I

114TH CONGRESS
1ST SESSION

# H. R. 2834

To enact certain laws relating to the environment as title 55, United States Code, ''Environment''.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2015

Mr. MARINO introduced the following bill; which was referred to the Committee on the Judiciary

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# A BILL

To enact certain laws relating to the environment as title 55, United States Code, ''Environment''.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. TABLE OF CONTENTS.**

The table of contents for this Act is as follows:



**SEC. 2. PURPOSE; RESTATEMENT DOES NOT CHANGE MEANING OR EFFECT OF EXISTING LAW.**

(a) PURPOSE.—The purpose of this Act is to codify certain existing laws relating to the environment as a positive law title of the United States Code.

(b) RESTATEMENT DOES NOT CHANGE MEANING OR EFFECT OF EXISTING LAW.—

(1) IN GENERAL.—The restatement of existing law enacted by this Act does not change the meaning or effect of the existing law. The re-

statement consolidates various provisions that were enacted separately over a period of many years, reorganizing them, conforming style and terminology, modernizing obsolete language, and correcting drafting errors. These changes serve to remove ambiguities, contradictions, and other imperfections, but they do not change the meaning or effect of the existing law or impair the precedential value of earlier judicial decisions or other interpretations.

(2) RULE OF CONSTRUCTION.—

(A) IN GENERAL.—Notwithstanding the plain meaning rule or other rules of statutory construction, a change in wording made in the restatement of existing law enacted by this Act serves to clarify the existing law as indicated in paragraph (1), but not to change the meaning or effect of the existing law.

(B) REVISION NOTES.—Subparagraph (A) applies whether or not a change in wording is explained by a revision note appearing in a congressional report accompanying this Act. If such a revision note does appear, a court shall consider the revision note in interpreting the change.

**SEC. 3. ENACTMENT OF TITLE 55, UNITED STATES CODE.**

(a) TITLE 55.—Title 55, United States Code, ''Environment'', is enacted as follows:

# TITLE 55—ENVIRONMENT

# Subtitle I—General Provisions

# Chapter 101—Definitions



## § 101101. Definitions

In this title:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(2) EPA.—The term ''EPA'' means the Environmental Protection Agency.

## § 101102. Environmental law

The inclusion in this title or exclusion from this title of any provision of law has no bearing on whether that provision is a provision of environmental law within the meaning of that term as used in any provision of law.

# Chapter 103—Environmental Protection Agency



## § 103101. Establishment

There is established the Environmental Protection Agency.

## § 103102. Administrator

(a) IN GENERAL.—There shall be at the head of EPA the Administrator of the Environmental Protection Agency.

(b) APPOINTMENT.—The Administrator shall be appointed by the President by and with the advice and consent of the Senate.

## § 103103. Deputy Administrator

(a) IN GENERAL.—There shall be in EPA a Deputy Administrator of the Environmental Protection Agency.

(b) APPOINTMENT.—The Deputy Administrator shall be appointed by the President by and with the advice and consent of the Senate.

(c) FUNCTIONS.—The Deputy Administrator shall—

(1) perform such functions as the Administrator shall from time to time assign or delegate; and

(2) act as Administrator during the absence or disability of the Administrator or in the event of a vacancy in the office of Administrator.

**§ 103104. Assistant Administrators**

(a) IN GENERAL.—

(1) NUMBER OF ASSISTANT ADMINISTRATORS.—Except as provided in subsection (b), there shall be in EPA not to exceed 5 Assistant Administrators of the Environmental Protection Agency.

(2) APPOINTMENT.—An Assistant Administrator shall be appointed by the President by and with the advice and consent of the Senate.

(3) FUNCTIONS.—An Assistant Administrator shall perform such functions as the Administrator shall from time to time assign or delegate to the Assistant Administrator.

(b) ADDITIONAL ASSISTANT ADMINISTRATORS.—

(1) IN GENERAL.—The President, by and with the advice and consent of the Senate, may appoint 3 Assistant Administrators of the Environmental Protection Agency in addition to—

(A) the 5 Assistant Administrators provided for in subsection (a);

(B) the Assistant Administrator provided by section 26(g) of the Toxic Substances Control Act (15 U.S.C. 2625(g)); and

(C) the Assistant Administrator provided by section 307(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 6911a).

(2) DUTIES.—An Assistant Administrator appointed under paragraph (1) shall perform such duties as the Administrator may prescribe.

**§ 103105. Functions**

(a) IN GENERAL.—In addition to any function assigned specifically to the Administrator under any other provision of law, the Administrator shall perform the following functions:

(1) The functions that, before December 2, 1970, were vested by law in the Secretary of the Interior and the Department of the Interior and administered by the Gulf Breeze Biological Laboratory of the Bureau of Commercial Fisheries at Gulf Breeze, Florida.

(2) The function of conducting investigations, studies, surveys, research, and analyses relating to ecological systems.

(3) The functions that, before December 2, 1970, were vested by law in the Secretary of Agriculture and the Department of Agriculture and were administered through the Environmental Quality Branch of the Plant Protection Division of the Agricultural Research Service.

(4) Such functions as are incidental to or necessary for the performance by or under the Administrator of the functions described in paragraphs (1) through (3), including authority provided by law to prescribe regulations relating primarily to the functions.

(b) PERFORMANCE OF FUNCTIONS.—The Administrator may from time to time make such provisions as the Administrator considers appropriate authorizing the performance of any of the functions of the Administrator by any other officer, or by any organizational entity or employee, of EPA.

**§ 103106. Office of Criminal Investigations**

(a) HEAD OF OFFICE.—The head of the Office of Criminal Investigations—

(1) shall be a position in the competitive service (as defined in section 2102 of title 5) or a career reserved position (as defined in section 3132(a) of that title); and

(2) shall report directly, without intervening review or approval, to the Assistant Administrator for Enforcement.

(b) CRIMINAL INVESTIGATORS.—There shall be assigned to the Office of Criminal Investigations not fewer than 200 criminal investigators.

**§ 103107. Civil investigators**

The Administrator shall assign to assist the Office of Enforcement in developing and prosecuting civil and administrative actions and carrying out its other functions a number of civil investigators that is at least 50 greater than the number of civil investigators so assigned on November 16, 1990.

**§ 103108. National Enforcement Training Institute**

(a) IN GENERAL.—The Administrator shall establish within the Office of Enforcement the National Enforcement Training Institute.

(b) FUNCTION.—It shall be a function of the Institute to train Federal, State, and local lawyers, inspectors, civil and criminal investigators, and technical experts in the enforcement of the Nation's environmental laws.

**§ 103109. Availability of certain accounts**

(a) AVAILABILITY.—For each fiscal year—

(1) the Science and Technology Account and Environmental Programs and Management Account are available for—

(A) uniforms, or allowances for uniforms, as authorized by sections 5901 and 5902 of title 5; and

(B) services as authorized by section 3109 of title 5, but at rates for individuals not to exceed the daily equivalent of the rate paid for level IV of the Executive Schedule; and

(2) the Science and Technology Account, Environmental Programs and Management Account, Office of Inspector General Account, Hazardous Substance Superfund Account, and Leaking Underground Storage Tank Trust Fund Program Account are available for the construction, alteration, repair, rehabilitation, and renovation of facilities provided that the cost does not exceed $85,000 per project.

(b) LIMITATION ON USE OF FUNDS FOR GRANTS.—None of the funds available for grants under the title headed ''ENVIRONMENTAL PROTECTION AGENCY'' in the Department of the Interior, Environment, and Related Agencies Appropriations Act for any fiscal year may be used to pay for the salaries of individual consultants at more than the daily equivalent of the rate paid for level IV of the Executive Schedule.

# Chapter 105—National Environmental Policy



## Subchapter I—Purposes

### § 105101. Purposes

The purposes of this chapter are—

(1) to declare a national policy that will encourage productive and enjoyable harmony between man and his environment;

(2) to promote efforts that will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man;

(3) to enrich the understanding of the ecological systems and natural resources important to the Nation; and

(4) to establish a Council on Environmental Quality.

# Subchapter II—Policies and Goals

## § 105201. Declaration of national environmental policy

(a) IN GENERAL.—Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances, and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) RESPONSIBILITY OF THE FEDERAL GOVERNMENT.—To carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) ensure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment that supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use that will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) HEALTHFUL ENVIRONMENT; RESPONSIBILITY OF EACH PERSON.—Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

**§ 105202. Interpretation of policies, regulations, and public laws; actions by Federal agencies**

(a) IN GENERAL.—Congress authorizes and directs that, to the fullest extent possible—

(1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this chapter; and

(2) all Federal agencies shall—

(A) utilize a systematic, interdisciplinary approach that will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking that may have an impact on the human environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality, that will ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects that cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources that would be involved in the proposed action should it be implemented.

(D) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal that involves unresolved conflicts concerning alternative uses of available resources;

(E) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(F) make available to States, counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(G) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(H) assist the Council on Environmental Quality.

(b) DETAILED STATEMENTS.—

(1) IN GENERAL.—Prior to making any detailed statement under subsection (a)(2)(C), the responsible Federal official shall consult with and obtain the comments of any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved.

(2) AVAILABILITY.—Copies of the statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards—

(A) shall be made available to the President, the Council on Environmental Quality, and the public as provided by section 552 of title 5; and

(B) shall accompany the proposal through the existing agency review processes;

(3) DETAILED STATEMENT PREPARED BY STATE AGENCY OR OFFICIAL.—

(A) IN GENERAL.—Any detailed statement required under subsection (a)(2)(C) for any major Federal action funded under a program of grants to States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if—

(i) the State agency or official has statewide jurisdiction and has the responsibility for the action;

(ii) the responsible Federal official furnishes guidance and participates in the preparation;

(iii) the responsible Federal official independently evaluates the statement prior to its approval and adoption; and

(iv) the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto that may have significant impacts on the State or affected Federal land management entity and, if there is any disagreement on the impacts, prepares a written assessment of the impacts and views for incorporation into the detailed statement.

(B) EFFECT OF PROCEDURES.—The procedures under this paragraph shall not relieve the Federal official of the official's responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this chapter, and this paragraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(c) CERTAIN ACTIVITIES NOT A MAJOR FEDERAL ACTION.—The licensing of a launch vehicle or launch site operator (including any amendment, extension, or renewal of the license) under chapter 701 of title 49 shall not be considered a major Federal action for purposes of subsection (a)(2)(C) if—

(1) the Department of the Army has issued a permit for the activity; and

(2) the Army Corps of Engineers has found that the activity has no significant impact.

(d) NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PROTECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS.—Nothing in this chapter (including regulations implementing this chapter) shall require the Secretary of Defense or the Secretary of a military department to prepare a programmatic nationwide environmental impact statement for low-level flight training as a precondition to the use by the Armed Forces of an airspace for the performance of low-level training flights.

(e) ACCELERATED DECISIONMAKING.—

(1) IN GENERAL.—In preparing a final environmental impact statement under this section, if the lead agency modifies the statement in response to comments that are minor and are confined to factual corrections or explanations of why the comments do not warrant additional agency response, the lead agency may write on an errata sheet attached to the statement, instead of rewriting the draft statement, if the errata sheet—

(A) cites the sources, authorities, or reasons that support the position of the lead agency; and

(B) if appropriate, indicates the circumstances that would trigger a reappraisal or further response by the lead agency.

(2) SINGLE DOCUMENT.—To the maximum extent practicable, the lead agency shall expeditiously develop a single document that consists of a final environmental impact statement and a record of decision, unless—

(A) the final environmental impact statement makes substantial changes to the proposed action that are relevant to environmental or safety concerns; or

(B) there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.

(f) EFFECT OF SECTION.—Nothing in this section has any effect on the specific statutory obligations of any Federal agency—

(1) to comply with criteria or standards of environmental quality;

(2) to coordinate or consult with any other Federal or State agency; or

(3) to act or refrain from acting contingent on the recommendations or certification of any other Federal or State agency.

# Subchapter III—Council on Environmental Policy

## § 105301. Definition of Council

In this subchapter, the term ''Council'' means the Council on Environmental Quality established under section 105302 of this title.

## § 105302. Establishment

(a) IN GENERAL.—There is created in the Executive Office of the President a Council on Environmental Quality.

(b) MEMBERSHIP.—The Council shall be composed of 3 members who shall be appointed by the President to serve at the pleasure of the President, by and with the advice and consent of the Senate.

(c) CHAIRMAN.—The President shall designate 1 of the members of the Council to serve as Chairman.

(d) QUALIFICATIONS.—Each member shall be an individual who, as a result of the individual's training, experience, and attainments, is exceptionally well qualified to—

(1) analyze and interpret environmental trends and information of all kinds;

(2) appraise programs and activities of the Federal Government in light of the policy set forth in subchapter II;

(3) be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and

(4) formulate and recommend national policies to promote the improvement of the quality of the environment.

## § 105303. Employment of personnel, experts, and consultants

(a) OFFICERS AND EMPLOYEES.—The Council may employ such officers and employees as may be necessary to carry out its functions under this chapter.

(b) EXPERTS AND CONSULTANTS.—The Council may employ and fix the compensation of such experts and consultants as may be necessary for the

carrying out of its functions under this chapter, in accordance with section 3109 of title 5 (but without regard to the last sentence of subsection (b) of that section).

(c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

**§ 105304. Duties and functions**

It shall be the duty and function of the Council—

(1) to—

(A) gather timely and authoritative information concerning the conditions and trends in the quality of the environment, both current and prospective;

(B) analyze and interpret that information for the purpose of determining whether those conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in subchapter II; and

(C) compile and submit to the President studies relating to those conditions and trends;

(2) to—

(A) review and appraise the various programs and activities of the Federal Government in light of the policy set forth in subchapter II for the purpose of determining the extent to which those programs and activities are contributing to the achievement of that policy; and

(B) make recommendations to the President with respect thereto;

(3) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(4) to conduct investigations, studies, surveys, research, and analyses relating to environmental quality;

(5) to—

(A) document and define changes in the natural environment, including the plant and animal systems; and

(B) accumulate necessary data and other information for a continuing analysis of those changes or trends and an interpretation of their underlying causes;

(6) to report at least once each year to the President on the state and condition of the environment; and

(7) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

**§ 105305. Consultation with Citizens' Advisory Committee on Environmental Quality and other representatives**

In exercising its powers, functions, and duties under this chapter, the Council shall—

(1) consult with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments and other groups, as the Council considers advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus ensuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

**§ 105306. Full-time service; compensation**

(a) FULL-TIME SERVICE.—A member of the Council shall serve full time.

(b) COMPENSATION.—

(1) CHAIRMAN.—The Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates under section 5313 of title 5.

(2) OTHER MEMBERS.—A member of the Council other than the Chairman shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates under section 5315 of title 5.

**§ 105307. Acceptance of travel reimbursement**

The Council may accept reimbursement from any private nonprofit organization or from any Federal, State, or local government agency for the reasonable travel expenses incurred by an officer or employee of the Council in connection with the officer or employee's attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

**§ 105308. Expenditures for international activities**

The Council may make expenditures in support of its international activities, including expenditures for—

(1) international travel;

(2) activities in implementation of international agreements; and

(3) the support of international exchange programs in the United States and in foreign countries.

### § 105309. Authorization of appropriations

There is authorized to be appropriated to carry out this chapter $1,000,000 for each fiscal year.

# Chapter 107—Environmental Quality Improvement

Sec.
107101. Definitions.
107102. Findings, declarations, and purposes.
107103. Office of Environmental Quality.
107104. Office of Environmental Quality Management Fund.

### § 107101. Definitions

In this chapter:

(1) DIRECTOR.—The term ''Director'' means the Director of the Office.

(2) FUND.—The term ''Office of Environmental Quality Management Fund'' means the Office of Environmental Quality Management Fund established under section 107104 of this title.

(3) OFFICE.—The term ''Office'' means the Office of Environmental Quality established under section 107103 of this title.

### § 107102. Findings, declarations, and purposes

(a) FINDINGS.—Congress finds that—

(1) man has caused changes in the environment;

(2) many of those changes may affect the relationship between man and his environment; and

(3) population increases and urban concentration contribute directly to pollution and the degradation of our environment.

(b) DECLARATIONS.—

(1) NATIONAL POLICY.—Congress declares that there is a national policy for the environment that provides for the enhancement of environmental quality. That policy is evidenced by statutes enacted relating to the prevention, abatement, and control of environmental pollution, water and land resources, transportation, and economic and regional development.

(2) RESPONSIBILITY FOR IMPLEMENTATION.—The primary responsibility for implementing that policy rests with State and local government.

(3) REGIONAL ORGANIZATIONS.—The Federal Government encourages and supports implementation of that policy through appropriate regional organizations established under law.

(c) PURPOSES.—The purposes of this chapter are—

(1) to ensure that each Federal agency conducting or supporting public works activities that affect the environment shall implement the policies established under law; and

(2) to authorize an Office of Environmental Quality, which, notwithstanding any other provision of law, shall provide the professional and administrative staff for the Council on Environmental Quality.

**§ 107103. Office of Environmental Quality**

(a) ESTABLISHMENT; DIRECTOR; DEPUTY DIRECTOR.—

(1) ESTABLISHMENT.—There is established in the Executive Office of the President the Office of Environmental Quality.

(2) DIRECTOR.—The Chairman of the Council on Environmental Quality shall be the Director of the Office.

(3) DEPUTY DIRECTOR.—There shall be in the Office a Deputy Director who shall be appointed by the President, by and with the advice and consent of the Senate.

(b) COMPENSATION OF DEPUTY DIRECTOR.—The compensation of the Deputy Director shall be fixed by the President at a rate not in excess of the annual rate of compensation payable to the Deputy Director of the Office of Management and Budget.

(c) EMPLOYMENT OF OFFICERS, EMPLOYEES, EXPERTS, AND CONSULTANTS; COMPENSATION.—The Director may employ such officers and employees (including experts and consultants) as may be necessary to enable the Office to carry out its functions under this chapter and chapter 105, except that the Director may employ not more than 10 specialists and other experts without regard to the provisions of title 5 governing appointments in the competitive service and pay such specialists and experts without regard to the provisions of chapter 51 and subchapter III of chapter 53 of that title relating to classification and General Schedule pay rates, but no such specialist or expert shall be paid at a rate in excess of the maximum rate payable under section 5376 of title 5.

(d) DUTIES AND FUNCTIONS OF DIRECTOR.—In carrying out the Director's functions, the Director shall assist and advise the President on policies and programs of the Federal Government affecting environmental quality by—

(1) providing the professional and administrative staff and support for the Council on Environmental Quality;

(2) assisting Federal agencies in appraising the effectiveness of existing and proposed facilities, programs, policies, and activities of the Federal Government, and specific major projects designated by the President that do not require individual project authorization by Congress, that affect environmental quality;

(3) reviewing the adequacy of existing systems for monitoring and predicting environmental changes in order to achieve effective coverage and efficient use of research facilities and other resources;

(4) promoting the advancement of scientific knowledge of the effects of actions and technology on the environment and encouraging the development of the means to prevent or reduce adverse effects that endanger the health and well-being of man;

(5) assisting in coordinating among Federal agencies programs and activities that affect, protect, and improve environmental quality;

(6) assisting Federal agencies in the development and interrelationship of environmental quality criteria and standards established through the Federal Government; and

(7) collecting, collating, analyzing, and interpreting data and information on environmental quality, ecological research, and evaluation.

(e) AUTHORITY OF DIRECTOR TO CONTRACT.—The Director may contract with public or private agencies, institutions, and organizations and with individuals without regard to subsections (a) and (b) of section 3324 of title 31 or section 6101 of title 5 in carrying out the Director's functions.

### § 107104. Office of Environmental Quality Management Fund

(a) ESTABLISHMENT; FINANCING OF STUDY CONTRACTS AND FEDERAL INTERAGENCY ENVIRONMENTAL PROJECTS.—There is established an Office of Environmental Quality Management Fund to receive advance payments from other agencies or accounts that may be used solely to finance—

(1) study contracts that are jointly sponsored by the Office and 1 or more other Federal agencies; and

(2) Federal interagency environmental projects (including task forces) in which the Office participates.

(b) STUDY CONTRACT OR PROJECT INITIATIVE.—Any study contract or project that is to be financed under subsection (a) may be initiated only with the approval of the Director.

(c) REGULATIONS.—The Director shall promulgate regulations setting forth policies and procedures for operation of the Fund.

# Chapter 109—Environmental Research, Development, and Demonstration

**Subchapter I—Provisions Enacted by the Environmental Research, Development, and Demonstration Authorization Act of 1978**



**Subchapter II—Provisions Enacted by the Environmental Research, Development, and Demonstration Authorization Act of 1979**

# Subchapter I—Provisions Enacted by the Environmental Research, Development, and Demonstration Authorization Act of 1978

## § 109101. Expenditure of funds for research and development related to regulatory program activities

(a) DEFINITION OF PROGRAM OFFICE.—In this section, the term ''program office'' means—

(1) the Office of Air and Waste Management, for air quality activities;

(2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;

(3) the Office of Pesticides, for environmental effects of pesticides;

(4) the Office of Solid Waste, for solid waste activities;

(5) the Office of Toxic Substances, for toxic substance activities;

(6) the Office of Radiation Programs, for radiation activities; and

(7) the Office of Noise Abatement and Control, for noise activities.

(b) REQUIREMENT.—The Administrator shall ensure that the expenditure of any funds appropriated under this subchapter or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with, and reflect the research needs and priorities of, the program offices and the overall research needs and priorities of EPA.

## § 109102. Science Advisory Board

(a) ESTABLISHMENT.—The Administrator shall establish a Science Advisory Board, which shall provide such scientific advice as may be requested by the Administrator, the Committee on Environment and Public Works of the Senate, or the Committee on Science and Technology, Committee on Energy and Commerce, or Committee on Transportation and Infrastructure of the House of Representatives.

(b) MEMBERSHIP; CHAIRMAN; MEETINGS; QUALIFICATIONS OF MEMBERS.—The Board shall be composed of at least 9 members, 1 of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education,

training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) PROPOSED ENVIRONMENTAL CRITERIA DOCUMENT, STANDARD, LIMITATION, OR REGULATION.—

(1) AVAILABILITY TO BOARD.—The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under division A of subtitle II, the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.), the Noise Control Act of 1972 (42 U.S.C. 4901 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), or the Safe Drinking Water Act (42 U.S.C. 300f et seq.), or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board—

(A) the proposed criteria document, standard, limitation, or regulation; and

(B) relevant scientific and technical information in the possession of EPA on which the proposed action is based.

(2) ADVICE AND COMMENTS.—The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(d) USE OF TECHNICAL AND SCIENTIFIC CAPABILITIES.—In preparing its advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including EPA and any national environmental laboratories.

(e) COMMITTEES.—

(1) MEMBER COMMITTEES.—

(A) IN GENERAL.—The Board may establish such member committees and investigative panels as the Administrator and the Board determine to be necessary to carry out this section.

(B) CHAIRMANSHIP.—Each member committee or investigative panel established under this subsection shall be chaired by a member of the Board.

(2) AGRICULTURE-RELATED COMMITTEES.—

(A) IN GENERAL.—The Administrator and the Board—

(i) shall establish a standing agriculture-related committee; and

(ii) may establish such additional agriculture-related committees and investigative panels as the Administrator and the

Board determine to be necessary to carry out the duties under subparagraph (C).

(B) MEMBERSHIP.—The standing committee and each agriculture-related committee or investigative panel established under subparagraph (A) shall be—

(i) composed of—

(I) such number of members as the Administrator and the Board determine to be necessary; and

(II) individuals who are not members of the Board on the date of appointment to the committee or investigative panel; and

(ii) appointed by the Administrator and the Board, in consultation with the Secretary of Agriculture.

(C) DUTIES.—The agriculture-related standing committee and each additional committee and investigative panel established under subparagraph (A) shall provide scientific and technical advice to the Board relating to matters referred to the Board that the Administrator and the Board determine, in consultation with the Secretary of Agriculture, to have a significant direct impact on enterprises that are engaged in the business of production of food and fiber, ranching and raising livestock, aquaculture, or any other farming- or agriculture-related industry.

(f) APPOINTMENT AND COMPENSATION OF SECRETARY AND OTHER PERSONNEL; COMPENSATION OF MEMBERS.—

(1) APPOINTMENT AND COMPENSATION OF SECRETARY AND OTHER PERSONNEL.—On the recommendation of the Board, the Administrator shall appoint a secretary and such other employees as are necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) COMPENSATION OF MEMBERS.—Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate payable under section 5376 of title 5.

(g) CONSULTATION AND COORDINATION WITH SCIENTIFIC ADVISORY PANEL.—In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator under section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w(d)).

(h) PUBLIC PARTICIPATION AND TRANSPARENCY.—The Board shall make every effort, consistent with applicable law, including section 552 of

title 5 (commonly known as the ''Freedom of Information Act'') and section 552a of title 5 (commonly known as the ''Privacy Act''), to maximize public participation and transparency, including making the scientific and technical advice of the Board and any committees or investigative panels of the Board publically available in electronic form on the EPA website.

(i) REPORT TO CONGRESS.—The Administrator shall annually report to the Committee on Environment and Public Works and Committee on Agriculture, Nutrition and Forestry of the Senate and the Committee on Transportation and Infrastructure, Committee on Energy and Commerce, and Committee on Agriculture of the House of Representatives regarding the membership and activities of the standing agriculture-related committee established under subsection (e)(2)(A)(i).

**§ 109103. Identification and coordination of research, development, and demonstration activities**

(a) CONSULTATION AND COOPERATION OF ADMINISTRATOR WITH FEDERAL AGENCY HEADS.—

(1) IN GENERAL.—The Administrator, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(A) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, that may need to be more effectively coordinated to minimize unnecessary duplication of programs, projects, and research facilities;

(B) to determine the steps that might be taken under existing law, by the Administrator and by the heads of other Federal agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(C) to determine the additional legislative actions that would be needed to ensure such coordination to the maximum extent possible.

(2) REPORTS.—The Administrator may submit to Congress reports on actions and determinations under paragraph (1) at such times as the Administrator considers appropriate.

(b) COORDINATION OF PROGRAMS.—The Administrator shall coordinate EPA environmental research, development, and demonstration programs with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

**§ 109104. Reporting of financial interests of EPA officers and employees**

(a) IN GENERAL.—An officer or employee of EPA who—

(1) performs any function or duty under this chapter; and

(2) has any known financial interest in any person that applies for or receives a grant, contract, or other form of financial assistance under this chapter;

shall annually file with the Administrator a written statement concerning all such interests held by the officer or employee during the preceding calendar year.

(b) PUBLIC AVAILABILITY.—A statement under subsection (a) shall be available to the public.

(c) IMPLEMENTATION OF REQUIREMENTS.—The Administrator shall—

(1) define the term ''known financial interest'' for purposes of subsection (a); and

(2) establish the methods by which the requirement to file written statements specified in subsection (a) will be monitored and enforced, including appropriate provision for the filing by officers and employees of statements under subsection (a) and the review by the Administrator of the statements.

(d) EXEMPTION OF POSITIONS BY ADMINISTRATOR.—In the regulations prescribed under subsection (c), the Administrator may identify specific positions of a nonpolicymaking nature within EPA and provide that officers or employees occupying those positions shall be exempt from the requirements of this section.

(e) CRIMINAL PENALTIES.—Criminal penalties for a violation of this section are provided under section 731 of title 18.

# Subchapter II—Provisions Enacted by the Environmental Research, Development, and Demonstration Authorization Act of 1979

## § 109201. Grants to qualified citizens groups

(a) DEFINITION OF QUALIFIED CITIZENS GROUP.—In this section, the term ''qualified citizens group'' means a nonprofit organization of citizens that—

(1) has an area-based focus;

(2) is not single-issue oriented; and

(3) demonstrates a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect, and enhance significant natural and cultural resources and the environment.

(b) GRANTS.—The Administrator may make a grant to a qualified citizens group in a State or region for the purpose of supporting and encouraging participation by the qualified citizens group in—

(1) determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area; and

(2) setting goals and identifying measures for improvement.

(c) ELIGIBILITY.—A qualified citizens group shall be eligible for assistance under this section only if the qualified citizens group is certified by the Governor in consultation with the State legislature as a bona fide organization entitled to receive Federal assistance to pursue the aims of the program under this section. The qualified citizens group shall further demonstrate its capacity to employ usefully the funds for the purposes of the program and its broad-based representative nature.

(d) AMOUNT.—A grant made under this section shall not exceed 75 percent of the estimated cost of the project or program for which the grant is made, and no qualified citizens group shall receive more than $50,000 in any 1 year.

(e) ANNUAL RENEWAL.—After an initial application of a qualified citizens group for assistance under this section has been approved, the Administrator may make grants to the qualified citizens group on an annual basis, on condition that the Governor recertify the qualified citizens group and that the applicant submit to the Administrator annually—

(1) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(2) a description of any changes in the objectives of the activities; and

(3) a description of the proposed activities for the succeeding one-year period.

(f) NO LOBBYING OR LITIGATION.—No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient qualified citizens group.

(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to EPA for grants to qualified citizens groups in States and regions $3,000,000.

**§ 109202. Miscellaneous reports**

(a) AVAILABILITY TO CONGRESSIONAL COMMITTEES.—All reports to or by the Administrator relevant to EPA's program of research, development, and demonstration shall promptly be made available to the Committee on Science and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

(b) INFORMATION WITH RESPECT TO MATTERS FALLING WITHIN OR RELATED TO COMMITTEE JURISDICTION.—The Administrator shall keep

the Committee on Science and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

(c) AVAILABILITY OF RESEARCH INFORMATION TO THE DEPARTMENT OF ENERGY.—For the purpose of assisting the Department of Energy in planning and assigning priorities in research, development, and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of EPA.

**§ 109203. Staff management**

(a) APPOINTMENTS FOR EDUCATIONAL PROGRAMS.—

(1) IN GENERAL.—The Administrator may select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of—

(A) securing an advanced degree; or

(B) securing academic training;

for the purpose of making a career change in order to better carry out EPA's research mission.

(2) RULES AND CRITERIA.—The Administrator shall select and appoint staff members for assignments under paragraph (1) according to rules and criteria promulgated by the Administrator.

(3) PAY.—The Administrator may continue to pay the salary and benefits of the appointees under paragraph (1) and reasonable and appropriate relocation expenses and tuition.

(4) TERM.—The term of each appointment under paragraph (1) shall be for up to 1 year, with a single renewal of up to 1 year in appropriate cases at the discretion of the Administrator.

(5) PERSONNEL CEILING.—Staff members appointed under paragraph (1) shall not count against any EPA personnel ceiling during the term of their appointment.

(b) POST-DOCTORAL RESEARCH FELLOWS.—

(1) IN GENERAL.—The Administrator may appoint up to 25 post-doctoral research fellows in accordance with section 213.3102(aa) of title 5, Code of Federal Regulations.

(2) PERSONNEL CEILING.—Post-doctoral research fellows appointed under paragraph (1) shall not count against any EPA personnel ceiling.

(c) NON-GOVERNMENT RESEARCH ASSOCIATES.—

(1) IN GENERAL.—The Administrator may, and is encouraged to, utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of EPA.

(2) SELECTION; RULES AND CRITERIA.—Research associates described in paragraph (1) shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

(d) WOMEN AND MINORITY GROUPS.—For all programs under this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

# Subchapter III—Provisions Enacted by the Environmental Research, Development, and Demonstration Authorization Act of 1980

## § 109301. Energy-related pollution control technologies and environmental protection projects

(a) ENERGY-RELATED POLLUTION CONTROL TECHNOLOGIES.—The Administrator shall continue to be responsible for conducting and shall continue to conduct full-scale demonstrations of energy-related pollution control technologies as necessary in the Administrator's judgment to fulfill—

(1) division A of subtitle II;

(2) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.); and

(3) other pertinent pollution control statutes.

(b) ENERGY-RELATED ENVIRONMENTAL PROTECTION PROJECTS.—Energy-related environmental protection projects authorized to be administered by the Administrator under the Environmental Research, Development, and Demonstration Authorization Act of 1980 (94 Stat. 325) shall not be transferred administratively to the Department of Energy or reduced through budget amendment. No action shall be taken through administrative or budgetary means to diminish the ability of the Administrator to initiate such projects.

## § 109302. Information about environmental research and development activities

The Administrator shall keep the appropriate committees of Congress fully and currently informed about all aspects of the environmental research and development activities of EPA.

## § 109303. Reimbursement for use of facilities

(a) IN GENERAL.—The Administrator may allow appropriate use of special EPA research and test facilities by outside groups or individuals and receive reimbursement or fees for costs incurred in connection with such use

when the Administrator finds it to be in the public interest. Such reimbursement or fees shall be used by the Administrator to defray the costs of use by outside groups or individuals.

(b) REGULATIONS.—The Administrator may promulgate regulations to cover the use of EPA facilities under subsection (a) in accordance with generally accepted accounting, safety, and laboratory practices.

(c) WAIVER OF REIMBURSEMENT.—When the Administrator finds it is in the public interest, the Administrator may waive reimbursement or fees for outside use of EPA facilities by nonprofit private or public entities.

# Subchapter IV—Provision Enacted by the Environmental Research, Development, and Demonstration Authorization Act of 1981

## § 109401. Continuing and long-term environmental research and development

(a) IN GENERAL.—The Administrator shall establish a separately identified program of continuing, long-term environmental research and development for—

(1) air quality activities under division A of subtitle II;

(2) water quality activities under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

(3) water supply activities under the Safe Drinking Water Act (42 U.S.C. 300f et seq.);

(4) solid waste activities under the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.);

(5) pesticide activities under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.);

(6) radiation activities under the Public Health Service Act (42 U.S.C. 201 et seq.);

(7) interdisciplinary activities in the Health and Ecological Effects program and the Monitoring and Technical Support program;

(8) toxic substance activities under the Toxic Substances Control Act (15 U.S.C. 2601 et seq.); and

(9) energy activities in the Health and Ecological Effects program and the Energy Control program.

(b) USE OF APPROPRIATED FUNDS.—Unless otherwise specified by law, at least 15 percent of funds appropriated to the Administrator for environmental research and development for each activity listed in subsection (a) shall be obligated and expended for long-term environmental research and development under subsection (a).

# Chapter 111—Provisions Applicable to More Than 1 Subtitle or Other Law



### § 111101. Oklahoma Indian country

(a) ADMINISTRATION OF STATE PROGRAMS BY THE STATE.—Notwithstanding any other provision of law, if the Administrator determines that a regulatory program submitted by the State of Oklahoma for approval by the Administrator under a law administered by the Administrator meets applicable requirements of the law, and the Administrator approves the State to administer the State program under the law with respect to areas in the State that are not Indian country, on request of the State, the Administrator shall approve the State to administer the State program in the areas of the State that are in Indian country, without any further demonstration of authority by the State.

(b) TREATMENT AS STATE.—Notwithstanding any other provision of law, the Administrator may treat an Indian tribe in the State of Oklahoma as a State under a law administered by the Administrator only if—

(1) the Indian tribe meets requirements under the law to be treated as a State; and

(2) the Indian tribe and the agency of the State of Oklahoma with federally delegated program authority enter into a cooperative agreement, subject to review and approval of the Administrator after notice and opportunity for public hearing, under which the Indian tribe and that State agency agree to treatment of the Indian tribe as a State and to jointly plan and administer program requirements.

# Chapters 113 through 197—Reserved

# Chapter 199—Miscellaneous



### § 199101. Interagency cooperation on prevention of environmental cancer and heart and lung disease

(a) TASK FORCE.—There shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (referred to in this section as the ''Task Force'').

(b) MEMBERSHIP; CHAIR.—The Task Force—

(1) shall include—

(A) representatives of EPA, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and Health, and the National Institute on Environmental Health Sciences; and

(B) the Director of the National Center for Health Statistics and the head of the Centers for Disease Control and Prevention (or the successor to that entity); and

(2) shall be chaired by the Administrator.

(c) DUTIES.—The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or heart and lung disease associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases; and

(4) coordinate research by, and stimulate cooperation between, EPA, the Department of Health and Human Services, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases.

### § 199102. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control

(a) TECHNICAL ASSISTANCE TO ENVIRONMENTAL AGENCIES.—Notwithstanding any other provision of law relating to Federal grants and cooperative agreements, the Administrator may make a grant to, or enter into a cooperative agreement with, a private nonprofit organization designated by the Secretary of Labor under title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.) to utilize the talents of older Americans in programs authorized by other provisions of law administered by the Administrator (and consistent with those provisions of law) in providing technical assistance to Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control.

(b) PRE-AWARD CERTIFICATIONS.—Prior to awarding any grant or agreement under subsection (a), the Federal, State, or local environmental agency shall certify to the Administrator that the grant or agreement will not—

(1) result in the displacement of individuals currently employed by the environmental agency concerned (including partial displacement through reduction of nonovertime hours, wages, or employment benefits);

(2) result in the employment of any individual when any other person is in a layoff status from the same or substantially equivalent job within the jurisdiction of the environmental agency concerned; or

(3) affect existing contracts for services.

(c) FUNDING.—

(1) IN GENERAL.—Funding for grants or agreements under this section may be made available from programs described in subsection (a) or through title V of the Older Americans Act of 1965 (42 U.S.C. 3056 et seq.) and subtitle D of title I of the Workforce Innovation and Opportunity Act (29 U.S.C. 3221 et seq.).

(2) PRIOR APPROPRIATION ACTS.—Grants or agreements awarded under this section shall be subject to prior appropriation Acts.

**§ 199103. Indian environmental general assistance program**

(a) PURPOSES.—The purposes of this section are to—

(1) provide general assistance grants to Indian tribal governments and intertribal consortia to build capacity to administer environmental regulatory programs that may be delegated by the Administrator on Indian land; and

(2) provide technical assistance from the Administrator to Indian tribal governments and intertribal consortia in the development of multimedia programs to address environmental issues on Indian land.

(b) DEFINITIONS.—In this section:

(1) INDIAN TRIBAL GOVERNMENT.—The term ''Indian tribal government'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation (as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recognized as eligible for the special services provided by the United States to Indians because of their status as Indians.

(2) INTERTRIBAL CONSORTIUM.—The term ''intertribal consortium'' means a partnership between 2 or more Indian tribal governments authorized by the governing bodies of those Indian tribes to apply for and receive assistance pursuant to this section.

(c) GENERAL ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish an Indian environmental general assistance program that provides grants to eligible Indian tribal governments or intertribal consortia to cover the costs of

planning, developing, and establishing environmental protection programs consistent with other applicable provisions of law providing for enforcement of such laws by Indian tribes on Indian land.

(2) GRANT AMOUNT.—Each grant awarded for general assistance under this subsection for a fiscal year shall be not less than $75,000, and no single grant may be awarded to an Indian tribal government or intertribal consortium for more than 10 percent of the funds appropriated to carry out this section.

(3) GRANT TERM.—The term of any general assistance award made under this subsection may exceed 1 year. Any award made pursuant to this section shall remain available until expended. An Indian tribal government or intertribal consortium may receive a general assistance grant for a period of up to 4 years in each specific media area.

(d) NO REDUCTION IN AMOUNTS.—In no case shall the award of a general assistance grant to an Indian tribal government or intertribal consortium under this section result in a reduction of EPA grants for environmental programs to that tribal government or consortium. Nothing in this section shall preclude an Indian tribal government or intertribal consortium from receiving individual media grants or cooperative agreements. Funds provided by the Administrator through the general assistance program shall be used by an Indian tribal government or intertribal consortium to supplement other funds provided by the Administrator through individual media grants or cooperative agreements.

(e) EXPENDITURE OF GENERAL ASSISTANCE.—Any general assistance under this section shall be expended for the purpose of planning, developing, and establishing the capability to implement programs administered by the Administrator and specified in the assistance agreement. Purposes and programs authorized under this section shall include the development and implementation of solid and hazardous waste programs for Indian land. An Indian tribal government or intertribal consortium receiving general assistance pursuant to this section shall utilize the funds for programs and purposes to be carried out in accordance with the terms of the assistance agreement. The programs and general assistance shall be carried out in accordance with the purposes and requirements of applicable provisions of law (including the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)).

(f) PROCEDURES.—

(1) REGULATIONS.—The Administrator shall promulgate regulations establishing procedures under which an Indian tribal government or intertribal consortium may apply for general assistance grants under this section.

(2) ACCOUNTING, AUDITING, EVALUATING, AND REVIEWING.—The Administrator shall establish procedures for accounting, auditing, evaluating, and reviewing any programs or activities funded in whole or in part by a general assistance grant under this section.

(g) REPORTS TO CONGRESS.—The Administrator shall submit an annual report to the appropriate Committees of Congress with jurisdiction over the applicable environmental laws and Indian tribes describing which Indian tribes or intertribal consortia have been granted approval by the Administrator pursuant to law to enforce certain environmental laws and the effectiveness of any such enforcement.

**§ 199104. EPA fees**

(a) ASSESSMENT AND COLLECTION.—The Administrator shall by regulation assess and collect fees and charges for services and activities carried out pursuant to laws administered by the Administrator.

(b) LIMITATION ON FEES AND CHARGES.—

(1) CERTAIN PROGRAMS.—The maximum aggregate amount of fees and charges in excess of the amounts being collected under law in effect as of November 5, 1980, that may be assessed and collected pursuant to this section in a fiscal year—

(A) for services and activities carried out pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is $10,000,000; and

(B) for services and activities in programs within the jurisdiction of the Committee on Energy and Commerce of the House of Representatives and administered by the Administrator shall be limited to—

(i) such sums collected as of November 5, 1990, pursuant to sections 26(b) and 305(d)(2) of the Toxic Substances Control Act (15 U.S.C. 2625(b), 2665(d)(2)); and

(ii) such sums specifically authorized by Public Law 101–549 (commonly known as the Clean Air Act Amendments of 1990).

(2) OTHER PROGRAMS.—Any remaining amounts required to be collected under this section shall be collected from services and programs administered by the Administrator other than those specified in subparagraphs (A) and (B) of paragraph (1).

(c) RULE OF CONSTRUCTION.—Nothing in this section increases or diminishes the authority of the Administrator to promulgate regulations pursuant to section 9701 of title 31.

(d) USES OF FEES.—Fees and charges collected pursuant to this section shall be deposited in the Treasury in a special account for environmental

services. Subject to appropriation Acts, such funds shall be available to the Administrator to carry out the activities for which the fees and charges are collected. Such funds shall remain available until expended.

### § 199105. Availability of fees and charges deposited in the Licensing and Other Services Fund to carry out EPA programs

Amounts deposited in the Licensing and Other Services Fund from fees and charges assessed and collected by the Administrator for services and activities carried out pursuant to the statutes administered by the Administrator shall be available to carry out EPA's activities in the programs for which the fees or charges are made.

### § 199106. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals

(a) IN GENERAL.—The Administrator shall, to the fullest extent possible, ensure that at least 8 percent of Federal funding for prime and subcontracts awarded in support of authorized programs, including grants, loans, and contracts for wastewater treatment and leaking underground storage tanks grants, be made available to business concerns or other organizations owned or controlled by socially and economically disadvantaged individuals (within the meaning of paragraphs (5) and (6) of section 8(a) of the Small Business Act (15 U.S.C. 637(a))), including historically black colleges and universities.

(b) WOMEN.—For purposes of this section, economically and socially disadvantaged individuals shall be deemed to include women.

### § 199107. Working capital fund

(a) ESTABLISHMENT.—There is established in the Treasury a working capital fund, to be available without fiscal year limitation for expenses and equipment necessary for the maintenance and operation of such administrative services as the Administrator determines may be performed more advantageously as central services.

(b) USE OF ASSETS TO CAPITALIZE FUND.—Any inventories, equipment, and other assets pertaining to the services to be provided by the working capital fund, either on hand or on order, less the related liabilities or unpaid obligations, and any appropriations made for the purpose of providing capital, shall be used to capitalize the working capital fund.

(c) PAYMENT OR REIMBURSEMENT.—The working capital fund shall be paid in advance or reimbursed from funds available to EPA and other Federal agencies for which such centralized services are performed, at rates that will return in full all expenses of operation, including—

(1) accrued leave;

(2) depreciation of fund plant and equipment;

(3) amortization of automated data processing software and systems (either acquired or donated); and

(4) an amount necessary to maintain a reasonable operating reserve, as determined by the Administrator.

(d) COMPETITION.—The working capital fund shall provide services on a competitive basis.

(e) RESERVE.—

(1) IN GENERAL.—An amount not to exceed 4 percent of the total income to the working capital fund during a fiscal year may be retained in the fund, to remain available until expended, to be used for the acquisition of capital equipment and for the improvement and implementation of EPA financial management, automated data processing, and other support systems.

(2) EXCESS.—Not later than 30 days after the end of each fiscal year, amounts in excess of the reserve limitation under paragraph (1) shall be transferred to the Treasury.

### § 199108. Availability of funds after expiration of period for liquidating obligations

For any fiscal year, the obligated balances of sums available in multiple-year appropriations accounts shall remain available through the 7th fiscal year after their period of availability has expired for liquidating obligations made during the period of availability.

# Subtitle II—Air
# Division A—Clean Air
# Subdivision 1—General Provisions
# Chapter 201—Definitions

Sec.
201101. Definitions.

### § 201101. Definitions

In this division:

(1) AIR POLLUTANT.—

(A) IN GENERAL.—The term ''air pollutant'' means any air pollution agent or combination of air pollution agents (including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter) that is emitted into or otherwise enters the ambient air.

(B) INCLUSIONS.—The term ''air pollutant'' includes any precursor or precursors to the formation of any air pollutant, to the extent that the Administrator has identified the precursor or precursors for the particular purpose for which the term ''air pollutant'' is used.

(2) AIR POLLUTION CONTROL AGENCY.—The term ''air pollution control agency'' means any of the following:

(A) A single State agency designated by the Governor of a State as the official State air pollution control agency for purposes of this division.

(B) An agency established by 2 or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(C)(i) A city, county, or other local government health authority; or

(ii) in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, that agency.

(D) An agency of 2 or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(E) An agency of an Indian tribe.

(3) AIR QUALITY CONTROL REGION.—The term ''air quality control region'' means an air quality control region designated under section 211107 of this title.

(4) APPLICABLE IMPLEMENTATION PLAN.—The term ''applicable implementation plan'' means the portion (or portions) of an implementation plan, or most recent revision of an implementation plan, that—

(A) has been approved under section 211110 of this title, promulgated under section 211110(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 203101(d) of this title; and

(B) implements the relevant requirements of this division.

(5) CO.—The term ''CO'' means carbon monoxide.

(6) COMPLIANCE SCHEDULE.—The term ''compliance schedule'' means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(7) CONTROL TECHNIQUE GUIDELINE.—The term ''control technique guideline'' means a control technique guideline published by the Administrator under section 211108 of this title.

(8) DELAYED COMPLIANCE ORDER.—The term ''delayed compliance order'' means an order issued by a State or by the Administrator to an existing stationary source, postponing the date required under an

applicable implementation plan for compliance by the source with any requirement of the applicable implementation plan.

(9) EMISSION LIMITATION; EMISSION STANDARD.—

(A) IN GENERAL.—The terms ''emission limitation'' and ''emission standard'' mean a requirement established by a State or the Administrator that limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.

(B) INCLUSIONS.—The terms ''emission limitation'' and ''emission standard'' include—

(i) any requirement relating to the operation or maintenance of a source to ensure continuous emission reduction; and

(ii) any design, equipment, work practice, or operational standard promulgated under this division.

(10) FEDERAL IMPLEMENTATION PLAN.—The term ''Federal implementation plan'' means a plan (or portion of a plan) that—

(A) is promulgated by the Administrator to fill all or a portion of a gap, or otherwise correct all or a portion of an inadequacy, in a State implementation plan;

(B) includes enforceable emission limitations or other control measures, means, or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances); and

(C) provides for attainment of the relevant NAAQS.

(11) FEDERAL LAND MANAGER.—The term ''Federal land manager'' means, with respect to any land in the United States, the Secretary of the department with authority over the land.

(12) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, that is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(13) INTERSTATE AIR POLLUTION CONTROL AGENCY.—The term ''interstate air pollution control agency'' means—

(A) an air pollution control agency established by 2 or more States; or

(B) an air pollution control agency of 2 or more municipalities located in different States.

(14) MAJOR EMITTING FACILITY; MAJOR STATIONARY SOURCE.—The terms ''major emitting facility'' and ''major stationary source'' mean any stationary facility or source of air pollutants that directly emits,

or has the potential to emit, 100 tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by regulation by the Administrator).

(15) MEANS OF EMISSION LIMITATION.—

(A) IN GENERAL.—The term ''means of emission limitation'' means a system of continuous emission reduction.

(B) INCLUSIONS.—The term ''means of emission limitation'' includes the use of specific technology or fuels with specified pollution characteristics.

(16) MUNICIPALITY.—The term ''municipality'' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(17) NAAQS.—The term ''NAAQS'' means a national ambient air quality standard.

(18) $NO_x$.—The term ''$NO_x$'' means a nitrogen oxide.

(19) PERSON.—The term ''person'' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(20) PM–10.—The term ''PM–10'' means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers, as measured by such method as the Administrator may determine.

(21) PRIMARY STANDARD ATTAINMENT DATE.—The term ''primary standard attainment date'' means the date specified in an applicable implementation plan for the attainment of a primary NAAQS for any air pollutant.

(22) RACT/BACT/LAER CLEARINGHOUSE.—The tern ''RACT/BACT/LAER clearinghouse'' means the database maintained under section 211108(h) of this title.

(23) STANDARD OF PERFORMANCE.—

(A) IN GENERAL.—The term ''standard of performance'' means a requirement of continuous emission reduction.

(B) INCLUSIONS.—The term ''standard of performance'' includes any requirement relating to the operation or maintenance of a source to ensure continuous emission reduction.

(24) STATE.—The term ''State'' means a State, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands.

(25) STATIONARY SOURCE.—The term ''stationary source'' means any source of an air pollutant except emissions resulting directly from

an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle (as defined in section 221101 of this title).

(26) VOLATILE ORGANIC COMPOUND; VOC.—The terms ''volatile organic compound'' and ''VOC'' mean a volatile organic compound as defined by the Administrator.

(27) WELFARE.—All language referring to effects on welfare includes—

(A) effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate;

(B) damage to and deterioration of property;

(C) hazards to transportation; and

(D) effects on economic values and on personal comfort and well-being;

whether or not any of the foregoing is caused by transformation of an air pollutant, conversion of an air pollutant, or a combination of an air pollutant with other air pollutants.

# Chapter 203—Administrative and Procedural Provisions



## § 203101. Administration

(a) REGULATIONS; DELEGATION OF POWERS AND DUTIES; REGIONAL OFFICERS AND EMPLOYEES.—

(1) IN GENERAL.—The Administrator may prescribe such regulations as are necessary to carry out the Administrator's functions under this division. The Administrator may delegate to any officer or employee of EPA such of the Administrator's powers and duties under this division, except the making of regulations subject to section 203102(d) of this title, as the Administrator considers necessary or expedient.

(2) PROCEDURES AND POLICIES FOR REGIONAL OFFICERS AND EMPLOYEES.—

(A) IN GENERAL.—The Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including a Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any.

(B) DESIGN.—The regulations shall be designed to—

(i) ensure fairness and uniformity in the criteria, procedures, and policies applied by the various EPA regions in implementing and enforcing this division;

(ii) ensure at least an adequate quality audit of each State's performance and adherence to the requirements of this division in implementing and enforcing This division, particularly in the review of new sources and in enforcement of this division; and

(iii) provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by regional officers and employees in implementing and enforcing this division.

(b) DETAIL OF EPA PERSONNEL TO AIR POLLUTION CONTROL AGENCIES.—On the request of an air pollution control agency, EPA personnel may be detailed to the air pollution control agency for the purpose of carrying out this division.

(c) PAYMENTS UNDER GRANTS; INSTALLMENTS; ADVANCES OR REIMBURSEMENTS.—Payments under grants made under this division may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

(d) TRIBAL AUTHORITY.—

(1) IN GENERAL.—Subject to paragraph (2), the Administrator—

(A) may treat Indian tribes as States under this division, except for purposes of the requirement that makes available for application by each State not less than 0.5 percent of annual appropriations under section 211105 of this title; and

(B) may provide any Indian tribe grant and contract assistance to carry out functions provided by this division.

(2) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall promulgate regulations specifying the provisions of this division for which it is appropriate to treat Indian tribes as States.

(B) REQUIREMENTS.—The Administrator may treat an Indian tribe as a State only if—

(i) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

(ii) the functions to be exercised by the Indian tribe pertain to the management and protection of air resources within the exterior boundaries of the reservation or other areas within the Indian tribe's jurisdiction; and

(iii) the Indian tribe is reasonably expected to be capable, in the judgment of the Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this division (including all applicable regulations).

(3) TRIBAL IMPLEMENTATION PLANS.—The Administrator may promulgate regulations that establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions of tribal implementation plans.

(4) TREATMENT.—In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer the provisions specified under paragraph (2) so as to achieve the appropriate purpose.

### § 203102. General provisions relating to administrative proceedings and judicial review

(a) ADMINISTRATIVE SUBPOENAS.—

(1) IN GENERAL.—In connection with any determination under section 211110(d) of this title, or for purposes of obtaining information under section 221111(d)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under this division (including under section 203103, 209101, 211113, 211114, 211119, 211128, 213109, 221105, 221106, or 221108 of this title), the Administrator may—

(A) issue subpoenas for the attendance and testimony of witnesses and the production of relevant records; and

(B) administer oaths.

(2) TRADE SECRETS; SECRET PROCESSES.—Except for emission data, on a showing satisfactory to the Administrator by an owner or operator that records or information or any part thereof subpoenaed under paragraph (1), if made public, would divulge trade secrets or secret processes of the owner or operator, the Administrator shall consider the record or part of a record confidential in accordance with section 1905 of title 18, except that the record may be disclosed—

(A) to other officers, employees, or authorized representatives of the United States concerned with carrying out this division; or

(B) when relevant in any proceeding under this division.

(3) PAYMENT OF WITNESSES.—A witness summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(4) CONTUMACY; REFUSAL TO OBEY SUBPOENA.—In case of contumacy or refusal to obey a subpoena served on any person under this subsection—

(A) the United States district court for any district in which the person is found or resides or transacts business, on application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Administrator, to appear and produce records before the Administrator, or both; and

(B) any failure to obey such a court order may be punished by the court as a contempt of court.

(b) JUDICIAL REVIEW.—

(1) PLACE FOR REVIEW.—

(A) DISTRICT OF COLUMBIA CIRCUIT.—

(i) IN GENERAL.—A petition for review of an action of the Administrator described in clause (ii) may be filed only in the United States Court of Appeals for the District of Columbia Circuit.

(ii) ACTION.—An action referred to in clause (i) is—

(I) an action of the Administrator in promulgating any—

(aa) primary or secondary NAAQS;

(bb) emission standard or requirement under section 211112 of this title;

(cc) standard of performance or requirement under section 211111 of this title;

(dd) standard under section 221102 of this title (other than a standard required to be prescribed under section 221102(b)(1) of this title);

(ee) control or prohibition under section 221111 of this title;

(ff)) standard under section 223102 of this title; or

(gg) regulation issued under section 211113 or 211119 of this title; or

(II) an action of the Administrator in promulgating any other nationally applicable regulation or taking any other nationally applicable final action under this division.

(B) OTHER CIRCUITS.—

(i) IN GENERAL.—A petition for review of an action of the Administrator described in clause (ii) may be filed only in the United States Court of Appeals for the appropriate circuit.

(ii) ACTION.—An action referred to in clause (i) is—

(I) an action of the Administrator in approving or promulgating any—

(aa) implementation plan under section 211110 or 211111(d) of this title; or

(bb) order under section 211111(h), 211112, or 211119 of this title;

(II) an action of the Administrator revising regulations for enhanced monitoring and compliance certification programs under section 211114(a)(3) of this title; or

(III) any other final action of the Administrator under this division (including any denial or disapproval by the Administrator under subdivision 2) that is locally or regionally applicable.

(iii) DETERMINATION OF NATIONWIDE SCOPE OR EFFECT.—Notwithstanding clauses (i) and (ii), a petition for review of any action described in clause (ii) may be filed only in the United States Court of Appeals for the District of Columbia Circuit if—

(I) the action is based on a determination of nationwide scope or effect; and

(II) in taking the action, the Administrator finds and publishes that the action is based on such a determination.

(2) TIME FOR FILING.—A petition for review under this subsection shall be filed within 60 days after the date notice of the promulgation, approval, or action appears in the Federal Register, except that if the petition is based solely on grounds arising after that 60th day, any petition for review under this subsection shall be filed within 60 days after those grounds arise.

(3) EFFECT OF FILING OF PETITION FOR RECONSIDERATION.—The filing of a petition for reconsideration by the Administrator of any otherwise final regulation or other action shall not—

(A) affect the finality of the regulation or other action for purposes of judicial review;

(B) extend the time within which a petition for judicial review of the regulation or other action under this section may be filed; or

(C) postpone the effectiveness of the regulation or other action.

(4) NO REVIEW IN ENFORCEMENT PROCEEDINGS.—Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(5) DEFERRAL OF NONDISCRETIONARY ACTION.—Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) ADDITIONAL EVIDENCE.—In any judicial proceeding in which review is sought of a determination under this division required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceeding before the Administrator, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and on such terms and conditions as the court considers proper. The Administrator may modify the Administrator's findings as to the facts or make new findings by reason of the additional evidence so taken, and the Administrator shall file the modified or new findings, and the Administrator's recommendation, if any, for the modification or setting aside of the Administrator's original determination, with the return of the additional evidence.

(d) RULEMAKING.—

(1) DEFINITIONS.—In this subsection:

(A) COMMENT PERIOD.—The term ''comment period'' means the period for public comment specified in a notice of proposed rulemaking under paragraph (4)(A)(iii).

(B) DOCKET.—The term ''docket'' means a rulemaking docket established under paragraph (3).

(C) RULE.—The term ''rule'' means—

(i) the promulgation or revision of any NAAQS under section 211109 of this title;

(ii) the promulgation or revision of an implementation plan by the Administrator under section 211110(c) of this title;

(iii) the promulgation or revision of any standard of performance under section 211111 of this title, emission stand-

ard or limitation under section 211112(d) of this title, standard under section 211112(f) of this title, or regulation under subsection (l) or (m) of section 211112 of this title;

(iv) the promulgation of any requirement for solid waste combustion under section 211128 of this title;

(v) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 221111 of this title;

(vi) the promulgation or revision of any aircraft emission standard under section 223102 of this title;

(vii) the promulgation or revision of any regulation under subdivision 5;

(viii) promulgation or revision of regulations under subdivision 7;

(ix) promulgation or revision of regulations under chapter 213;

(x) promulgation or revision of regulations under section 221102 of this title and test procedures for new motor vehicles or engines under section 221106 of this title, and the revision of a standard under section 221102(a)(3) of this title;

(xi) promulgation or revision of regulations for noncompliance penalties under section 211119 of this title;

(xii) promulgation or revision of any regulations promulgated under section 221107 of this title;

(xiii) action of the Administrator under section 211125 of this title;

(xiv) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 215204(e) of this title;

(xv) the promulgation or revision of any regulation pertaining to field citations under section 211113(e)(3) of this title;

(xvi) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under chapter 225;

(xvii) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 221113 of this title;

(xviii) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 221115 of this title;

(xix) the promulgation or revision of any regulation under section 215204(f) of this title pertaining to marine vessels; and

(xx) such other actions as the Administrator may determine.

(2) INAPPLICABILITY OF CERTAIN PROVISIONS IN TITLE 5.—Sections 553 to 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to a rule. This subsection shall not apply in the case of any rule or circumstance described in the provision designated (A) or (B) of section 553(b) of title 5.

(3) RULEMAKING DOCKET.—Not later than the date of proposal of any rule, the Administrator shall establish a rulemaking docket for the rule. Whenever a rule applies only within a particular State, a 2d (identical) docket shall be simultaneously established in the appropriate EPA regional office.

(4) NOTICE OF PROPOSED RULEMAKING.—

(A) IN GENERAL.—In the case of any rule, notice of proposed rulemaking—

(i) shall be published in the Federal Register, as provided under section 553(b) of title 5;

(ii) shall be accompanied by a statement of its basis and purpose;

(iii) shall specify the period for public comment; and

(iv) shall state the docket number, the location or locations of the docket, and the times that the docket will be open to public inspection.

(B) STATEMENT OF BASIS AND PURPOSE.—A statement of basis and purpose under subparagraph (A)(ii)—

(i) shall include a summary of—

(I) the factual data on which the proposed rule is based;

(II) the methodology used in obtaining the data and in analyzing the data; and

(III) the major legal interpretations and policy considerations underlying the proposed rule; and

(ii) shall—

(I) set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 211109(d) of this title and the National Academy of Sciences; and

(II) if the proposal differs in any important respect from any of these recommendations, include an explanation of the reasons for the differences.

(C) INCLUSION IN DOCKET.—All data, information, and documents described in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(5) PUBLIC AVAILABILITY OF DOCKET.—The docket shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities that may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(6) INCLUSION IN DOCKET.—

(A) COMMENTS AND DOCUMENTARY INFORMATION RECEIVED.—Promptly on receipt by EPA, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket.

(B) TRANSCRIPT.—The transcript of public hearings, if any, on the proposed rule shall be included in the docket promptly on receipt from the person who transcribed the hearings.

(C) DOCUMENTS OF CENTRAL RELEVANCE.—All documents that become available after the proposed rule has been published and that the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(D) DRAFTS OF PROPOSED AND FINAL RULES UNDER THIS SUBSECTION AND RELATED DOCUMENTS AND COMMENTS.—The drafts of a proposed rule submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any rule, all documents accompanying the drafts, all written comments thereon by other agencies, and all written responses to such written comments by the Administrator shall be placed in the docket not later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written re-

sponses thereto shall be placed in the docket not later than the date of promulgation.

(7) PROCEEDINGS.—In promulgating a rule—

(A) the Administrator shall allow any person to submit written comments, data, or documentary information;

(B) the Administrator shall give interested persons an opportunity to make written submissions and oral presentations of data, views, or arguments;

(C) a transcript shall be kept of any oral presentation; and

(D) the Administrator shall keep the record of the proceeding open for 30 days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(8) PROMULGATED RULES UNDER THIS SUBSECTION.—

(A) ITEMS TO ACCOMPANY PROMULGATED RULE.—A promulgated rule shall be accompanied by—

(i) a statement of basis and purpose like that described in paragraph (4)(B) with respect to a proposed rule;

(ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule; and

(iii) a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(B) BASIS.—A promulgated rule may not be based (in part or whole) on any information or data that have not been placed in the docket as of the date of promulgation.

(9) JUDICIAL REVIEW.—

(A) RECORD.—The record for judicial review shall consist exclusively of the material described in subparagraphs (A) and (B) of paragraph (4), subparagraphs (A), (B), and (C) of paragraph (6), and paragraph (8)(A).

(B) OBJECTIONS.—

(i) IN GENERAL.—Only an objection to a rule or a procedure that was raised with reasonable specificity during the comment period (including any public hearing) may be raised during judicial review.

(ii) IMPRACTICALITY OF RAISING OBJECTION; GROUNDS ARISING AFTER COMMENT PERIOD.—If the person raising an objection demonstrates to the Administrator that it was impracticable to raise an objection within the comment period or if the grounds for an objection arose after the comment

period (but within the time specified for judicial review), and if the objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time at which the rule was proposed. If the Administrator refuses to convene such a proceeding, the person may seek review of the refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Reconsideration shall not stay the effectiveness of the rule, but the Administrator or the court may stay the effectiveness of the rule during reconsideration for not more than 3 months.

(10) PROCEDURAL DETERMINATIONS.—

(A) SOLE FORUM.—The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule.

(B) NO INTERLOCUTORY APPEAL.—No interlocutory appeal shall be permitted with respect to a procedural determination made by the Administrator under this subsection.

(C) INVALIDATION OF RULE.—In reviewing alleged procedural errors, the court may invalidate a rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if the errors had not been made.

(11) REVERSAL.—A court may reverse any action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if—

(i) the failure to observe the procedure is arbitrary or capricious;

(ii) the requirement of paragraph (9)(B) has been met; and

(iii) the condition of paragraph (10)(C) is met.

(12) STATUTORY DEADLINES.—A statutory deadline for promulgation of a rule that requires promulgation less than 6 months after the

date of proposal may be extended to not more than 6 months after the date of proposal by the Administrator on a determination that the extension is necessary to afford the public and EPA adequate opportunity to carry out the purposes of this subsection.

(e) NO OTHER JUDICIAL REVIEW.—Nothing in this division shall be construed to authorize judicial review of regulations or orders of the Administrator under this division, except as provided in this section.

(f) COSTS.—In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney's fees and expert witness's fees) whenever the court determines that such an award is appropriate.

(g) STAY, INJUNCTION, OR SIMILAR RELIEF IN PROCEEDINGS RELATING TO NONCOMPLIANCE PENALTIES.—In any civil action respecting the promulgation of regulations under, or the administration or enforcement of, section 211119 of this title, the court shall not grant any stay, injunctive relief, or similar relief before final judgment by the court.

(h) PUBLIC PARTICIPATION.—It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of title 5, the Administrator in promulgating any regulation under this division, including a regulation subject to a deadline, shall ensure that there is a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in sections 211107(d), 215102(a), 215202, and 215302 of this title.

### § 203103. Emergency powers

(a) CIVIL ACTION.—Notwithstanding any other provision of this division, the Administrator, on receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring a civil action on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to the pollution or to take such other action as may be necessary.

(b) ISSUANCE OF ORDERS BY THE ADMINISTRATOR.—If it is not practicable to ensure prompt protection of public health or welfare or the environment by commencement of a civil action under subsection (a), the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment.

(c) CONSULTATION.—Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based.

(d) EFFECTIVENESS.—Any order issued by the Administrator under this section shall be effective on issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings a civil action pursuant to subsection (a) before the expiration of that period. Whenever the Administrator brings such a civil action within the 60-day period, the order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which the civil action is brought.

**§ 203104. Citizen suits**

(a) DEFINITION OF EMISSION STANDARD OR LIMITATION UNDER THIS DIVISION.—In this section, the term ''emission standard or limitation under this division'' means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance, or emission standard;

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive;

(3)(A) any condition or requirement of a permit under chapter 213 or 215;

(B) any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements;

(C) any regulation under subsection (e) or act described in subsection (f) of section 221111 of this title;

(D) any regulation under subsection (b) or (c) of section 213201 of this title;

(E) subdivision 7; or

(F) any requirement under section 211111 or 211112 of this title (without regard to whether the requirement is expressed as an emission standard); or

(4) any other standard, limitation, or schedule established under any permit issued pursuant to subdivision 6 or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations;

that is in effect under this division (including a requirement applicable by reason of section 211118 of this title) or under an applicable implementation plan.

(b) IN GENERAL.—

(1) VIOLATION OF EMISSION STANDARD OR LIMITATION OR OF ORDER.—

(A) DEFINITION OF PERSON.—In this paragraph, the term ''person'' includes—

(i) the United States; and

(ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution.

(B) CIVIL ACTION.—Except as provided in subsection (c), any person may commence a civil action on the person's own behalf against any person that is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of—

(i) an emission standard or limitation under this division; or

(ii) an order issued by the Administrator or a State with respect to an emission standard or limitation under this division.

(2) FAILURE OF ADMINISTRATOR TO PERFORM NONDISCRETIONARY ACT OR DUTY.—Except as provided in subsection (c), any person may commence a civil action on the person's own behalf against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this division that is not discretionary with the Administrator.

(3) CONSTRUCTION WITHOUT PERMIT; VIOLATION OF PERMIT.—Except as provided in subsection (c), any person may commence a civil action on the person's own behalf against any person that—

(A) proposes to construct or constructs any new or modified major emitting facility without a permit required under chapter 213 or 215; or

(B) is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such a permit.

(4) JURISDICTION TO ENFORCE EMISSION STANDARD, EMISSION LIMITATION, OR ORDER.—

(A) IN GENERAL.—A United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to—

(i) enforce an emission standard or emission limitation or an order described in paragraph (1)(B)(ii), or to order the Administrator to perform an act or duty described in paragraph (2), as the case may be; and

(ii) to apply any appropriate civil penalties (except in a civil action under paragraph (2)).

(B) PENALTY ASSESSMENT CRITERIA.—

(i) FACTORS.—In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into consideration (in addition to such other factors as justice may require)—

(I) the size of the business;

(II) the economic impact of the civil penalty on the business;

(III) the violator's full compliance history and good faith efforts to comply;

(IV) the duration of the violation as established by any credible evidence (including evidence other than the applicable test method);

(V) payment by the violator of penalties previously assessed for the same violation;

(VI) the economic benefit of noncompliance; and

(VII) the seriousness of the violation.

(ii) CIVIL PENALTY FOR EACH DAY OF VIOLATION.—A civil penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a civil penalty may be assessed under this subsection, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of the notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(5) COMPULSION OF AGENCY ACTION.—A United States district court shall have jurisdiction to compel (consistent with paragraph (2)) agency action unreasonably delayed, except that a civil action to compel agency action under section 203102(b) of this title that is unreasonably delayed may be filed only in a United States district court within the circuit in which the civil action would be reviewable under section 203102(b) of this title. In any such civil action for unreasonable delay,

notice to the entities described in subsection (c)(1)(A)(i) shall be provided 180 days before commencing the civil action.

(c) NOTICE.—

(1) IN GENERAL.—Except as provided in paragraph (2), no civil action may be commenced—

(A) under subsection (b)(1)(B)—

(i) prior to 60 days after the plaintiff has given notice of the violation to—

(I) the Administrator;

(II) the State in which the violation occurs; and

(III) any alleged violator of the emission standard or limitation or order; or

(ii) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the emission standard or limitation or order (but in any such civil action in a court of the United States any person may intervene as a matter of right); or

(B) under subsection (b)(2) prior to 60 days after the plaintiff has given notice of the civil action to the Administrator.

(2) EXCEPTION.—A civil action under this section respecting a violation of subsection (f)(4) or (i)(3)(A) of section 211112 of this title or an order issued by the Administrator pursuant to section 211113(b) of this title may be brought immediately after notification to the Administrator.

(3) MANNER OF NOTICE.—Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(d) PLACE FOR BRINGING CIVIL ACTION; INTERVENTION BY ADMINISTRATOR; SERVICE OF COMPLAINT; CONSENT JUDGMENT.—

(1) PLACE FOR BRINGING CIVIL ACTION.—Any civil action respecting a violation by a stationary source of an emission standard or limitation or an order respecting an emission standard or limitation may be brought only in the judicial district in which the stationary source is located.

(2) INTERVENTION BY ADMINISTRATOR.—In any civil action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in a civil action under this section to which the United States is not a party shall not have any binding effect on the United States.

(3) SERVICE OF COMPLAINT.—Whenever any civil action is brought under this section, the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator.

(4) CONSENT JUDGMENT.—No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator, during which 45-day period the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(e) AWARD OF COSTS; SECURITY.—In issuing any final order in any action brought pursuant to subsection (b), a court may award costs of litigation (including reasonable attorney's fees and expert witness's fees) to any party, whenever the court determines that such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure (28 U.S.C. App.).

(f) NONRESTRICTION OF OTHER RIGHTS.—

(1) PERSONS IN GENERAL.—Nothing in this section restricts any right that any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(2) STATE, LOCAL, AND INTERSTATE AUTHORITIES.—Nothing in this section or in any other law of the United States prohibits, excludes, or restricts any State, local, or interstate authority from—

(A) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court; or

(B) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department, or instrumentality;

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution.

(3) OTHER PROVISIONS.—For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 211118 of this title.

(g) PENALTY FUND.—

(1) IN GENERAL.—

(A) DEPOSIT.—Penalties received under subsection (b) shall be deposited in a special fund in the Treasury for licensing and other services.

(B) USE.—Amounts in the fund are authorized to be appropriated and shall remain available until expended for use by the Administrator to finance air compliance and enforcement activities.

(2) USE OF PENALTIES IN BENEFICIAL MITIGATION PROJECTS.—

(A) IN GENERAL.—Notwithstanding paragraph (1), the court in any action under this section to apply civil penalties shall have discretion to order that the civil penalties, in lieu of being deposited in the fund described in paragraph (1), be used in beneficial mitigation projects that are consistent with this division and enhance public health or the environment.

(B) VIEW OF THE ADMINISTRATOR.—The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects.

(C) AMOUNT.—The amount of any such payment in any such action shall not exceed $100,000.

**§ 203105. Representation in litigation**

(a) ATTORNEY GENERAL; ATTORNEYS APPOINTED BY ADMINISTRATOR.—The Administrator shall request the Attorney General to appear and represent the Administrator in any civil action instituted under this division to which the Administrator is a party. Unless the Attorney General notifies the Administrator that the Attorney General will appear in the civil action within a reasonable time, attorneys appointed by the Administrator shall appear and represent the Administrator.

(b) MEMORANDUM OF UNDERSTANDING REGARDING LEGAL REPRESENTATION.—If the Attorney General agrees to appear and represent the Administrator in any civil action, the representation shall be conducted in accordance with, and shall include participation by attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the EPA dated June 13, 1977, respecting representation of EPA by the Department of Justice in civil litigation.

# Chapters 205 through 207—Reserved
# Chapter 209—Miscellaneous

Sec.
209101. Federal procurement.
209102. Mandatory patent licensing.
209103. Policy review.
209104. Other authority and responsibilities.
209105. Records and audit.
209106. Labor standards.

**§ 209101. Federal procurement**

(a) PROHIBITION OF CONTRACTS WITH VIOLATORS.—

(1) IN GENERAL.—No Federal agency may enter into any contract with any person that is convicted of any offense under section 211113(d) of this title for the procurement of goods, materials, and services to perform the contract at any facility at which the violation that gave rise to the conviction occurred if the facility is owned, leased, or supervised by that person.

(2) TIME PERIOD.—The prohibition under paragraph (1) shall continue until the Administrator certifies that the condition giving rise to the conviction has been corrected.

(3) INCLUSION OF SUBSTANTIVE VIOLATION.—In the case of a conviction arising under paragraph (2) of section 211113(d) of this title, the condition giving rise to the conviction also shall be considered to include any substantive violation of this division associated with the violation of that paragraph.

(4) OTHER FACILITIES.—The Administrator may extend the prohibition under paragraph (1) to other facilities owned or operated by the convicted person.

(b) NOTIFICATION PROCEDURES.—The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) FEDERAL AGENCY CONTRACTS.—To implement the purposes and policy of this division to protect and enhance the quality of the Nation's air, the President shall cause to be issued an order that—

(1) requires each Federal agency authorized to enter into contracts and each Federal agency that is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this division in such contracting or assistance activities; and

(2) sets forth procedures, sanctions, penalties, and such other provisions as the President determines to be necessary to carry out that requirement.

(d) EXEMPTIONS.—The President—

(1) may exempt any contract, loan, or grant from all or part of this section where the President determines that an exemption is necessary in the paramount interest of the United States; and

(2) shall notify Congress of the exemption.

**§ 209102. Mandatory patent licensing**

(a) IN GENERAL.—Whenever the Attorney General determines, on application of the Administrator—

(1) that—

(A) in the implementation of requirement of section 211111, 211112, or 221102 of this title, a right under any United States letters patent that is being used or intended for public or commercial use and that is not otherwise reasonably available is necessary to enable any person required to comply with the requirement to comply with the requirement; and

(B) there are no reasonable alternative methods to accomplish that purpose; and

(2) that the unavailability of that right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country;

the Attorney General may so certify to a United States district court, which may issue an order requiring the person that owns the patent to license it on such reasonable terms and conditions as the court, after hearing, may determine.

(b) WHERE CERTIFICATION MAY BE MADE.—Certification under subsection (a) may be made to the United States district court for the district in which the person owning the patent resides, does business, or is found.

**§ 209103. Policy review**

(a) ENVIRONMENTAL IMPACT.—The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this division or other provisions of the authority of the Administrator, contained in any—

(1) legislation proposed by any Federal department or agency;

(2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 105202(a)(2)(C) of this title applies; and

(3) proposed regulations published by any department or agency of the Federal Government.

(b) WRITTEN COMMENT.—Written comment under subsection (a) shall be made public at the conclusion of any review under subsection (a).

(c) UNSATISFACTORY LEGISLATION, ACTION, OR REGULATION.—If the Administrator determines that any legislation, action, or regulation de-

scribed in subsection (a) is unsatisfactory from the standpoint of public health or welfare or environmental quality—

(1) the Administrator shall publish the determination; and

(2) the matter shall be referred to the Council on Environmental Quality.

**§ 209104. Other authority and responsibilities**

(a) IN GENERAL.—Except as provided in subsection (b), this division shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) NONDUPLICATION OF APPROPRIATIONS.—No appropriation shall be authorized or made under section 301, 311, or 314 of the Public Health Service Act (42 U.S.C. 241, 243, 246) for any purpose for which appropriations may be made under this division.

**§ 209105. Records and audit**

(a) RECIPIENTS OF ASSISTANCE TO KEEP PRESCRIBED RECORDS.—A recipient of assistance under this division shall keep such records as the Administrator shall prescribe, including—

(1) records that fully disclose—

(A) the amount and disposition by the recipient of the proceeds of the assistance;

(B) the total cost of the project or undertaking in connection with which the assistance is given or used; and

(C) the amount of the portion of the cost of the project or undertaking that is supplied by other sources; and

(2) such other records as will facilitate an effective audit.

(b) AUDITS.—The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any records of a recipient of assistance under this division that are pertinent to the assistance received under this division.

**§ 209106. Labor standards**

(a) IN GENERAL.—The Administrator shall take such action as may be necessary to ensure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this division are paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with sections 3141 to 3144, 3146, and 3147 of title 40.

(b) AUTHORITY OF THE SECRETARY OF LABOR.—The Secretary of Labor shall have, with respect to the labor standards specified in this subsection

(a), the authority and functions set forth in Reorganization Plan No. 14 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

**§ 209107. Sewage treatment grants**

(a) CONSTRUCTION.—No grant that the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this division except as provided in subsection (b).

(b) WITHHOLDING, CONDITIONING, OR RESTRICTING OF GRANTS.—

(1) IN GENERAL.—The Administrator may withhold, condition, or restrict the making of any grant described in subsection (a) only if the Administrator determines that—

(A) the treatment works will not comply with applicable standards under section 211111 or 211112 of this title;

(B) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator that expressly quantifies and provides for the increase in emissions of each air pollutant from stationary and mobile sources in any area to which chapter 213 or 215 applies for that pollutant, which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity that would be created by the construction;

(C) the construction of the treatment works would create new sewage treatment capacity that—

(i) may reasonably be anticipated to cause or contribute, directly or indirectly, to an increase in emissions of any air pollutant in excess of the increase provided for under the provisions described in subparagraph (B) for any such area; or

(ii) would otherwise not be in conformity with the applicable implementation plan; or

(D) the increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

(2) INCREASE IN EMISSIONS OF AIR POLLUTANT FROM STATIONARY AND MOBILE SOURCES IN AN AREA TO WHICH CHAPTER 215 APPLIES.—In the case of construction of a treatment works that would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which chapter 215 applies, the quantification of emissions described in paragraph (1)(B) shall include the emissions of any such pollutant resulting directly or

indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) CHAPTER 105.—Nothing in this section shall be construed to—

(1) amend or alter any provision of chapter 105; or

(2) affect any determination as to whether or not the requirements of that chapter have been met in the case of the construction of any sewage treatment works.

**§ 209108. Economic impact assessment**

(a) ACTIONS TO WHICH THIS SECTION APPLIES.—

(1) IN GENERAL.—This section applies to action of the Administrator in promulgating or revising (subject to paragraph (2))—

(A) any new source standard of performance under section 211111 of this title;

(B) any regulation under section 211111(d) of this title;

(C) any regulation under subdivision 7;

(D) any regulation under chapter 213;

(E) any regulation establishing emission standards under section 221102 of this title and any other regulation promulgated under that section;

(F) any regulation controlling or prohibiting any fuel or fuel additive under section 221111(d) of this title; and

(G) any aircraft emission standard under section 223102 of this title.

(2) LIMITATION.—Nothing in this section shall apply to any standard or regulation described in paragraph (1) unless the notice of proposed rulemaking in connection with the standard or regulation is published in the Federal Register. In the case of a revision of such a standard or regulation, this section shall apply only to a revision that the Administrator determines to be a substantial revision.

(b) PREPARATION OF ASSESSMENT BY ADMINISTRATOR.—

(1) IN GENERAL.—Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting the standard or regulation.

(2) INCLUSION IN DOCKET.—An economic impact assessment under paragraph (1) shall be included in the docket required under section 203102(d)(3) of this title and shall be available to the public as provided in section 203102(d)(5) of this title. The notice of proposed rulemaking shall include notice of such availability and an explanation of the extent to which and manner in which the Administrator has consid-

ered the analysis contained in the economic impact assessment in proposing the action.

(3) EXPLANATION.—The Administrator shall provide an explanation described in paragraph (2) in the Administrator's notice of promulgation of any regulation or standard described in subsection (a). Each such explanation shall be part of the statements of basis and purpose required under paragraphs (4) and (8) of section 203102(d) of this title.

(c) ANALYSIS.—

(1) IN GENERAL.—Subject to subsection (d), the economic impact assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(A) the costs of compliance, including the extent to which the costs of compliance will vary depending on—

(i) the effective date; and

(ii) the development of less expensive, more efficient means or methods of compliance;

(B) the potential inflationary or recessionary effects;

(C) the effects on competition with respect to small business;

(D) the effects on consumer costs; and

(E) the effects on energy use.

(2) EFFECT OF SECTION.—Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors that the Administrator is required to consider in taking any action described in subsection (a).

(d) EXTENSIVENESS OF ASSESSMENT.—An economic impact assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator, taking into account the time and resources available to EPA and other duties and authorities that the Administrator is required to carry out under this division.

(e) EFFECT OF SECTION.—Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this division;

(2) to preclude the Administrator from carrying out the Administrator's responsibility under this division to protect public health and welfare; or

(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of the standard or regulation on the basis of failure to comply with this section.

(f) CITIZEN SUITS.—

(1) NONDISCRETIONARY DUTIES.—The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 203104(b)(2) of this title.

(2) SOLE METHOD OF ENFORCEMENT.—The sole method for enforcement of the Administrator's duty under this section shall be by bringing a civil action under section 203104(b)(2) of this title for a court order to compel the Administrator to perform the duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) COSTS.—In the case of any provision of this division in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of the provision to take cost into account.

**§ 209109. Air quality monitoring**

(a) IN GENERAL.—

(1) REGULATIONS.—After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States that—

(A) utilizes uniform air quality monitoring criteria and methodology and measures the air quality according to a uniform air quality index;

(B) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan;

(C) provides for daily analysis and reporting of air quality based on the uniform air quality index; and

(D) provides for recordkeeping with respect to the monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based on the data.

(2) OPERATION.—The operation of the air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President considers appropriate. Any air quality monitoring system required under any applicable implementation plan under section 211110 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the stand-

ard criteria and methodology, and measure air quality according to the standard index, established under the regulations.

(b) AIR QUALITY MONITORING DATA INFLUENCED BY EXCEPTIONAL EVENTS.—

(1) DEFINITION OF EXCEPTIONAL EVENT.—In this section:

(A) IN GENERAL.—The term ''exceptional event'' means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is caused by human activity that is unlikely to recur at a particular location or is a natural event; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) EXCLUSIONS.—The term ''exceptional event'' does not include—

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) REGULATIONS.—

(A) PROPOSED REGULATIONS.—After consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) FINAL REGULATIONS.—Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling of air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) PRINCIPLES AND REQUIREMENTS.—

(A) PRINCIPLES.—In promulgating regulations under this section, the Administrator shall follow the principles that—

(i) protection of public health is the highest priority;

(ii) timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) all ambient air quality data should be included in a timely manner, in an appropriate Federal air quality database that is accessible to the public;

(iv) each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

(B) REQUIREMENTS.—Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that are promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a NAAQS and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is an exceptional event; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that are directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the NAAQSes.

**§ 209110. Air quality modeling**

(a) CONFERENCES.—At least every 3 years, the Administrator shall conduct a conference on air quality modeling. In conducting a conference, special attention shall be given to appropriate modeling necessary for carrying out chapter 213.

(b) CONFEREES.—A conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation, the National Oceanic and Atmospheric Administration, and the National Institute of Standards and Technology.

(c) COMMENTS; TRANSCRIPTS.—Interested persons shall be permitted to submit written comments, and a verbatim transcript of the conference proceedings shall be maintained. The comments and transcript shall be included in the docket required to be established for purposes of promulgating

or revising any regulation relating to air quality modeling under chapter 213.

**§ 209111. Employment effects**

(a) CONTINUOUS EVALUATION OF POTENTIAL LOSS OR SHIFTS OF EMPLOYMENT.—The Administrator shall conduct continuing evaluations of potential loss or shifts of employment that may result from the administration or enforcement of the provision of this division and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) INVESTIGATION.—

(1) REQUEST FOR INVESTIGATION.—Any employee, or any representative of an employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this division, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision of a State, may request the Administrator to investigate the matter. Any such request shall be in writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee (or representative of the employee) making the request.

(2) INVESTIGATION.—On the making of a request under paragraph (1), the Administrator shall investigate the matter and, at the request of any party, shall hold public hearings on not less than 5 days' notice. At the hearings, the Administrator shall require the parties, including the employer of the employee, to present information relating to the actual or potential effect of a requirement described in paragraph (1) on employment and the detailed reasons or justification for the requirements. If the Administrator determines that there are no reasonable grounds for conducting a public hearing, the Administrator shall notify (in writing) the party requesting a hearing of the determination and the reasons for the determination. If the Administrator convenes a hearing, the hearing shall be on the record.

(3) FINDINGS AND RECOMMENDATIONS.—

(A) IN GENERAL.—On receiving the report of an investigation under paragraph (2), the Administrator shall—

(i) make findings of fact as to the effect of the requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment; and

(ii) make such recommendations as the Administrator considers appropriate.

(B) PUBLIC AVAILABILITY.—The report, findings, and recommendations shall be available to the public.

(c) SUBPOENAS; OATHS.—

(1) IN GENERAL.—In connection with any investigation or public hearing conducted under subsection (b), the Administrator may—

(A) issue subpoenas for the attendance and testimony of witnesses and the production of relevant records; and

(B) administer oaths.

(2) TRADE SECRETS; SECRET PROCESSES.—Except for emission data, on a showing satisfactory to the Administrator by an owner or operator that records or information or any particular part thereof, if made public, would divulge trade secrets or secret processes of the owner or operator, the Administrator shall consider the record, report, or information or particular part thereof confidential in accordance with section 1905 of title 18, except that the record or information may be disclosed—

(A) to other officers, employees, or authorized representatives of the United States concerned with carrying out this division; or

(B) when relevant in any proceeding under this division.

(3) PAYMENT OF WITNESSES.—A witness summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

(4) CONTUMACY; REFUSAL TO OBEY SUBPOENA.—In a case of contumacy or refusal to obey a subpoena served on any person under paragraph (1)—

(A) the United States district court for any district in which the person is found or resides or transacts business, on application by the United States and after notice to the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Administrator and to appear and produce records before the Administrator; and

(B) any failure to obey such a court order may be punished by the court as a contempt of court.

(d) LIMITATIONS ON CONSTRUCTION OF SECTION.—Nothing in this section shall be construed to require or authorize the Administrator, a State, or a political subdivision of a State to modify or withdraw any requirement imposed or proposed to be imposed under this division.

**§ 209112. Employee protection**

(a) NO DISCHARGE OR DISCRIMINATION.—No employer may discharge or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this division or a proceeding for the administration or enforcement of any requirement imposed under this division or under any applicable implementation plan;

(2) testified or is about to testify in any such proceeding; or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out this division.

(b) INVESTIGATION.—

(1) COMPLAINT.—An employee who believes that the employee has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within 30 days after the violation occurs, file (or have any person file on the employee's behalf) a complaint with the Secretary of Labor (referred to in this subsection as the ''Secretary'') alleging the discharge or discrimination. On receipt of the complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2) INVESTIGATION.—On receipt of a complaint under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within 30 days of the receipt of the complaint, the Secretary shall complete the investigation and shall notify in writing the complainant (and any person acting in the complainant's behalf) and the person alleged to have committed the violation of the results of the investigation.

(3) ORDER.—

(A) IN GENERAL.—Within 90 days after receipt of a complaint under paragraph (1), the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed the violation, issue an order providing the relief prescribed by subparagraph (B) or denying the relief. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) RELIEF.—If, in response to a complaint under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary—

(i) shall order the person that committed the violation to—

(I) take affirmative action to abate the violation; and

(II) reinstate the complainant to the complainant's former position together with the compensation (including back pay), terms, conditions, and privileges of the complainant's employment; and

(ii) may order the person to provide compensatory damages to the complainant.

(4) COSTS AND EXPENSES.—If an order is issued under paragraph (3), the Secretary, at the request of the complainant, shall assess against the person against which the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorney's fees and expert witness's fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint on which the order is issued.

(c) REVIEW.—

(1) IN GENERAL.—Any person adversely affected or aggrieved by an order issued under subsection (b)(3) may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within 60 days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) NO OTHER REVIEW.—An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) ENFORCEMENT OF ORDER BY SECRETARY.—Whenever a person has failed to comply with an order issued under subsection (b)(3), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce the order. In a civil action brought under this subsection, the district court shall have jurisdiction to grant all appropriate relief, including injunctive relief, compensatory damages, and exemplary damages.

(e) ENFORCEMENT OF ORDER BY PERSON ON WHOSE BEHALF ORDER WAS ISSUED.—

(1) IN GENERAL.—Any person on whose behalf an order was issued under subsection (b)(3) may commence a civil action against the person

to which the order was issued to require compliance with the order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce the order.

(2) COSTS.—In issuing any final order under this subsection, a court may award costs of litigation (including reasonable attorney's fees and expert witness's fees) to any party whenever the court determines that such an award is appropriate.

(f) MANDAMUS.—Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) DELIBERATE VIOLATION BY EMPLOYEE.—Subsection (a) shall not apply with respect to any employee who, acting without direction from the employee's employer (or the employer's agent), deliberately causes a violation of any requirement of this division.

**§ 209113. Cost of vapor recovery equipment**

(a) COSTS TO BE BORNE BY OWNER OF RETAIL OUTLET.—The regulations under this division applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of the vapor recovery shall be borne by the owner of the outlet (as determined under the regulations). Except as provided in subsection (b), the regulations shall provide that no lease of a retail outlet by the owner thereof may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. The regulations shall provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of the outlet by means of price increases in the cost of any product sold by the owner, notwithstanding any provision of law.

(b) PAYMENT BY LESSEE.—The regulations of the Administrator described in subsection (a) shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with the regulations) if the owner of the outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at the outlet.

**§ 209114. Vapor recovery for independent small business marketers of gasoline**

(a) DEFINITIONS.—In this section:

(1) CONTROL.—The term ''control'', in reference to control of a corporation, means ownership of more than 50 percent of the stock of the corporation.

(2) INDEPENDENT SMALL BUSINESS MARKETER OF GASOLINE.—The term ''independent small business marketer of gasoline'' means a person engaged in the marketing of gasoline that would be required to pay for procurement and installation of vapor recovery equipment under section 209113 of this title or under regulations of the Administrator, unless the person—

(A)(i) is a refiner;

(ii) controls, is controlled by, or is under common control with, a refiner; or

(iii) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person that controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by the refiner or any such person); or

(B) receives less than 50 percent of the person's annual income from refining or marketing of gasoline.

(3) REFINER.—The term ''refiner'' does not include a refiner the total refinery capacity of which (including the refinery capacity of any person that controls, is controlled by, or is under common control with, the refiner) does not exceed 65,000 barrels per day.

(b) MARKETERS OF GASOLINE.—The regulations under this division applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons.

(c) STATE REQUIREMENTS.—Nothing in subsection (a) shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement that is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

### § 209115. Exemptions for certain territories

(a) EXEMPTION ON PETITION.—

(1) IN GENERAL.—On petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Northern Mariana Islands, the Administrator may exempt any person or source or class of persons or sources in that territory or commonwealth from any requirement under this division other than—

(A) section 211112 of this title; or

(B) any requirement under section 211110 of this title or chapter 215 necessary to attain or maintain a primary NAAQS.

(2) BASIS FOR EXEMPTION.—An exemption may be granted under paragraph (1) if the Administrator finds that compliance with the requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of the territory or commonwealth or to such other local factors as the Administrator considers significant.

(3) CONSIDERATION.—A petition under paragraph (1) shall be considered in accordance with section 203102(d) of this title, and any exemption under this subsection shall be considered to be final action by the Administrator for the purposes of section 203102(b) of this title.

(4) NOTIFICATION.—The Administrator shall promptly notify the Committee on Energy and Commerce and Committee on Natural Resources of the House of Representatives and the Committee on Environment and Public Works and Committee on Energy and Natural Resources of the Senate on receipt of a petition under this subsection and of the approval or rejection of the petition and the basis for the action.

(b) EXEMPTION OF CERTAIN POWERPLANT.—

(1) IN GENERAL.—Notwithstanding any other provision of this division, any fossil fuel-fired steam electric powerplant operating within Guam as of December 8, 1983, is exempted from—

(A) any requirement of the new source performance standards relating to sulfur dioxide promulgated under section 211111 of this title as of December 8, 1983; and

(B) any regulation relating to sulfur dioxide standards or limitations contained in a State implementation plan approved under section 211110 of this title as of December 8, 1983, except as provided in paragraph (2).

(2) EXPIRATION.—The exemptions under paragraph (1) shall expire unless the Administrator determines that the powerplant described in paragraph (1) is making all emission reductions practicable to prevent exceedances of the NAAQSes for sulfur dioxide.

## § 209116. Air pollution from Outer Continental Shelf activities

(a) DEFINITIONS.—In this section:

(1) CORRESPONDING ONSHORE AREA.—

(A) IN GENERAL.—The term ''corresponding onshore area'' means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Ad-

ministrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions.

(B) DETERMINATION.—A determination under subparagraph (A) shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with chapter 213.

(2) EXISTING OCS SOURCE.—The term ''existing OCS source'' means any OCS source other than a new OCS source.

(3) NEW OCS SOURCE.—The term ''new OCS source'' means an OCS source that is a new source within the meaning of section 211111(a) of this title.

(4) OUTER CONTINENTAL SHELF.—The term ''Outer Continental Shelf'' has the meaning given the term in section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(5) OCS SOURCE.—

(A) IN GENERAL.—The term ''OCS source'' means a source on, or in or on water above, the Outer Continental Shelf that is located—

(i) offshore of a State along the Pacific, Arctic, or Atlantic Coast; or

(ii) offshore of the State of Florida along the United States Gulf Coast eastward of longitude 87 degrees, 30 minutes.

(B) INCLUSIONS.—

(i) IN GENERAL.—The term ''OCS source'' includes any equipment, activity, or facility that—

(I) emits or has the potential to emit any air pollutant; and

(II) is regulated or authorized under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(ii) ACTIVITY.—In clause (i), the term ''activity'' includes platform and drill ship exploration, construction, development, production, processing, and transportation.

(C) EXCLUSIONS.—The term ''OCS source'' does not include a source on, or in or on water above, the Outer Continental Shelf that is located offshore of the North Slope Borough of Alaska.

(b) APPLICABLE REQUIREMENTS FOR CERTAIN AREAS.—

(1) REQUIREMENTS TO CONTROL AIR POLLUTION.—

(A) IN GENERAL.—After consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by regulation, shall establish requirements to control air pollution from OCS sources to attain and maintain Federal and State ambient air quality standards and to comply with chapter 213.

(B) SOURCES LOCATED WITHIN 25 MILES OF THE SEAWARD BOUNDARY OF A STATE.—For OCS sources that are located within 25 miles of the seaward boundary of a State, the requirements under subparagraph (A)—

(i) shall be the same as would be applicable if the source were located in the corresponding onshore area; and

(ii) shall include State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting.

(C) UPDATING.—The Administrator shall update the requirements as necessary to maintain consistency with onshore regulations and this division.

(2) VESSELS.—For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered emissions from the OCS source.

(3) SUPERSEDURE OF OTHER LAW.—The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act (43 U.S.C. 1334(a)(8)) but shall not repeal or modify any other Federal, State, or local authority with respect to air quality.

(4) TREATMENT AS STANDARD.—Each requirement established under this subsection shall be treated, for purposes of sections 203104, 211113, 211114, 211116, and 211119 of this title, as a standard under section 211111 of this title, and a violation of any such requirement shall be considered a violation of section 211111(j) of this title.

(5) EXEMPTIONS.—

(A) IN GENERAL.—The Administrator may exempt an OCS source from a specific requirement in effect under regulations under this subsection if the Administrator finds that compliance with a pollution control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety.

(B) WRITTEN FINDINGS; OTHER REQUIREMENT.—The Administrator shall make written findings explaining the basis of any exemption issued pursuant to this paragraph and shall impose an-

other requirement equal to or as close in stringency to the original requirement as possible.

(C) OFFSET.—The Administrator shall ensure that any increase in emissions due to the granting of an exemption is offset by reductions in actual emissions, not otherwise required by this division, from the same source or other sources in the area or in the corresponding onshore area.

(D) PUBLIC NOTICE AND COMMENT.—The Administrator shall establish procedures to provide for public notice and comment on exemptions proposed pursuant to this paragraph.

(6) STATE PROCEDURES.—A State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this division to implement and enforce the requirements. Nothing in this subsection shall prohibit the Administrator from enforcing any requirement of this section.

(c) REQUIREMENTS FOR OTHER OFFSHORE AREAS.—For portions of the United States Outer Continental Shelf that are adjacent to the States of Alabama, Mississippi, Louisiana, and Texas or to the North Slope Borough of Alaska, the Secretary of the Interior shall consult with the Administrator to ensure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas.

(d) COASTAL WATER.—

(1) STUDY REPORT.—The study report under section 211112(m) of this title shall apply to the coastal water of the United States to the same extent and in the same manner as the requirements apply to the Great Lakes, the Chesapeake Bay, and their tributaries.

(2) REGULATORY REQUIREMENTS.—The regulatory requirements of section 211112(m) of this title shall apply to the coastal water of the States that is subject to subsection (b) to the same extent and in the same manner as the requirements apply to the Great Lakes, the Chesapeake Bay, and their tributaries.

### § 209117. Demonstration grant program for local governments

(a) DEFINITIONS.—In this section:

(1) COST-EFFECTIVE TECHNOLOGIES AND PRACTICES.—The term ''cost-effective technologies and practices'' has the meaning given the term in section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061).

(2) OPERATING COST SAVINGS.—The term ''operating cost savings'' has the meaning given the term in section 401 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17061).

(b) GRANT PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish a demonstration program under which the Administrator shall provide competitive grants to assist local governments (such as municipalities and counties) with respect to local government buildings to—

(A) deploy cost-effective technologies and practices; and

(B) achieve operational cost savings through the application of cost-effective technologies and practices, as verified by the Administrator.

(2) COST SHARING.—

(A) IN GENERAL.—The Federal share of the cost of an activity carried out using a grant provided under this section shall be 40 percent.

(B) WAIVER OF NON-FEDERAL SHARE.—The Administrator may waive up to 100 percent of the local share of the cost of any grant under this section if the Administrator determines, under objective economic criteria established by the Administrator in published guidelines, that the community is economically distressed.

(3) MAXIMUM AMOUNT.—The amount of a grant under this subsection shall not exceed $1,000,000.

(c) GUIDELINES.—

(1) IN GENERAL.—The Administrator shall issue guidelines to implement the grant program established under subsection (b).

(2) REQUIREMENTS.—The guidelines under paragraph (1) shall establish—

(A) standards for monitoring and verification of operational cost savings through the application of cost-effective technologies and practices reported by grantees under this section;

(B) standards for grantees to implement training programs and provide technical assistance and education relating to the retrofit of buildings using cost-effective technologies and practices; and

(C) a requirement that each local government that receives a grant under this section shall achieve facility-wide cost savings, through renovation of existing local government buildings using cost-effective technologies and practices, of at least 40 percent as compared with the baseline operational costs of the buildings be-

fore the renovation (as calculated assuming a 3-year, weather-normalized average).

(d) COMPLIANCE WITH STATE AND LOCAL LAW.—Nothing in this section or any program carried out using a grant provided under this section supersedes or otherwise affects any State or local law, to the extent that the State or local law contains a requirement that is more stringent than the relevant requirement of this section.

(e) REPORTS.—

(1) IN GENERAL.—The Administrator shall annually submit to Congress a report that—

(A) describes the cost savings achieved and actions taken and recommendations made under this section; and

(B) includes any recommendations for further action that the Administrator may have.

(2) FINAL REPORT.—The Administrator shall issue a final report at the conclusion of the program that includes findings, a summary of total cost savings achieved, and recommendations for further action.

(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2007 to 2012.

(g) TERMINATION.—The program under this section shall terminate on September 30, 2012.

# Subdivision 2—Air Pollution Prevention and Control

# Chapter 211—Air Quality And Emission Limitations

Sec.

### § 211101. Findings; purposes; primary goal

(a) FINDINGS.—Congress finds that—

(1) the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into 2 or more States;

(2) the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source are the primary responsibility of States and local governments; and

(4) Federal financial assistance and leadership are essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) PURPOSES.—The purposes of this subdivision are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) PRIMARY GOAL.—A primary goal of this division is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with this division, for pollution prevention.

### § 211102. Cooperative activities

(a) INTERSTATE COOPERATION; UNIFORM STATE LAWS; STATE COMPACTS.—The Administrator shall encourage—

(1) cooperative activities by States and local governments for the prevention and control of air pollution;

(2) enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and

(3) the making of agreements and compacts between States for the prevention and control of air pollution.

(b) FEDERAL COOPERATION.—The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to ensure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) CONSENT OF CONGRESS TO COMPACTS.—

(1) IN GENERAL.—The consent of Congress is given to 2 or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

(A) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto; and

(B) the establishment of such agencies, joint or otherwise, as the States consider desirable for making effective such agreements or compacts.

(2) NO BINDING EFFECT WITHOUT APPROVAL BY CONGRESS.—No agreement or compact under paragraph (1) shall be binding or obligatory on any State a party thereto unless and until the agreement or compact is approved by Congress.

(3) INTENT OF CONGRESS.—It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, that relates to the control and abatement of air pollution in an air quality control region shall provide for participation by a State that is not included (in whole or in part) in that air quality control region.

### § 211103. Research, investigation, training, and other activities

(a) RESEARCH AND DEVELOPMENT PROGRAM FOR PREVENTION AND CONTROL OF AIR POLLUTION.—

(1) IN GENERAL.—The Administrator shall establish a national research and development program for the prevention and control of air pollution.

(2) ACTIVITIES.—As part of the program, the Administrator shall—

(A) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects (including health and welfare effects), extent, prevention, and control of air pollution;

(B) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(C) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of the problem, if—

(i) the Administrator is requested to do so by the agency; or

(ii) in the Administrator's judgment, the problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(D) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research; and

(E) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

(b) ACTIVITIES.—

(1) IN GENERAL.—In carrying out subsection (a), the Administrator may—

(A) collect and make available, through publications and other appropriate means—

(i) the results of research activities and other activities under subsection (a); and

(ii) other information (including appropriate recommendations by the Administrator in connection therewith) pertaining to those research activities and other activities;

(B) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of those research activities and other activities;

(C) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(2)(A);

(D) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to subsection (a) or (b) of section 3324 of title 31 or section 6101 of title 5;

(E) establish and maintain research fellowships in EPA and at public or nonprofit private educational institutions or research organizations;

(F) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control of air pollution;

(G) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and

(H) construct facilities, provide equipment, and employ staff as necessary to carry out this division.

(2) TRAINING.—

(A) IN GENERAL.—In carrying out subsection (a), the Administrator shall—

(i) provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications; and

(ii) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(2)(E).

(B) FEES.—Reasonable fees may be charged for training provided to persons other than personnel of air pollution control agencies, but training shall be provided to personnel of air pollution control agencies without charge.

(c) AIR POLLUTANT SAMPLING, MEASUREMENT, MONITORING, ANALYSIS, AND MODELING.—

(1) IN GENERAL.—In carrying out subsection (a), the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants.

(2) ELEMENTS.—The program under paragraph (1) shall include the following elements:

(A) Consideration of individual air pollutants and complex mixtures of air pollutants and their chemical transformations in the atmosphere.

(B) Establishment of a national network to—

(i) monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and impairment of visibility; and

(ii) ensure the comparability of air quality data collected in different States and obtained from different nations.

(C) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase understanding of the sources of ozone precursors, ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants.

(D) Submission of periodic reports to Congress, not less than once every 5 years, that evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

(3) EMPHASIS.—In developing methodologies and technologies under paragraph (2)(C), the Administrator shall place emphasis on techniques that—

(A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;

(B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and

(C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.

(d) ENVIRONMENTAL HEALTH EFFECTS RESEARCH.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting the research program, the Administrator—

(A) shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

(B) may utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers; and

(C) shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

(2) METHODS AND TECHNIQUES TO IDENTIFY AND ASSESS RISKS.—In conducting the research program, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both routine and accidental exposures to individual air pollutants and combinations of air pollutants.

(3) ELEMENTS.—The research program shall include the following elements:

(A) An interagency task force to coordinate the research program.

(B) An evaluation of each of the hazardous air pollutants listed under section 211112(b) of this title, to decide, on the basis of available information, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants listed under section 211112(b) of this title.

(4) TASK FORCE.—The task force established under paragraph (3)(A) shall include representatives of the National Institute of Environmental Health Sciences, EPA, the Agency for Toxic Substances and Disease Registry, the National Toxicology Program, the National Institute of Standards and Technology, the National Science Foundation, the Surgeon General, and the Department of Energy. The task force shall be chaired by a representative of EPA.

(5) EVALUATION.—The evaluation under paragraph (3)(B) shall be based on reasonably anticipated toxicity to humans and exposure factors such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. The evaluation shall be reviewed by the task force established under paragraph (3)(A).

(6) ENVIRONMENTAL HEALTH ASSESSMENTS.—

(A) IN GENERAL.—The Administrator shall prepare an environmental health assessment for each hazardous air pollutant described in subparagraphs (B) and (C) of paragraph (3). Not fewer than 24 environmental health assessments shall be completed and published annually.

(B) GUIDELINES.—An environmental health assessment shall be prepared in accordance with guidelines developed by the Adminis-

trator in consultation with the task force established under paragraph (3)(A) and EPA's Science Advisory Board.

(C) CONTENTS.—An environmental health assessment shall include—

(i) an examination, summary, and evaluation of available toxicological and epidemiological information for an air pollutant to ascertain the levels of human exposure that pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects;

(ii) a determination of gaps in available information related to human health effects and exposure levels; and

(iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure that may present significant risk of adverse health effects in humans.

(e) ECOSYSTEM RESEARCH.—

(1) IN GENERAL.—In carrying out subsection (a), the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems.

(2) ELEMENTS.—The program shall include the following elements:

(A) Identification of regionally representative and critical ecosystems for research.

(B) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

(C) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

(D) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of acid deposition and other atmospherically derived pollutants on surface water (including wetland and estuaries) and groundwater.

(E) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

(F) Estimation of the associated economic costs of ecological damage that have occurred as a result of exposure to air pollutants.

(3) ESTUARINE RESEARCH RESERVES.—Consistent with the purpose of the program, the Administrator may use the estuarine research reserves established pursuant to section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461) to carry out the research.

(f) LIQUEFIED GASEOUS FUELS SPILL TEST FACILITY.—

(1) IN GENERAL.—The Administrator, in consultation with the Secretary of Energy and the Federal Coordinating Council for Science, Engineering, and Technology, shall oversee an experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility.

(2) LIST OF CHEMICALS; SCHEDULE FOR FIELD TESTING.—In consultation with the Secretary of Energy, the Administrator shall develop a list of chemicals and a schedule for field testing at the Liquefied Gaseous Fuels Spill Test Facility.

(3) NUMBER OF CHEMICALS.—Analysis of a minimum of 10 chemicals per year shall be carried out, with the selection of a minimum of 2 chemicals for field testing each year.

(4) PRIORITY.—Highest priority shall be given to chemicals that would present the greatest potential risk to human health as a result of an accidental release—

(A) from a fixed site; or

(B) related to the transport of the chemicals.

(5) PURPOSE.—The purpose of the research shall be to—

(A) develop improved predictive models for atmospheric dispersion that, at a minimum—

(i) describe dense gas releases in complex terrain including man-made structures or obstacles with variable winds;

(ii) improve understanding of the effects of turbulence on dispersion patterns; and

(iii) consider realistic behavior of aerosols by including physicochemical reactions with water vapor, ground deposition, and removal by water spray;

(B) evaluate existing and future atmospheric dispersion models by—

(i) the development of a rigorous, standardized methodology for dense gas models; and

(ii) the application of the methodology to current dense gas dispersion models using data generated from field experiments; and

(C) evaluate the effectiveness of hazard mitigation and emergency response technology for fixed site and transportation related accidental releases of toxic chemicals.

(6) MODELS.—Models pertaining to accidental release shall be evaluated and improved periodically for their utility in planning and implementing evacuation procedures and other mitigative strategies designed to minimize human exposure to hazardous air pollutants released accidentally.

(7) USE OF FACILITY.—The Secretary of Energy shall make available to interested persons (including other Federal agencies and businesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to conduct research and other activities in connection with the activities described in this subsection.

(g) POLLUTION PREVENTION AND EMISSION CONTROL.—

(1) IN GENERAL.—In carrying out subsection (a), the Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention.

(2) PRIORITY; PARTICIPATION.—The strategies and technologies shall be developed with priority on pollutants that pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, and other interested persons in the development of the strategies and technologies.

(3) ELEMENTS.—

(A) IN GENERAL.—The program shall include the following elements:

(i) Improvements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM–10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel powerplants.

(ii) Improvements in nonregulatory strategies and technologies for reducing air emissions from area sources.

(iii) Improvements in nonregulatory strategies and technologies for preventing, detecting, and correcting accidental releases of hazardous air pollutants.

(iv) Improvements in nonregulatory strategies and technologies that dispose of tires in ways that avoid adverse air quality impacts.

(B) PREVENTION OR REDUCTION OF MULTIPLE AIR POLLUTANTS.—The strategies and technologies described in subparagraph (A)(i) shall include improvements in the relative cost effectiveness and long-range implications of various air pollutant reduction and nonregulatory control strategies such as energy conservation, including end-use efficiency, and fuel-switching to cleaner fuels. The strategies and technologies shall be considered for existing and new facilities.

(4) EFFECT OF SUBSECTION.—Nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements.

(5) CONSULTATION.—The Administrator shall consult with other appropriate Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(h) NIEHS STUDIES.—

(1) BASIC RESEARCH PROGRAM.—

(A) IN GENERAL.—The Director of the National Institute of Environmental Health Sciences may conduct a program of basic research to identify, characterize, and quantify risks to human health from air pollutants.

(B) MEANS OF RESEARCH.—The research shall be conducted primarily through a combination of university and medical school-based grants and through intramural studies and contracts.

(2) PHYSICIAN EDUCATION AND TRAINING PROGRAM.—The Director of the National Institute of Environmental Health Sciences shall conduct a program for the education and training of physicians in environmental health.

(3) NO CONFLICT.—The Director shall ensure that the programs shall not conflict with research undertaken by the Administrator.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the National Institute of Environmental Health Sciences such sums as are necessary to carry out this subsection.

(i) COORDINATION OF RESEARCH.—

(1) IN GENERAL.—The Administrator shall develop and implement a plan for identifying areas in which activities authorized under this

section can be carried out in conjunction with other Federal ecological and air pollution research efforts.

(2) CONTENTS.—The plan shall include—

(A) an assessment of ambient monitoring stations and networks to determine cost effective ways to expand monitoring capabilities in both urban and rural environments;

(B) a consideration of the extent of the feasibility and scientific value of conducting the research program under subsection (e) to include consideration of the effects of atmospheric processes and air pollution effects; and

(C) a methodology for evaluating and ranking pollution prevention technologies, such as those developed under subsection (g), in terms of their ability to reduce cost-effectively the emissions of air pollutants and other airborne chemicals of concern.

(3) REPORTS.—Every 4 years, the Administrator shall report to Congress on the progress made in implementing the plan developed under this subsection, and shall include in the report any revisions of the plan.

(j) NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) ACID PRECIPITATION.—The term ''acid precipitation'' means the wet or dry deposition from the atmosphere of acid chemical compounds.

(B) COMPREHENSIVE PLAN.—The term ''comprehensive plan'' means the comprehensive research plan prepared under paragraph (3).

(C) TASK FORCE.—The term ''Task Force'' means the Acid Precipitation Task Force formed under paragraph (2).

(2) TASK FORCE.—There shall be formed an Acid Precipitation Task Force consisting of the Administrator, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members.

(3) CONVENING OF TASK FORCE.—The Task Force shall convene as necessary, but not less than twice during each fiscal year.

(4) COMPREHENSIVE RESEARCH PLAN.—

(A) IN GENERAL.—The Task Force shall prepare a comprehensive research plan setting forth a coordinated program—

(i) to identify the causes and effects of acid precipitation; and

(ii) to identify actions to limit or ameliorate the harmful effects of acid precipitation.

(B) SCOPE.—The comprehensive plan shall include programs for—

(i) identifying the sources of atmospheric emissions contributing to acid precipitation;

(ii) establishing and operating a nationwide long-term monitoring network to detect and measure levels of acid precipitation;

(iii) research in atmospheric physics and chemistry to facilitate understanding of the processes by which atmospheric emissions are transformed into acid precipitation;

(iv) development and application of atmospheric transport models to enable prediction of long-range transport of substances causing acid precipitation;

(v) defining geographic areas of impact through deposition monitoring, identification of sensitive areas, and identification of areas at risk;

(vi) broadening of impact databases through collection of existing data on water and soil chemistry and through temporal trend analysis;

(vii) development of dose-response functions with respect to soils, soil organisms, aquatic and amphibious organisms, crop plants, and forest plants;

(viii) establishing and carrying out system studies with respect to plant physiology, aquatic ecosystems, soil chemistry systems, soil microbial systems, and forest ecosystems;

(ix) economic assessments of—

(I) the environmental impacts caused by acid precipitation on crops, forests, fisheries, and recreational and aesthetic resources and structures; and

(II) alternative technologies to remedy or otherwise ameliorate the harmful effects which may result from acid precipitation;

(x) documenting all current Federal activities related to research on acid precipitation and ensuring that those activities are coordinated in ways that prevent needless duplication and waste of financial and technical resources;

(xi) effecting cooperation in acid precipitation research and development programs, ongoing and planned, with the affected and contributing States and with other sovereign nations having a commonality of interest;

(xii) subject to subparagraph (E)(i), management by the Task Force of financial resources committed to Federal acid precipitation research and development;

(xiii) subject to subparagraph (E)(ii), management of the technical aspects of Federal acid precipitation research and development programs, including—

(I) the planning and management of research and development programs and projects;

(II) the selection of contractors and grantees to carry out the programs and projects; and

(III) the establishment of peer review procedures to ensure the quality of research and development programs and their products; and

(xiv) analyzing the information available regarding acid precipitation in order to present periodic recommendations to Congress and the appropriate agencies about actions to be taken by Congress and the agencies to alleviate acid precipitation and its effects.

(C) BASIS FOR AUTHORIZATIONS AND APPROPRIATIONS.—The comprehensive plan shall constitute the basis on which requests for authorizations and appropriations are to be made.

(D) IMPLEMENTATION.—The comprehensive plan—

(i) shall be carried out in accordance with, and meet the program objectives specified in, clauses (i) through (xi) of subparagraph (B);

(ii) shall be managed in accordance with clauses (xii) through (xiv) of subparagraph (B); and

(iii) shall be funded by annual appropriations, subject to annual authorizations.

(E) RULES OF CONSTRUCTION.—

(i) MANAGEMENT OF FINANCIAL RESOURCES.—Subparagraph (B)(xii) shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of an appropriation Act (or any other provision of law relating to the use of appropriated funds) that specifies—

(I) the department or agency to which funds are appropriated; or

(II) the obligations of a department or agency with respect to the use of those funds.

(ii) MANAGEMENT OF TECHNICAL ASPECTS OF PROGRAMS.—Subparagraph (B)(xiii) shall not be construed as modifying, or as authorizing the Task Force or the comprehensive plan to modify, any provision of law relating to or involving a department or agency that specifies—

(I) procurement practices for the selection, award, or management of contracts or grants by the department or agency; or

(II) program activities, limitations, obligations, or responsibilities of the department or agency.

(5) OTHER RESPONSIBILITIES OF THE TASK FORCE.—

(A) IN GENERAL.—The responsibilities of the Task Force shall include the following:

(i) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program.

(ii) Publication and maintenance of a national acid lakes registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

(iii) Biennial submission of a unified budget recommendation to the President for activities of the Federal Government in connection with the research program described in this subsection.

(iv) Biennial submission of a report to Congress describing the results of the Task Force's investigations and analyses.

(B) RESEARCH AND MONITORING EFFORTS.—Research and monitoring efforts under subparagraph (A)(i) shall include—

(i) continuous monitoring of emissions of precursors of acid deposition;

(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models

that describe the response of ecosystems to acid deposition; and

(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

(C) REPORTS.—

(i) TECHNICAL INFORMATION.—The reporting of technical information about acid deposition in a report under subparagraph (A)(iv) shall be provided in a format that facilitates communication with policymakers and the public.

(ii) CONTENTS OF BIENNIAL REPORT.—A report under subparagraph (A)(iv) shall include—

(I) actual and projected emissions and acid deposition trends;

(II) average ambient concentrations of acid deposition precursors and their transformation products;

(III) the status of ecosystems (including forests and surface water), materials, and visibility affected by acid deposition;

(IV) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;

(V) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and

(VI) the confidence level associated with each conclusion to aid policymakers in use of the information.

(iii) ADDITIONAL CONTENTS OF QUADRENNIAL REPORT.—Every 4 years, a report under subparagraph (A)(iv) shall include—

(I) the reduction in deposition rates that must be achieved to prevent adverse ecological effects; and

(II) the costs and benefits of the acid deposition control program created by subdivision 5.

(6) EFFECT OF SUBSECTION.—Nothing in this subsection shall be deemed to—

(A) grant any new regulatory authority;

(B) limit, expand, or otherwise modify any regulatory authority under existing law; or

(C) establish new criteria, standards, or requirements for regulation under existing law.

(k) AIR POLLUTION CONFERENCES.—

(1) IN GENERAL.—If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, the Administrator may call a conference concerning the potential air pollution problem to be held in or near 1 or more of the places where the discharge or discharges are occurring or will occur.

(2) OPPORTUNITY TO BE HEARD.—All interested persons shall be given an opportunity to be heard at a conference under paragraph (1), orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator.

(3) FINDINGS.—

(A) IN GENERAL.—If the Administrator finds, on the basis of the evidence presented at a conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under this part, the Administrator shall send the findings, together with recommendations concerning the measures that the Administrator finds reasonable and suitable to prevent the pollution, to—

(i) the person or persons whose actions will result in the discharge or discharges;

(ii) air pollution agencies of the State or States and of the municipality or municipalities where the discharge or discharges will originate; and

(iii) the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located.

(B) EFFECT.—Findings and recommendations under subparagraph (A) shall be advisory only, but shall be admitted with the record of the conference as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 211108 of this title.

**§ 211104. Research relating to fuels and vehicles**

(a) IN GENERAL.—

(1) SPECIAL EMPHASIS.—The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels.

(2) ACTIVITIES.—In furtherance of research and development under paragraph (1), the Administrator shall—

(A) conduct and accelerate research programs directed toward development of improved, cost-effective techniques for—

(i) control of combustion byproducts of fuels;

(ii) removal of potential air pollutants from fuels prior to combustion;

(iii) control of emissions from the evaporation of fuels;

(iv) improving the efficiency of fuels combustion so as to decrease atmospheric emissions; and

(v) producing synthetic or new fuels that, when used, result in decreased atmospheric emissions;

(B) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of—

(i) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants;

(ii) part of the cost of programs to develop low emission alternatives to the present internal combustion engine;

(iii) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and

(iv) carrying out the other provisions of this section, without regard to subsection (a) or (b) of section 3324 of title 31 or section 6101 of title 5;

(C) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where the processes and plant designs can be demonstrated on a large and practical scale;

(D) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of, new or improved demonstration plants or processes that have promise of accomplishing the purposes of this division; and

(E) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

(3) RESEARCH OR DEMONSTRATION CONTRACTS.—A research or demonstration contract awarded pursuant to this subsection (including a contract for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the

military departments in, section 2353 of title 10, except that the determination, approval, and certification required by that subsection shall be made by the Administrator.

(4) LIMITATION ON GRANT AMOUNT.—No grant may be made under paragraph (2)(B) in excess of $1,500,000.

(b) POWERS OF ADMINISTRATOR.—In carrying out this section, the Administrator may—

(1) conduct and accelerate research and development of cost-effective instrumentation techniques to facilitate determination of the quantity and quality of air pollutant emissions, including automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and interests in land, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of this division will be served thereby.

(c) CLEAN ALTERNATIVE FUELS.—The Administrator shall conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels. The Administrator shall consult with other Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

### § 211105. Grants for support of air pollution planning and control programs

(a) DEFINITION OF IMPLEMENT.—In this section, the term ''implement'', in the context of implementation of a program or of a primary or secondary NAAQS, means to engage in any activity related to the planning, developing, establishing, carrying out, improving, or maintaining of the program or primary or secondary NAAQS.

(b) IN GENERAL.—

(1) GRANTS.—

(A) IN GENERAL.—The Administrator may make a grant to an air pollution control agency described in subparagraph (A), (B), (C), (D), or (E) of section 201101 of this title in an amount up

to ⅗ of the cost of implementing programs for the prevention and control of air pollution or implementation of primary and secondary NAAQSes.

(B) FAILURE TO CONTRIBUTE MINIMUM REQUIRED AMOUNT.—Subject to subsections (c) and (d), an air pollution control agency that receives a grant under subparagraph (A) shall contribute the required ⅖ minimum. If an air pollution control agency fails to meet and maintain the required level, the Administrator shall reduce the amount of the Federal contribution accordingly.

(C) AIR QUALITY CONTROL REGIONS OR PORTIONS THEREOF FOR WHICH THERE IS AN APPLICABLE IMPLEMENTATION PLAN.—With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 211110 of this title, a grant under subparagraph (A) may be made only to an air pollution control agency that has substantial responsibilities for carrying out the applicable implementation plan.

(2) AIR POLLUTION CONTROL AGENCIES ESTABLISHED BY 2 OR MORE STATES OR MUNICIPALITIES.—Before approving any grant under this subsection to any air pollution control agency described in subparagraph (B) or (D) of section 201101(2) of this title, the Administrator shall receive assurances that the air pollution control agency—

(A) provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international interests in the air quality control region; and

(B) has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include—

(i) (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants; and

(ii) the various aspects relevant to the establishment of air quality standards for that air quality control region, including the concentration of industries, other commercial establishments, population, and naturally occurring factors that affect those air quality standards.

(c) TERMS AND CONDITIONS; LIMITATION ON GRANT AMOUNTS.—

(1) TERMS AND CONDITIONS.—From the sums available for the purposes of subsection (b) for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies on such terms and conditions as the Administrator may find necessary to carry

out this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to—

(A) the population;

(B) the extent of the actual or potential air pollution problem; and

(C) the financial need of the respective air pollution control agencies.

(2) LIMITATION ON GRANT AMOUNTS.—Not more than 10 percent of the total of funds appropriated or allocated for the purposes of subsection (b) shall be granted for programs in any 1 State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of the grant that is chargeable to the percentage limitation under this subsection for each State into which the area extends.

(3) MINIMUM AMOUNT.—Subject to paragraph (1), no State shall have made available to it for application less than 0.5 percent of the annual appropriation for grants under this section for grants to air pollution control agencies within the State.

(d) MAINTENANCE OF EFFORT.—

(1) EXPENDITURES.—

(A) IN GENERAL.—Except as provided in paragraph (2), no air pollution control agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year, the Administrator shall compare an air pollution control agency's prospective expenditure level to that of its 2d preceding fiscal year.

(B) CONSIDERATION OF EXEMPTIONS.—In prescribing regulations that define applicable nonrecurrent and recurrent expenditures, the Administrator shall give due consideration to exempting an air pollution control agency from the limitations of this paragraph and subsection (b) due to increases experienced by that air pollution control agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.

(2) NONSELECTIVE REDUCTION IN EXPENDITURES.—The Administrator may award a grant to an air pollution control agency that does not meet the requirements of paragraph (1) if the Administrator, after

notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in the expenditures in the programs of all executive branch agencies of the applicable unit of government.

(3) USE TO SUPPLEMENT OR INCREASE NON-FEDERAL FUNDS.—No air pollution control agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds.

(4) CONSULTATION.—No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(e) REDUCTION OF PAYMENTS.—The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to the recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 203101 of this title, when the detail is for the convenience of, and at the request of, the recipient and for the purpose of carrying out this division. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (b), be deemed to have been paid to the recipient.

(f) NOTICE AND OPPORTUNITY FOR HEARING.—No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in 1 of the affected States if more than 1 State is affected).

### § 211106. Interstate air quality agencies

(a) IN GENERAL.—For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 211107 of this title or of implementing section 215108 or 215205 of this title, the Administrator may pay, for 2 years, up to 100 percent of the air quality planning program costs of—

(1) any commission established under either of those sections; or

(2) any agency designated by the Governors of the affected States, which agency—

(A) shall be capable of recommending to the Governors plans for implementation of primary and secondary NAAQSes; and

(B) shall include representation from the States and appropriate political subdivisions within the air quality control region.

(b) SUBSEQUENT YEARS.—After the initial 2-year period, the Administrator may make grants to a commission or agency described in subsection (a) in an amount up to ⅗ of the air quality implementation program costs of the commission or agency.

**§ 211107. Air quality control regions**

(a) STATE RESPONSIBILITY.—Each State shall have the primary responsibility for ensuring air quality within the entire geographic area comprising the State by submitting an implementation plan for the State that specifies the manner in which primary and secondary NAAQSes will be achieved and maintained within each air quality control region in the State.

(b) DESIGNATED AIR QUALITY CONTROL REGIONS.—For purposes of developing and carrying out State implementation plans under section 211110 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after that date under subsection (c), shall be an air quality control region; and

(2) the portion of a State that is not part of any such designated region shall be an air quality control region, but that portion may be subdivided by the State into 2 or more air quality control regions with the approval of the Administrator.

(c) DESIGNATION BY THE ADMINISTRATOR.—After consultation with appropriate State and local authorities, the Administrator shall designate as an air quality control region any interstate area or major intrastate area that the Administrator considers necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) DESIGNATIONS.—

(1) DESIGNATIONS GENERALLY.—

(A) SUBMISSION BY GOVERNORS OF INITIAL DESIGNATIONS FOLLOWING PROMULGATION OF NEW OR REVISED STANDARDS.—

(i) IN GENERAL.—By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised NAAQS for any pollutant under section 211109 of this title, the Governor of each State shall (and at any other time the Governor of a State considers appropriate the Governor may) submit to the Administrator a

list of all areas (or portions thereof) in the State, designating as—

(I) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the primary or secondary NAAQS for the pollutant;

(II) attainment, any area (other than an area identified in subclause (I)) that meets the primary or secondary NAAQS for the pollutant; or

(III) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the primary or secondary NAAQS for the pollutant.

(ii) TIMING.—The Administrator may not require a Governor to submit a list required under clause (i) sooner than 120 days after promulgating a new or revised NAAQS.

(B) PROMULGATION OF DESIGNATIONS BY THE ADMINISTRATOR.—

(i) IN GENERAL.—On promulgation or revision of a NAAQS, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years after the date of promulgation of the new or revised NAAQS. The 2-year period may be extended for up to 1 year if the Administrator has insufficient information to promulgate the designations.

(ii) MODIFICATIONS.—In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator considers necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A)(i) (including to the boundaries of the areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide the State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give the notification not later than 120 days before the date the Administrator promulgates the designation, including any modification to the designation. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator considers ap-

propriate for any area (or portion thereof) not designated by the State.

(iii) SUBMISSION OF LIST ON GOVERNOR'S OWN MOTION.—If the Governor of any State, on the Governor's own motion, submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on the designations in accordance with the procedures under paragraph (3).

(iv) EFFECTIVE PERIOD.—A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) DESIGNATIONS BY OPERATION OF LAW.—

(i) NONATTAINMENT.—Any area designated with respect to any air pollutant under subparagraph (A), (B), or (C) of section 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as in effect on November 14, 1990) is designated, by operation of law, as a nonattainment area for that air pollutant within the meaning of subparagraph (A)(i)(I).

(ii) ATTAINMENT.—Any area designated with respect to any air pollutant under subparagraph (E) of section 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as in effect on November 14, 1990) is designated by operation of law, as an attainment area for that air pollutant within the meaning of subparagraph (A)(i)(II).

(iii) UNCLASSIFIABLE.—Any area designated with respect to any air pollutant under subparagraph (D) of section 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as in effect on November 14, 1990) is designated, by operation of law, as an unclassifiable area for that air pollutant within the meaning of subparagraph (A)(i)(III).

(2) PUBLICATION OF DESIGNATIONS AND REDESIGNATIONS.—

(A) NOTICE.—The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) NONAPPLICABILITY OF OTHER LAW.—Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to sections 553 to 557 of title 5, except that nothing in this subparagraph shall be construed as precluding such public notice and comment whenever possible.

(3) REDESIGNATION.—

(A) NOTIFICATION.—Subject to subparagraph (E), on the basis of air quality data, planning and control considerations, or any other air quality-related considerations that the Administrator considers appropriate, the Administrator may at any time publicly notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such a notification to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notification.

(B) SUBMISSION OF REDESIGNATION.—Not later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) PROMULGATION OF REDESIGNATION.—Not later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator considers necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that ''60 days'' shall be substituted for ''120 days'' in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, as the Administrator considers appropriate.

(D) REDESIGNATION ON GOVERNOR'S OWN MOTION.—The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months after receipt of a complete State redesignation submittal, the Administrator shall approve or deny the redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable State implementation plan.

(E) REDESIGNATION OF NONATTAINMENT TO ATTAINMENT.—The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

(i) the Administrator determines that the area has attained the NAAQS;

(ii) the Administrator has fully approved the applicable State implementation plan for the area under section 211110(i) of this title;

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable State implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 215106 of this title; and

(v) the State containing the area has met all requirements applicable to the area under section 211110 of this title and chapter 215.

(F) NO REDESIGNATION FROM NONATTAINMENT TO UNCLASSIFIABLE.—The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) NONATTAINMENT DESIGNATIONS FOR OZONE, CARBON MONOXIDE, AND PARTICULATE MATTER (PM–10).—

(A) OZONE AND CARBON MONOXIDE.—

(i) SUBMISSIONS BY GOVERNORS.—The Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the NAAQSes for ozone and carbon monoxide.

(ii) PROMULGATION.—The Administrator shall promulgate the designations required under clause (i), making such modifications as the Administrator considers necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that ''60 days'' shall be substituted for ''120 days'' in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator considers appropriate.

(iii) NO REDESIGNATION AS ATTAINMENT.—No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) AREAS CLASSIFIED AS A SERIOUS AREA, SEVERE AREA, OR EXTREME AREA.—Notwithstanding paragraph (1)(C)(ii), if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under chapter 215 as a serious area, severe area, or extreme area, the boundaries of the area are revised (on the date that is 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within that 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). When a Governor has submitted such a notice to the Administrator, the boundary revision shall occur on the date that is 8 months after the date of the classification unless the Governor makes the finding described in clause (v), and the Administrator concurs in the finding, within that period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision.

(v) EXCLUSION OF PORTION OF AREA.—Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in the finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the NAAQS, the Administrator shall approve the Governor's request to exclude that portion from the nonattainment area. In making the finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial de-

velopment, industrial development, meteorological conditions, and pollution transport.

(B) PM–10 DESIGNATIONS.—

(i) IN GENERAL.—By operation of law, until redesignation by the Administrator pursuant to paragraph (3)—

(I) each area identified in 52 Fed. Reg. 29383 (August 7, 1987) as a Group I area (except to the extent that such identification was modified by the Administrator before November 15, 1990) is designated nonattainment for PM–10;

(II) any area containing a site for which air quality monitoring data show a violation of the NAAQS for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40, Code of Federal Regulations), is designated nonattainment for PM–10; and

(III) each area not described in subclause (I) or (II) is designated unclassifiable for PM–10.

(ii) CONTINUANCE IN EFFECT OF CERTAIN DESIGNATIONS.—Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) (as in effect on November 14, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 213105(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.

(5) DESIGNATIONS FOR LEAD.—The Administrator may, at any time that the Administrator considers appropriate, require a State to designate areas (or portions thereof) with respect to the NAAQS for lead in effect as of November 15, 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1), the phrase ''2 years after the date of promulgation of the new or revised NAAQS'' shall be replaced by the phrase ''1 year after the date on which the Administrator notifies the State of the requirement to designate areas with respect to the NAAQS for lead''.

(6) DESIGNATIONS FOR JULY 1997 $PM_{2.5}$ NAAQS.—

(A) SUBMISSION.—Notwithstanding any other provision of law, the Governor of each State shall submit designations described in

paragraph (1) for the July 1997 $PM_{2.5}$ NAAQSes for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

(B) PROMULGATION.—Notwithstanding any other provision of law, the Administrator shall, consistent with paragraph (1), promulgate the designations described in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ NAAQSes.

(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations described in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 213202(e)(1) of this title (referred to in this paragraph as ''regional haze requirements'').

(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming for implementation of regional haze requirements applicable to those States.

(e) REDESIGNATION OF AIR QUALITY CONTROL REGIONS.—

(1) IN GENERAL.—Except as otherwise provided in paragraph (2), the Governor of each State may, with the approval of the Administrator, redesignate from time to time the air quality control regions within the State for purposes of efficient and effective air quality management. On such redesignation, the list under subsection (d) shall be modified accordingly.

(2) SIGNIFICANT EFFECT ON AIR POLLUTION CONCENTRATIONS IN ANOTHER STATE.—In the case of an air quality control region in a State, or part of an air quality control region, that the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which that region or part of a region is located may redesignate from time to time the boundaries of so much of the air quality control region as is located within that State only with the approval of the Administrator and with the consent of all Governors of all States that the Administrator determines may be significantly affected.

**§ 211108. Air quality criteria and control techniques**

(a) AIR POLLUTANT LIST; AIR QUALITY CRITERIA.—

(1) AIR POLLUTANT LIST.—For the purpose of establishing primary and secondary NAAQSes, the Administrator shall publish and shall from time to time revise a list that includes each air pollutant—

(A) emissions of which, in the Administrator's judgment, cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970, but for which the Administrator plans to issue air quality criteria under this section.

(2) AIR QUALITY CRITERIA.—

(A) IN GENERAL.—The Administrator shall issue air quality criteria for an air pollutant within 12 months after the Administrator includes the air pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of the pollutant in the ambient air, in varying quantities.

(B) INFORMATION TO BE INCLUDED.—The criteria for an air pollutant, to the extent practicable, shall include information on—

(i) the variable factors (including atmospheric conditions) that of themselves or in combination with other factors may alter the effects on public health or welfare of the air pollutant;

(ii) the types of air pollutants that, when present in the atmosphere, may interact with the air pollutant to produce an adverse effect on public health or welfare; and

(iii) any known or anticipated adverse effects on welfare.

(b) AIR POLLUTION CONTROL TECHNIQUES.—

(1) ISSUANCE OF INFORMATION.—

(A) IN GENERAL.—Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques.

(B) INFORMATION TO BE INCLUDED.—The information issued under subparagraph (A) shall include—

(i) data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology;

(ii) such data as are available on available technology and alternative methods of prevention and control of air pollution; and

(iii) data on alternative fuels, processes, and operating methods that will result in elimination or significant reduction of emissions.

(2) CONSULTING COMMITTEES.—To assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) REVIEW, MODIFICATION, AND REISSUANCE OF CRITERIA OR INFORMATION.—The Administrator shall from time to time review, and, as appropriate, modify and reissue any criteria or information on control techniques issued pursuant to this section. The criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of nitrogen oxides.

(d) ANNOUNCEMENT IN FEDERAL REGISTER; PUBLIC AVAILABILITY.—The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register, and copies shall be made available to the general public.

(e) TRANSPORTATION PLANNING AND GUIDELINES.—

(1) IN GENERAL.—The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, periodically as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of NAAQSes.

(2) INFORMATION TO BE INCLUDED.—The guidelines shall include information on—

(A) methods to identify and evaluate alternative planning and control activities;

(B) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(C) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(D) methods to ensure participation by the public in all phases of the planning process; and

(E) such other methods as the Administrator determines to be necessary to carry out a continuous planning process.

(f) INFORMATION REGARDING TRANSPORTATION CONTROL MEASURES.—

(1) IN GENERAL.—The Administrator shall publish and make available to appropriate Federal, State, and local environmental and transportation agencies from time to time—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including—

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of a metropolitan area to the use of non-motorized vehicles or pedestrian use, as to both time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subdivision 3, that are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel and the provision and utilization of mass transit and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks, or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest; and

(xvi) programs to encourage the voluntary removal from use and the marketplace of pre-1980 model year light-duty vehicles and pre-1980 model year light-duty trucks;

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures that may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control an air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) ASSESSMENT.—In publishing information under paragraph (1) the Administrator shall include an assessment of—

(A) the relative effectiveness of the processes, procedures, and methods described in paragraph (1);

(B) the potential effect of those processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of those processes, procedures, and methods.

(3) CONSULTATION.—For purposes of paragraph (1)(A)(xv), the Administrator shall consult with the Secretary of the Interior as well as with the Secretary of Transportation.

(g) ASSESSMENT OF RISKS TO ECOSYSTEMS.—The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER CLEARINGHOUSE.—The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

### § 211109. National primary and secondary ambient air quality standards

(a) PROMULGATION.—

(1) AIR POLLUTANTS FOR WHICH AIR QUALITY CRITERIA WERE ISSUED BEFORE DECEMBER 31, 1970.—The Administrator shall promulgate regulations prescribing a primary NAAQS and a secondary NAAQS for each air pollutant for which air quality criteria were issued before December 31, 1970.

(2) AIR POLLUTANTS FOR WHICH AIR QUALITY CRITERIA ARE ISSUED AFTER DECEMBER 31, 1970.—

(A) PROPOSED STANDARDS.—With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed primary and secondary NAAQSes for any such air pollutant.

(B) PROMULGATION.—After a reasonable time for interested persons to submit written comments on the proposed standards (but not later than 90 days after the initial publication of the proposed standards), the Administrator shall by regulation promulgate the proposed primary and secondary NAAQSes with such modifications as the Administrator considers appropriate.

(b) PROTECTION OF PUBLIC HEALTH AND WELFARE.—

(1) PRIMARY NAAQSES.—Primary NAAQSes promulgated under subsection (a) shall be ambient air quality standards the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. The primary NAAQSes may be revised in the same manner as promulgated.

(2) SECONDARY NAAQSES.—Any secondary NAAQS promulgated under subsection (a) shall specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of an air pollutant in the ambient air. The secondary NAAQSes may be revised in the same manner as promulgated.

(c) PRIMARY NAAQS FOR NITROGEN DIOXIDE.—The Administrator shall promulgate a primary NAAQS for nitrogen dioxide concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 211108(c) of this title, the Administrator finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) REVIEW OF CRITERIA AND STANDARDS.—

(1) IN GENERAL.—

(A) 5-YEAR INTERVALS.—At 5-year intervals, the Administrator shall—

(i) complete a thorough review of the criteria published under section 211108 of this title and the NAAQSes promulgated under this section; and

(ii) make such revisions in the criteria and standards and promulgate such new standards as may be appropriate in accordance with section 211108 of this title and subsection (b).

(B) MORE FREQUENT INTERVALS.—The Administrator may review and revise criteria or promulgate new standards more frequently than required under this paragraph.

(2) SCIENTIFIC REVIEW COMMITTEE.—

(A) APPOINTMENT.—The Administrator shall appoint an independent scientific review committee composed of 7 members, including at least 1 member of the National Academy of Sciences, 1 physician, and 1 person representing State air pollution control agencies.

(B) REVIEW.—At 5-year intervals, the scientific review committee shall—

(i) complete a review of the criteria published under section 211108 of this title and the primary and secondary NAAQSes promulgated under this section; and

(ii) recommend to the Administrator any new NAAQSes and revisions of existing criteria and standards as may be appropriate under section 211108 of this title and subsection (b).

(C) OTHER DUTIES.—The scientific review committee shall—

(i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQSes;

(ii) describe the research efforts necessary to provide the required information;

(iii) advise the Administrator on the relative contribution to air pollution concentrations of natural activity and anthropogenic activity; and

(iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects that may result from various strategies for attainment and maintenance of NAAQSes.

**§ 211110. State implementation plans**

(a) ADOPTION OF PLAN OR PLANS.—

(1) PRIMARY NAAQSES.—Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a primary NAAQS (or any revision thereof) under section 211109 of this title for any air pollutant, a plan that provides for implementation, maintenance, and enforcement of the primary standard in each air quality control region (or portion thereof) within the State.

(2) SECONDARY NAAQSES.—

(A) IN GENERAL.—Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator (either as a part of a plan submitted under paragraph (1) or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a secondary NAAQS (or revision thereof), a plan that provides for implementation, maintenance, and enforcement of the secondary standard in each air quality control region (or portion thereof) within the State.

(B) PUBLIC HEARING.—Unless a separate public hearing is provided, each State shall consider its plan implementing a secondary standard at the hearing required by paragraph (1).

(3) CONTENTS.—Each State implementation plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), and schedules and timetables for compliance, as may be

necessary or appropriate to meet the applicable requirements of this division;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality; and

(ii) on request, make the data available to the Administrator;

(C) include a program to provide for—

(i) enforcement of the measures described in subparagraph (A); and

(ii) regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to ensure that NAAQSes are achieved, including a permit program as required in chapters 213 and 215;

(D) contain adequate provisions—

(i) prohibiting, consistent with this subdivision, any source or other type of emission activity within the State from emitting any air pollutant in amounts that will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such primary or secondary NAAQS; or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under chapter 213 to prevent significant deterioration of air quality or to protect visibility;

(ii) ensuring compliance with the applicable requirements of sections 211115 and 211125 of this title;

(E) provide—

(i) necessary assurances that the State (or, except where the Administrator considers inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for the purpose)—

(I) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out the implementation plan; and

(II) is not prohibited by any Federal or State law from carrying out the implementation plan or portion thereof);

(ii) requirements that the State comply with the requirements respecting State boards under section 211127 of this title; and

(iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from stationary sources;

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this division, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 203103 of this title and adequate contingency plans to implement that authority;

(H) provide for revision of the plan—

(i) from time to time as may be necessary to take account of revisions of the primary or secondary NAAQS or the availability of improved or more expeditious methods of attaining the NAAQS; and

(ii) except as provided in paragraph (4)(B), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the NAAQS that it implements or to otherwise comply with any additional requirements established under this division;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of chapter 215;

(J) meet the applicable requirements of sections 211120 and 211126 of this title and chapter 213;

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the

effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a NAAQS; and

(ii) the submission, on request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this division, a fee under an approved fee program under subdivision 6; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(4) PLAN REVISION.—

(A) REVIEW.—As soon as practicable, the Administrator shall, consistent with the purposes of this division and the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 791 et seq.), review each State's applicable implementation plans and report to the State on whether the plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any NAAQS within the period permitted in this section. If the Administrator determines that any such plan can be revised, the Administrator shall notify the State that a plan revision may be submitted by the State. Any plan revision that is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (3). The Administrator shall approve or disapprove any revision not later than 3 months after its submission.

(B) LIMITATION.—Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because 1 or more suspensions under subsection (d) or (e) or exemptions under section 211118 of this title have been granted, if the plan would have met the requirements of this section if no such suspension or exemption had been granted.

(5) INDIRECT SOURCE REVIEW PROGRAMS.—

(A) DEFINITIONS.—In this paragraph:

(i) INDIRECT SOURCE.—

(I) IN GENERAL.—The term ''indirect source'' means a facility, building, structure, installation, real property, road, or highway that attracts, or may attract, mobile sources of pollution.

(II) INCLUSIONS.—The term ''indirect source'' includes a parking lot, parking garage, or other facility subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(A)(i)), including regulation of existing off-street parking.

(III) EXCLUSIONS.—The term ''indirect source'' does not include—

(aa) new or existing on-street parking; or

(bb) a direct emission source or facility at, within, or associated with a source described in subclause (I) or (II).

(ii) INDIRECT SOURCE REVIEW PROGRAM.—The term ''indirect source review program'' means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to ensure, or assist in ensuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(I) exceeding any primary NAAQS for a mobile source-related air pollutant after the primary standard attainment date; or

(II) preventing maintenance of any such standard after that date.

(B) INCLUSION IN STATE IMPLEMENTATION PLAN.—

(i) IN GENERAL.—Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such a plan under this section, any indirect source review program.

(ii) APPROVAL AND ENFORCEMENT BY THE ADMINISTRATOR.—The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program that the State chooses to adopt and submit as part of its plan.

(iii) REVISION.—Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke an indirect source review program included in the

plan, provided that the plan meets the requirements of this section.

(C) PLANS PROMULGATED BY THE ADMINISTRATOR.—

(i) IN GENERAL.—Except as provided in clause (ii), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(ii) FEDERALLY ASSISTED OR FEDERALLY OWNED OR OPERATED SOURCES.—The Administrator may promulgate, implement, and enforce regulations under subsection (c) respecting indirect source review programs that apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(b) EXTENSION OF PERIOD FOR SUBMISSION OF PLANS.—The Administrator may, wherever the Administrator determines it to be necessary, extend the period for submission of any plan or portion thereof that implements a secondary NAAQS for a period not to exceed 18 months after the date otherwise required for submission of the plan.

(c) FEDERAL IMPLEMENTATION PLANS.—

(1) PROMULGATION.—The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (i)(1)(A); or

(B) disapproves a State implementation plan submission in whole or in part;

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates the Federal implementation plan.

(2) PARKING SURCHARGE REGULATION.—

(A) DEFINITIONS.—In this paragraph:

(i) MANAGEMENT OF PARKING SUPPLY.—The term ''management of parking supply'' includes any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(ii) PARKING SURCHARGE REGULATION.—The term ''parking surcharge regulation'' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(iii) PREFERENTIAL BUS/CARPOOL LANE.—The term ''preferential bus/carpool lane'' includes any requirement for the setting aside of 1 or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(B) NO REQUIREMENT BY THE ADMINISTRATOR.—

(i) FEDERAL IMPLEMENTATION PLAN.—No parking surcharge regulation may be required by the Administrator under paragraph (1) as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator are void.

(ii) STATE IMPLEMENTATION PLAN.—The Administrator may not condition approval of any implementation plan submitted by a State on the plan's including a parking surcharge regulation.

(iii) REQUIREMENT BY A STATE.—This subparagraph shall not preclude the Administrator from approving a parking surcharge regulation if it is adopted and submitted by a State as part of an applicable implementation plan.

(C) MANAGEMENT OF PARKING SUPPLY; PREFERENTIAL BUS/CARPOOL LANES.—No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section unless the promulgation has been subjected to a public hearing held in the affected area for which reasonable notice has been given in that area. If substantial changes are made after public hearing, 1 or more additional hearings shall be held in the area after such notice.

(3) DELEGATION OF AUTHORITY.—On application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that the unit has adequate authority under State or local law, the Administrator may delegate to the unit the authority to implement and enforce within the jurisdiction of the unit any part of a plan promulgated under this subsection. Nothing in this paragraph precludes the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) BRIDGE USE CHARGES.—

(A) ELIMINATION.—Any measure in an applicable implementation plan that requires a toll or other charge for the use of a bridge located entirely within 1 city shall be eliminated from the plan by the Administrator on application by the Governor of the State, which application shall include a certification by the Governor that the Governor will revise the plan in accordance with subparagraph (B).

(B) PLAN REVISION.—In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A)—

(i) the plan shall be revised to include comprehensive measures to—

(I) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(II) implement transportation control measures necessary to attain and maintain NAAQSes; and

(ii) the revised plan shall, for the purpose of implementing those comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing the grants and funds.

(C) EMISSION REDUCTIONS EQUIVALENT.—The measures under subparagraph (B)(i) shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emission reductions equivalent to the reductions that may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(D) COORDINATION.—Any revision of an implementation plan for purposes of meeting the requirements of subparagraphs (B) and (C) shall be submitted in coordination with any plan revision required under chapter 215.

(d) TEMPORARY EMERGENCY SUSPENSIONS ON DETERMINATION BY THE PRESIDENT OF A NATIONAL OR REGIONAL ENERGY EMERGENCY.—

(1) DETERMINATION BY THE PRESIDENT.—On application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which the source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 233110 of this title may be necessary; and

(B) other means of responding to the energy emergency may be inadequate.

(2) NONDELEGABILITY.—A determination under paragraph (1) shall not be delegable by the President to any other person.

(3) TEMPORARY EMERGENCY SUSPENSIONS.—

(A) IN GENERAL.—If the President determines that a national or regional energy emergency of the severity described in paragraph (1) exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 233110 of this title adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in subparagraph (B) and may take effect immediately.

(B) CONDITION.—A temporary emergency suspension under subparagraph (A) shall be issued to a source only if the Governor of the State finds that—

(i) there exists in the vicinity of the source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(ii) such unemployment or loss can be totally or partially alleviated by the emergency suspension.

(C) LIMITATION.—Not more than 1 temporary emergency suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(D) EFFECTIVE PERIOD.—A temporary emergency suspension shall remain in effect for a maximum of—

(i) 4 months; or

(ii) such lesser period as may be specified in a disapproval order of the Administrator, if any.

(E) DISAPPROVAL BY THE ADMINISTRATOR.—The Administrator may disapprove a temporary emergency suspension if the Administrator determines that it does not meet the requirements of subparagraphs (B) and (C).

(4) APPLICABILITY.—This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c), but in any such case the President may grant a temporary emergency suspension for a 4-month period of any such provision or requirement if the President makes the determinations and

findings specified in paragraph (1) and subparagraphs (B) and (C) of paragraph (3).

(e) TEMPORARY EMERGENCY SUSPENSIONS BY A GOVERNOR TO PREVENT CLOSING OF A SOURCE.—

(1) IN GENERAL.—In the case of any State that has adopted and submitted to the Administrator a proposed plan revision that—

(A) the State determines—

(i) meets the requirements of this section; and

(ii) is necessary—

(I) to prevent the closing for 1 year or more of any source of air pollution; and

(II) to prevent substantial increases in unemployment that would result from such a closing; and

(B) the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision;

the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for the State that is proposed to be revised with respect to that source.

(2) DETERMINATION UNDER PARAGRAPH (1)(A)(ii).—A determination under paragraph (1)(A)(ii) may not be made with respect to a source that would close without regard to whether or not the proposed plan revision is approved.

(3) EFFECTIVE PERIOD.—A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of—

(A) 4 months; or

(B) such lesser period as may be specified in a disapproval order of the Administrator.

(4) DISAPPROVAL BY THE ADMINISTRATOR.—The Administrator may disapprove a temporary emergency suspension if the Administrator determines that it does not meet the requirements of this subsection.

(f) COMPREHENSIVE DOCUMENTS SETTING FORTH REQUIREMENTS OF APPLICABLE IMPLEMENTATION PLANS.—

(1) IN GENERAL.—Every 3 years, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for the State and shall publish notice in the Federal Register of the availability of such documents.

(2) REGULATIONS.—The Administrator may promulgate such regulations as may be reasonably necessary to carry out this subsection.

(g) NO MODIFICATION OF IMPLEMENTATION PLAN REQUIREMENTS.—Except for a suspension under subsection (d) or (e), an exemption under section 211118 of this title, a plan promulgation under subsection (c), or a plan revision under subsection (a)(4), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by a State or by the Administrator.

(h) TECHNOLOGICAL SYSTEMS OF CONTINUOUS EMISSION REDUCTION ON NEW OR MODIFIED STATIONARY SOURCES; COMPLIANCE WITH REQUIREMENTS.—As a condition for issuance of any permit required under this subdivision, the owner or operator of each new or modified stationary source that is required to obtain such a permit shall show to the satisfaction of the permitting authority that—

(1) the technological system of continuous emission reduction that is to be used at the source will enable the source to comply with the standards of performance that are to apply to the source; and

(2) the construction or modification and operation of the source will be in compliance with all other requirements of this division.

(i) EPA ACTION ON PLAN SUBMISSIONS.—

(1) COMPLETENESS OF PLAN SUBMISSIONS.—

(A) COMPLETENESS CRITERIA.—The Administrator shall promulgate minimum criteria that any plan submission shall meet before the Administrator is required to act on the submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with this division.

(B) COMPLETENESS FINDING.—Within 60 days after the Administrator's receipt of a plan or plan revision, but not later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date that is 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A) shall on that date be deemed by operation of law to meet the minimum criteria.

(C) EFFECT OF FINDING OF INCOMPLETENESS.—Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to sub-

paragraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) DEADLINE FOR ACTION.—Within 12 months after a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months after submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) FULL AND PARTIAL APPROVAL AND DISAPPROVAL.—In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve the submittal as a whole if it meets all of the applicable requirements of this division. If a portion of the plan revision meets all the applicable requirements of this division, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this division until the Administrator approves the entire plan revision as complying with the applicable requirements of this division.

(4) CONDITIONAL APPROVAL.—The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with the commitment.

(5) CALLS FOR PLAN REVISIONS.—

(A) IN GENERAL.—Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant NAAQS, to mitigate adequately the interstate pollutant transport described in section 215108 of this title or section 215205 of this title, or to otherwise comply with any requirement of this division, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.

(B) NOTICE; DEADLINES.—The Administrator—

(i) shall notify the State of the inadequacies; and

(ii) may establish reasonable deadlines (not to exceed 18 months after the date of the notice) for the submission of the plan revisions.

(C) PUBLIC AVAILABILITY.—The findings under subparagraph (A) and notice under subparagraph (B) shall be public.

(D) EFFECT OF FINDING.—Any finding under this paragraph shall, to the extent that the Administrator considers appropriate, subject the State to the requirements of this division to which the State was subject when it developed and submitted the plan for which the finding was made, except that the Administrator may adjust any dates applicable under those requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under chapter 215 unless that date has elapsed).

(6) CORRECTIONS.—Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise the action as appropriate without requiring any further submission from the State. Such a determination and the basis thereof shall be provided to the State and public.

(j) PLAN REVISIONS.—Each revision to an implementation plan submitted by a State under this division shall be adopted by the State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 215101 of this title) or any other applicable requirement of this division.

(k) SANCTIONS.—

(1) IN GENERAL.—The Administrator may apply any of the sanctions listed in section 215111(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under subparagraphs (A) through (D), respectively, of section 215111(a)(1) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this division, with respect to any portion of the State that the Administrator determines to be reasonable and appropriate, for the purpose of ensuring that the requirements of this division relating to the plan or plan item are met.

(2) CRITERIA.—The Administrator shall, by regulation, establish criteria for exercising the Administrator's authority under paragraph (1) with respect to any deficiency described in section 215111(a)(1) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination described in section 215111(a)(1) of this

title, the sanctions are not applied on a statewide basis where 1 or more political subdivisions covered by the applicable implementation plan are principally responsible for the deficiency.

(l) SAVINGS PROVISIONS.—

(1) EXISTING PLAN PROVISIONS.—Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act (42 U.S.C. 7410) (as in effect before November 15, 1990) shall remain in effect as part of the applicable implementation plan, except to the extent that a revision to the provision is approved or promulgated by the Administrator pursuant to this division.

(2) ATTAINMENT DATES.—For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a primary NAAQS in effect on November 15, 1990; or

(B) in response to a finding of substantial inadequacy under section 110(a)(2) of the Clean Air Act (42 U.S.C. 7410(a)(2)) (as in effect before November 15, 1990);

shall provide for attainment of the primary NAAQSes within 5 years after issuance of the finding of substantial inadequacy.

(3) RETENTION OF CONSTRUCTION MORATORIUM IN CERTAIN AREAS.—In the case of an area to which, as of November 14, 1990, the prohibition on construction or modification of major stationary sources prescribed in section 110(a)(2)(I) of the Clean Air Act (42 U.S.C. 7410(a)(2)(I)) (as in effect before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing that area had not submitted an implementation plan meeting the requirements of section 172(b)(6) of the Clean Air Act (42 U.S.C. 7502(b)(6)) (as in effect before November 15, 1990) or section 172(a)(1) of the Clean Air Act (42 U.S.C. 7502(a)(1)) (to the extent that those requirements relate to provision for attainment of the primary NAAQS for sulfur oxides by December 31, 1982) (as in effect before November 15, 1990), no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in the area until the Administrator finds that the plan for the area meets the applicable requirements of section 215102(c)(5) of this title or subchapter V of chapter 215, respectively.

(m) INDIAN TRIBES.—

(1) REVIEW OF IMPLEMENTATION PLAN.—If an Indian tribe submits an implementation plan to the Administrator pursuant to section

203101(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 203101(d)(2) of this title.

(2) APPLICABILITY OF IMPLEMENTATION PLAN.—When an implementation plan described in paragraph (1) becomes effective in accordance with the regulations promulgated under section 203101(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(n) REPORTS.—Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to—

(1) emission reductions;

(2) vehicle miles traveled;

(3) congestion levels; and

(4) any other information that the Administrator considers necessary to assess the development, effectiveness, need for revision, or implementation of any plan or plan revision required under this division.

## § 211111. Standards of performance for new stationary sources

(a) DEFINITIONS.—In this section:

(1) EXISTING SOURCE.—The term ''existing source'' means any stationary source other than a new source.

(2) MODIFY.—

(A) IN GENERAL.—The term ''modify'', with respect to a stationary source, means to make or undergo any physical change in, or change in the method of operation of, the stationary source that—

(i) increases the amount of any air pollutant emitted by the stationary source; or

(ii) results in the emission of any air pollutant not previously emitted.

(B) EXCLUSION.—The term ''modify'' does not include converting to coal by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792(a)) or any enactment that supersedes that Act.

(3) NEW SOURCE.—The term ''new source'' means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) pre-

scribing a standard of performance under this section that will be applicable to the source.

(4) OWNER OR OPERATOR.—The term ''owner or operator'' means any person that owns, leases, operates, controls, or supervises a stationary source.

(5) STANDARD OF PERFORMANCE.—The term ''standard of performance'' means a standard for emissions of air pollutants that reflects the degree of emission limitation achievable through the application of the best system of emission reduction that (taking into account the cost of achieving the reduction and any non-air-quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(6) STATIONARY SOURCE.—The term ''stationary source'' means any building, structure, facility, or installation that emits or may emit any air pollutant.

(7) TECHNOLOGICAL SYSTEM OF CONTINUOUS EMISSION REDUCTION.—The term ''technological system of continuous emission reduction'' means—

(A) a technological process for production or operation by any source that is inherently low-polluting or nonpolluting; or

(B) a technological system for continuous reduction of the pollution generated by a source before the pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuel.

(b) STANDARDS OF PERFORMANCE.—

(1) LIST OF CATEGORIES.—The Administrator shall publish (and from time to time revise) a list of categories of stationary sources. The Administrator shall include a category of sources in the list if in the Administrator's judgment it causes, or contributes significantly to, air pollution that may reasonably be anticipated to endanger public health or welfare.

(2) REGULATIONS.—Within 1 year after the inclusion of a category of stationary sources in a list under paragraph (1), the Administrator shall publish proposed regulations establishing Federal standards of performance for new sources within the category. The Administrator shall afford interested persons an opportunity for written comment on the proposed regulations. After considering the comments, the Administrator shall promulgate, within 1 year after publication of the proposed regulations, the standard of performance with such modifications as the Administrator considers appropriate.

(3) PERIODIC REVIEW.—

(A) IN GENERAL.—The Administrator shall, at least every 8 years, review and, if appropriate, revise the standard of performance following the procedure required by this subsection for promulgation of standards of performance.

(B) READILY AVAILABLE INFORMATION.—Notwithstanding subparagraph (A), the Administrator need not review any standard of performance if the Administrator determines that review is not appropriate in light of readily available information on the efficacy of the standard of performance.

(4) EFFECTIVE DATE.—A standard of performance or revision thereof shall become effective on promulgation.

(5) CONSIDERATION OF EMISSION LIMITATIONS AND PERCENT REDUCTIONS ACHIEVED IN PRACTICE.—When implementation and enforcement of any requirement of this division indicate that emission limitations and percent reductions beyond those required by the standard of performance promulgated under this section are achieved in practice, the Administrator shall, when revising the standard of performance promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(6) CLASSES, TYPES, AND SIZES.—The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing standards of performance.

(7) POLLUTION CONTROL TECHNIQUES.—The Administrator shall from time to time issue information on pollution control techniques for categories of new sources and air pollutants subject to this section.

(8) NEW SOURCES OWNED OR OPERATED BY THE UNITED STATES.—This section shall apply to any new source owned or operated by the United States.

(9) EFFECT OF SECTION.—Except as otherwise authorized under subsection (f), nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(10) CERTAIN NEW OR MODIFIED FOSSIL FUEL-FIRED STATIONARY SOURCES.—Any new or modified fossil fuel-fired stationary source that commences construction prior to the date of publication of proposed revised standards shall not be required to comply with those revised standards.

(c) STATE IMPLEMENTATION AND ENFORCEMENT OF STANDARDS OF PERFORMANCE.—

(1) DELEGATION OF AUTHORITY.—Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in the State. If the Administrator finds that the State procedure is adequate, the Administrator shall delegate to the State any authority that the Administrator has under this division to implement and enforce the standards of performance.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits the Administrator from enforcing any applicable standard of performance under this section.

(d) STANDARDS OF PERFORMANCE ESTABLISHED BY STATES FOR EXISTING SOURCES.—

(1) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall prescribe regulations that establish a procedure similar to that provided by section 211110 of this title under which each State shall submit to the Administrator a plan that—

(i) establishes standards of performance for any existing source for any air pollutant—

(I)(aa) for which air quality criteria have not been issued; or

(bb) that is not included on a list published under section 211108(a) of this title or emitted from a source category that is regulated under section 211112 of this title; but

(II) to which a standard of performance under this section would apply if the existing source were a new source; and

(ii) provides for the implementation and enforcement of the standards of performance.

(B) CONSIDERATIONS.—The regulations under this paragraph shall permit a State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which the standard of performance applies.

(2) AUTHORITY OF THE ADMINISTRATOR.—

(A) IN GENERAL.—The Administrator shall have the authority described in paragraph (1)—

(i) to prescribe a plan for a State in a case where the State fails to submit a satisfactory plan as the Administrator would

have under section 211110(c) of this title in the case of failure to submit an implementation plan; and

(ii) to enforce the plan in a case where the State fails to enforce the plan as the Administrator would have under sections 211113 and 211114 of this title with respect to an implementation plan.

(B) CONSIDERATIONS.—In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

(e) NEW SOURCE STANDARDS OF PERFORMANCE.—

(1) IN GENERAL.—For categories of major stationary sources that the Administrator listed under section 111(b)(1)(A) of the Clean Air Act (42 U.S.C. 7411(b)(1)(A)) before November 15, 1990, and for which the Administrator had not proposed regulations by November 15, 1990, the Administrator shall promulgate regulations establishing standards of performance.

(2) PRIORITIES.—In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions that each category will emit or be designed to emit;

(B) the extent to which each air pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each category of sources and the consequent need for nationally applicable new source standards of performance.

(3) CONSULTATION.—Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(4) REVISION OF REGULATIONS.—

(A) SPECIFICATION OF CATEGORY LISTED.—On application by the Governor of a State showing that the Administrator has failed to specify in regulations under paragraph (1) any category of major stationary sources required to be specified under the regulations, the Administrator shall revise the regulations to specify any such category.

(B) SPECIFICATION OF CATEGORY NOT LISTED.—On application of the Governor of a State showing that any category of stationary sources not included in the list under section 111(b)(1)(A) of the Clean Air Act (42 U.S.C. 7411(b)(1)(A)) before November 15, 1990, contributes significantly to air pollution that may reasonably be anticipated to endanger public health or welfare (notwithstanding that that category is not a category of major stationary sources), the Administrator shall revise the regulations to specify that category of stationary sources.

(C) PROPER APPLICATION OF CRITERIA.—On application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under paragraph (2), the Administrator shall revise the list under subsection (b)(1) to apply properly the criteria.

(D) NEW, INNOVATIVE, OR IMPROVED TECHNOLOGY OR PROCESS.—On application of the Governor of a State showing that—

(i) a new, innovative, or improved technology or process that achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources; and

(ii) as a result of that technology or process, the new source standard of performance in effect under this section for that category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction that (taking into consideration the cost of achieving such an emission reduction, and any non-air-quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise the standard of performance for that category accordingly.

(E) DEADLINE.—Unless later deadlines for action of the Administrator are otherwise prescribed under this section, the Administrator shall, not later than 3 months after the date of receipt of any application by a Governor of a State—

(i) find that the application does not contain the requisite showing and deny the application; or

(ii) grant the application and take the action required under this subsection.

(5) NOTICE AND OPPORTUNITY FOR PUBLIC HEARING.—Before taking any action required by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(f) DESIGN, EQUIPMENT, WORK PRACTICE, OR OPERATIONAL STANDARD IF STANDARD OF PERFORMANCE IS NOT FEASIBLE.—

(1) IN GENERAL.—If, in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, the Administrator may instead promulgate a design, equipment, work practice, or operational standard (or combination thereof) that reflects the best technological system of continuous emission reduction that (taking into consideration the cost of achieving the emission reduction, and any non-air-quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) OPERATION AND MAINTENANCE.—The Administrator shall include as part of any design or equipment standard promulgated under this subsection such requirements as will ensure the proper operation and maintenance of any such element of design or equipment.

(3) STANDARD OF PERFORMANCE NOT FEASIBLE.—For the purpose of this subsection, the Administrator may determine that it is not feasible to prescribe or enforce a standard of performance in any situation in which the Administrator determines that—

(A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture pollutant, or any requirement for, or use of, such a conveyance would be inconsistent with Federal, State, or local law; or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(4) ALTERNATIVE MEANS OF EMISSION LIMITATION.—If, after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of that air pollutant achieved under a design, equipment, work practice, or operational standard promulgated under paragraph (1), the Administrator shall permit the use of the alternative by the source for purposes of compliance with this section with respect to that pollutant.

(5) PROMULGATION OF STANDARD OF PERFORMANCE WHEN FEASIBLE.—Any design, equipment, work practice, or operational standard promulgated under paragraph (1) shall be promulgated in terms of a

standard of performance whenever it becomes feasible to promulgate and enforce the design, equipment, work practice, or operational standard in terms of a standard of performance.

(6) TREATMENT.—Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of this division (except subsection (a) and this subsection).

(g) COUNTRY ELEVATORS.—Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) that have a storage capacity of less than 2,500,000 bushels.

(h) WAIVERS TO ENCOURAGE THE USE OF INNOVATIVE TECHNOLOGICAL SYSTEMS OF CONTINUOUS EMISSION REDUCTION.—

(1) REQUEST FOR WAIVER.—Any person proposing to own or operate a new source may request the Administrator for 1 or more waivers from the requirements of this section for the source or any portion thereof with respect to any air pollutant to encourage the use of 1 or more innovative technological systems of continuous emission reduction.

(2) GRANT OF WAIVER.—The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under paragraph (1) if the Administrator determines, after notice and opportunity for public hearing, that—

(A) the proposed system or systems have not been adequately demonstrated;

(B)(i) the proposed system or systems will operate effectively; and

(ii) there is a substantial likelihood that the system or systems will achieve—

(I) greater continuous emission reduction than that required to be achieved under the standards of performance that would otherwise apply; or

(II) at least an equivalent reduction at lower cost in terms of energy, economic, or non-air-quality environmental impact;

(C) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction; and

(D) the granting of the waiver is consistent with paragraph (6).

(3) LIKELIHOOD OF GREATER CONTINUOUS EMISSION REDUCTION.—In making any determination under paragraph (2)(B), the Adminis-

trator shall take into account any previous failure of the system or systems to operate effectively or to meet any requirement of the new source performance standards.

(4) RISK TO PUBLIC HEALTH, WELFARE, OR SAFETY.—

(A) CONSIDERATIONS.—In determining whether an unreasonable risk exists under paragraph (2)(C), the Administrator shall consider, among other factors—

(i) whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants;

(ii) available methods for reducing or eliminating any risk to public health, welfare, or safety that may be associated with the use of the system; and

(iii) the availability of other technological systems that may be used to conform to standards under this section without causing or contributing to an unreasonable risk.

(B) TESTS; INFORMATION.—The Administrator may conduct such tests and require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out paragraph (2)(C). Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if the pollutant was not emitted, or was emitted in significantly lesser amounts, without use of the system.

(5) TERMS AND CONDITIONS.—

(A) IN GENERAL.—A waiver under paragraph (5) shall be granted on such terms and conditions as the Administrator determines to be necessary to—

(i) ensure that emissions from the source will not prevent attainment and maintenance of any NAAQSes; and

(ii) ensure the proper functioning of the technological system or systems authorized.

(B) TREATMENT AS STANDARD OF PERFORMANCE.—Any such term or condition shall be treated as a standard of performance for the purposes of subsection (j) and section 211113 of this title.

(6) NUMBER OF WAIVERS.—The number of waivers granted under this subsection with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not the system will achieve the conditions specified in subparagraphs (B) and (C) of paragraph (2).

(7) EFFECTIVE PERIOD.—

(A) IN GENERAL.—A waiver under paragraph (1) shall extend to the earlier of—

(i) a date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used; or

(ii) the date on which the Administrator determines that—

(I) the system has failed to—

(aa) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance that would otherwise apply; or

(bb) comply with the condition specified in paragraph (2)(C); and

(II) the failure cannot be corrected.

(B) DATE DETERMINED BY THE ADMINISTRATOR.—In carrying out subparagraph (A)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the earlier of—

(i) years after the date on which any waiver is granted to the source or portion thereof; or

(ii) the date that is 4 years after the date on which the source or portion thereof commences operation.

(8) PORTION OF SOURCE TO WHICH WAIVER APPLIES.—No waiver under paragraph (1) shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction are used.

(9) EXTENSION.—

(A) IN GENERAL.—If a waiver for a source is terminated under paragraph (7)(A)(ii), the Administrator shall grant an extension of the requirements of this section for the source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. That period shall not extend beyond the date that is 3 years after the date on which the waiver is terminated.

(B) EMISSION LIMITS AND COMPLIANCE SCHEDULE.—

(i) IN GENERAL.—An extension granted under this paragraph shall—

(I) set forth emission limits and a compliance schedule containing increments of progress that require compli-

ance with the applicable standards of performance as expeditiously as practicable; and

(II) include such measures as are necessary and practicable in the interim to minimize emissions.

(ii) TREATMENT.—A schedule under clause (i)(I) shall be treated as a standard of performance for purposes of subsection (j) and section 211113 of this title.

(i) INCINERATION UNITS.—An incineration unit shall not be considered to be combusting municipal waste for purposes of this section if the incineration unit combusts a fuel feed stream 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(j) PROHIBITION.—It shall be unlawful for any owner or operator of any new source to operate the source in violation of any standard of performance applicable to the source.

**§ 211112. Hazardous air pollutants**

(a) DEFINITIONS.—In this section:

(1) ADVERSE ENVIRONMENTAL EFFECT.—

(A) IN GENERAL.—The term ''adverse environmental effect'' means any significant and widespread adverse effect that may reasonably be anticipated, to wildlife, aquatic life, or other natural resources.

(B) INCLUSIONS.—The term ''adverse environmental effect'' includes adverse impacts on—

(i) populations of endangered or threatened species; or

(ii) significant degradation of environmental quality over broad areas.

(2) AREA SOURCE.—

(A) IN GENERAL.—The term ''area source'' means any stationary source of hazardous air pollutants that is not a major source.

(B) EXCLUSIONS.—The term ''area source'' does not include motor vehicles or nonroad vehicles subject to regulation under subdivision 3.

(3) CARCINOGENIC.—

(A) IN GENERAL.—Unless revised, the term ''carcinogenic'' has the meaning provided by the Administrator for purposes of the term ''carcinogenic effect'' under the Guidelines for Carcinogenic Risk Assessment as of November 15, 1990.

(B) REVISION.—Any revision in the Guidelines for Carcinogenic Risk Assessment shall be subject to notice and opportunity for comment.

(4) ELECTRIC UTILITY STEAM GENERATING UNIT.—

(A) IN GENERAL.—The term ''electric utility steam generating unit'' means any fossil fuel-fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale.

(B) COGENERATION UNITS.—A unit that cogenerates steam and electricity and supplies more than ⅓ of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered to be an electric utility steam generating unit.

(5) EXISTING SOURCE.—The term ''existing source'' means any stationary source other than a new source.

(6) HAZARDOUS AIR POLLUTANT.—The term ''hazardous air pollutant'' means any air pollutant listed pursuant to subsection (b).

(7) MAJOR SOURCE.—

(A) IN GENERAL.—The term ''major source'' means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate—

(i) 10 tons per year or more of any hazardous air pollutant; or

(ii) 25 tons per year or more of any combination of hazardous air pollutants.

(B) LESSER QUANTITY; DIFFERENT CRITERIA.—The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in subparagraph (A), on the basis of—

(i) the potency of the air pollutant;

(ii) the persistence of the air pollutant;

(iii) the potential for bioaccumulation of the air pollutant;

(iv) other characteristics of the air pollutant; or

(v) other relevant factors.

(8) MODIFICATION.—The term ''modification'' means any physical change in, or change in the method of operation of, a major source that—

(A) increases the actual emissions of any hazardous air pollutant emitted by the source by more than a de minimis amount; or

(B) results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

(9) NEW SOURCE.—The term ''new source'' means a stationary source the construction or reconstruction of which is commenced after

the Administrator first proposes regulations under this section establishing an emission standard applicable to the source.

(10) OWNER OR OPERATOR.—Except in subsection (q), the term ''owner or operator'' means any person that owns, leases, operates, controls, or supervises a stationary source.

(11) STATIONARY SOURCE.—The term ''stationary source'' has the meaning given the term in section 211111(a) of this title.

(b) LIST OF POLLUTANTS.—

(1) LIST.—Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

| CAS number | Chemical name |
|---|---|
| 75070 | Acetaldehyde |
| 60355 | Acetamide |
| 75058 | Acetonitrile |
| 98862 | Acetophenone |
| 53963 | 2-Acetylaminofluorene |
| 107028 | Acrolein |
| 79061 | Acrylamide |
| 79107 | Acrylic acid |
| 107131 | Acrylonitrile |
| 107051 | Allyl chloride |
| 92671 | 4-Aminobiphenyl |
| 62533 | Aniline |
| 90040 | o-Anisidine |
| 1332214 | Asbestos |
| 71432 | Benzene (including benzene from gasoline) |
| 92875 | Benzidine |
| 98077 | Benzotrichloride |
| 100447 | Benzyl chloride |
| 92524 | Biphenyl |
| 117817 | Bis(2-ethylhexyl)phthalate (DEHP) |
| 542881 | Bis(chloromethyl)ether |
| 75252 | Bromoform |
| 106990 | 1,3-Butadiene |
| 156627 | Calcium cyanamide |
| 105602 | Caprolactam |
| 133062 | Captan |
| 63252 | Carbaryl |
| 75150 | Carbon disulfide |
| 56235 | Carbon tetrachloride |
| 463581 | Carbonyl sulfide |
| 120809 | Catechol |
| 133904 | Chloramben |
| 57749 | Chlordane |
| 7782505 | Chlorine |
| 79118 | Chloroacetic acid |
| 532274 | 2-Chloroacetophenone |
| 108907 | Chlorobenzene |
| 510156 | Chlorobenzilate |
| 67663 | Chloroform |
| 107302 | Chloromethyl methyl ether |
| 126998 | Chloroprene |
| 1319773 | Cresols/Cresylic acid (isomers and mixture) |
| 95487 | o-Cresol |
| 108394 | m-Cresol |
| 106445 | p-Cresol |
| 98828 | Cumene |
| 94757 | 2,4-D, salts and esters |
| 3547044 | DDE |
| 334883 | Diazomethane |
| 132649 | Dibenzofurans |
| 96128 | 1,2-Dibromo-3-chloropropane |
| 84742 | Dibutylphthalate |
| 106467 | 1,4-Dichlorobenzene(p) |
| 91941 | 3,3-Dichlorobenzidene |
| 111444 | Dichloroethyl ether (Bis(2-chloroethyl)ether) |
| 542756 | 1,3-Dichloropropene |
| 62737 | Dichlorvos |
| 111422 | Diethanolamine |
| 121697 | N,N-Diethyl aniline (N,N-Dimethylaniline) |
| 64675 | Diethyl sulfate |

| CAS number | Chemical name |
|---|---|
| 119904 | 3,3-Dimethoxybenzidine |
| 60117 | Dimethyl aminoazobenzene |
| 119937 | 3,3′-Dimethyl benzidine |
| 79447 | Dimethyl carbamoyl chloride |
| 68122 | Dimethyl formamide |
| 57147 | 1,1-Dimethyl hydrazine |
| 131113 | Dimethyl phthalate |
| 77781 | Dimethyl sulfate |
| 534521 | 4,6-Dinitro-o-cresol, and salts |
| 51285 | 2,4-Dinitrophenol |
| 121142 | 2,4-Dinitrotoluene |
| 123911 | 1,4-Dioxane (1,4-Diethyleneoxide) |
| 122667 | 1,2-Diphenylhydrazine |
| 106898 | Epichlorohydrin (l-Chloro-2,3-epoxypropane) |
| 106887 | 1,2-Epoxybutane |
| 140885 | Ethyl acrylate |
| 100414 | Ethyl benzene |
| 51796 | Ethyl carbamate (Urethane) |
| 75003 | Ethyl chloride (Chloroethane) |
| 106934 | Ethylene dibromide (Dibromoethane) |
| 107062 | Ethylene dichloride (1,2-Dichloroethane) |
| 107211 | Ethylene glycol |
| 151564 | Ethylene imine (Aziridine) |
| 75218 | Ethylene oxide |
| 96457 | Ethylene thiourea |
| 75343 | Ethylidene dichloride (1,1-Dichloroethane) |
| 50000 | Formaldehyde |
| 76448 | Heptachlor |
| 118741 | Hexachlorobenzene |
| 87683 | Hexachlorobutadiene |
| 77474 | Hexachlorocyclopentadiene |
| 67721 | Hexachloroethane |
| 822060 | Hexamethylene-1,6-diisocyanate |
| 680319 | Hexamethylphosphoramide |
| 110543 | Hexane |
| 302012 | Hydrazine |
| 7647010 | Hydrochloric acid |
| 7664393 | Hydrogen fluoride (Hydrofluoric acid) |
| 123319 | Hydroquinone |
| 78591 | Isophorone |
| 58899 | Lindane (all isomers) |
| 108316 | Maleic anhydride |
| 67561 | Methanol |
| 72435 | Methoxychlor |
| 74839 | Methyl bromide (Bromomethane) |
| 74873 | Methyl chloride (Chloromethane) |
| 71556 | Methyl chloroform (1,1,1-Trichloroethane) |
| 78933 | Methyl ethyl ketone (2-Butanone) |
| 60344 | Methyl hydrazine |
| 74884 | Methyl iodide (Iodomethane) |
| 108101 | Methyl isobutyl ketone (Hexone) |
| 624839 | Methyl isocyanate |
| 80626 | Methyl methacrylate |
| 1634044 | Methyl tertiary butyl ether |
| 101144 | 4,4-Methylene bis(2-chloroaniline) |
| 75092 | Methylene chloride (Dichloromethane) |
| 101688 | Methylene diphenyl diisocyanate (MDI) |
| 101779 | 4,4′-Methylenedianiline |
| 91203 | Naphthalene |
| 98953 | Nitrobenzene |
| 92933 | 4-Nitrobiphenyl |
| 100027 | 4-Nitrophenol |
| 79469 | 2-Nitropropane |
| 684935 | N-Nitroso-N-methylurea |
| 62759 | N-Nitrosodimethylamine |
| 59892 | N-Nitrosomorpholine |
| 56382 | Parathion |
| 82688 | Pentachloronitrobenzene (Quintobenzene) |
| 87865 | Pentachlorophenol |
| 108952 | Phenol |
| 106503 | p-Phenylenediamine |
| 75445 | Phosgene |
| 7803512 | Phosphine |
| 7723140 | Phosphorus |
| 85449 | Phthalic anhydride |
| 1336363 | Polychlorinated biphenyls (Aroclors) |
| 1120714 | 1,3-Propane sultone |
| 57578 | beta-Propiolactone |
| 123386 | Propionaldehyde |
| 114261 | Propoxur (Baygon) |

| CAS number | Chemical name |
|---|---|
| 78875 | Propylene dichloride (1,2-Dichloropropane) |
| 75569 | Propylene oxide |
| 75558 | 1,2-Propylenimine (2-Methyl aziridine) |
| 91225 | Quinoline |
| 106514 | Quinone |
| 100425 | Styrene |
| 96093 | Styrene oxide |
| 1746016 | 2,3,7,8-Tetrachlorodibenzo-p-dioxin |
| 79345 | 1,1,2,2-Tetrachloroethane |
| 127184 | Tetrachloroethylene (Perchloroethylene) |
| 7550450 | Titanium tetrachloride |
| 108883 | Toluene |
| 95807 | 2,4-Toluene diamine |
| 584849 | 2,4-Toluene diisocyanate |
| 95534 | o-Toluidine |
| 8001352 | Toxaphene (chlorinated camphene) |
| 120821 | 1,2,4-Trichlorobenzene |
| 79005 | 1,1,2-Trichloroethane |
| 79016 | Trichloroethylene |
| 95954 | 2,4,5-Trichlorophenol |
| 88062 | 2,4,6-Trichlorophenol |
| 121448 | Triethylamine |
| 1582098 | Trifluralin |
| 540841 | 2,2,4-Trimethylpentane |
| 108054 | Vinyl acetate |
| 593602 | Vinyl bromide |
| 75014 | Vinyl chloride |
| 75354 | Vinylidene chloride (1,1-Dichloroethylene) |
| 1330207 | Xylenes (isomers and mixture) |
| 95476 | o-Xylenes |
| 108383 | m-Xylenes |
| 106423 | p-Xylenes |
| 0 | Antimony Compounds |
| 0 | Arsenic Compounds (inorganic including arsine) |
| 0 | Beryllium Compounds |
| 0 | Cadmium Compounds |
| 0 | Chromium Compounds |
| 0 | Cobalt Compounds |
| 0 | Coke Oven Emissions |
| 0 | Cyanide Compounds [1] |
| 0 | Glycol ethers [2] |
| 0 | Lead Compounds |
| 0 | Manganese Compounds |
| 0 | Mercury Compounds |
| 0 | Fine mineral fibers [3] |
| 0 | Nickel Compounds |
| 0 | Polycylic Organic Matter [4] |
| 0 | Radionuclides (including radon) [5] |
| 0 | Selenium Compounds |

NOTE: For all listings above that contain the word ''compounds'' and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical's infrastructure.

[1] X′CN where X = H′ or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$.

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R–$(OCH2CH2)_n$–OR′ where
n = 1, 2, or 3
R = alkyl or aryl groups
R′ = R, H, or groups that, when removed, yield glycol ethers with the structure: R–$(OCH2CH)_n$–OH. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds that have more than 1 benzene ring and have a boiling point greater than or equal to 100 degrees C.

[5] A type of atom that spontaneously undergoes radioactive decay.

(2) REVISION OF LIST.—

(A) IN GENERAL.—The Administrator shall periodically review the list established by paragraph (1) and publish the results of the review and, where appropriate, revise the list by regulation, adding pollutants that present, or may present, through inhalation or other routes of exposure, a threat of—

(i) adverse human health effects, including substances that—

(I) are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic;

(II) cause reproductive dysfunction; or

(III) are acutely or chronically toxic; or

(ii) adverse environmental effects, whether through—

(I) ambient concentrations;

(II) bioaccumulation;

(III) deposition; or

(IV) otherwise (not including releases subject to regulation under subsection (q) as a result of emissions to the air).

(B) POLLUTANTS LISTED UNDER SECTION 211108(a).—

(i) IN GENERAL.—No air pollutant that is listed under section 211108(a) of this title may be added to the list under this section.

(ii) APPLICABILITY.—This subparagraph does not apply to any pollutant that—

(I) independently meets the listing criteria of subparagraph (A) and is a precursor to a pollutant that is listed under section 211108(a) of this title; or

(II) is in a class of pollutants listed under that section.

(C) SUBSTANCES, PRACTICES, PROCESSES, AND ACTIVITIES REGULATED UNDER SUBDIVISION 7.—No substance, practice, process, or activity regulated under subdivision 7 shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) PETITIONS TO MODIFY THE LIST.—

(A) PETITION.—Any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter), removing certain unique substances. Any such petition shall include a showing by the petitioner that there are adequate data on the health or environmental effects of the pollutant or other evidence adequate to support the petition.

(B) ACTION BY THE ADMINISTRATOR.—Within 18 months after receipt of a petition, the Administrator shall grant or deny the petition by publishing a written explanation of the reasons for the

Administrator's decision. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

(C) ADDITION OF SUBSTANCE.—The Administrator shall add a substance to the list on a showing by the petitioner or on the Administrator's own determination that—

(i) the substance is an air pollutant; and

(ii) emissions, ambient concentrations, bioaccumulation, or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects on human health or adverse environmental effects.

(D) DELETION FROM LIST.—

(i) IN GENERAL.—The Administrator shall delete a substance from the list on a showing by the petitioner or on the Administrator's own determination that there are adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation, or deposition of the substance may not reasonably be anticipated to cause any adverse effects on human health or adverse environmental effects.

(ii) CERTAIN UNIQUE CHEMICAL SUBSTANCES THAT CONTAIN A LISTED HAZARDOUS AIR POLLUTANT NOT HAVING A CAS NUMBER.—The Administrator shall delete from the list 1 or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) on a showing by the petitioner or on the Administrator's own determination that the unique chemical substances that contain the named chemical of the listed hazardous air pollutant meet the deletion requirements of clause (i).

(4) FURTHER INFORMATION.—If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

(5) TEST METHODS.—The Administrator may establish, by regulation, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) PREVENTION OF SIGNIFICANT DETERIORATION.—Chapter 213 shall not apply to a pollutant listed under this section.

(7) LEAD.—The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) LIST OF SOURCE CATEGORIES.—

(1) PUBLICATION AND REVISION.—

(A) IN GENERAL.—The Administrator shall publish, and shall from time to time, but not less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b).

(B) CONSISTENCY.—

(i) IN GENERAL.—To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 211111 of this title and chapter 213.

(ii) EFFECT.—Nothing in clause (i) limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) REQUIREMENT FOR EMISSION STANDARDS.—For the categories and subcategories that the Administrator lists, the Administrator shall establish emission standards under subsection (d), according to the schedule in this subsection and subsection (e).

(3) AREA SOURCES.—The Administrator shall list under this subsection each category or subcategory of area sources that the Administrator finds presents a threat of adverse effects on human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, pursuant to subsection (j)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section.

(4) PREVIOUSLY REGULATED SOURCES.—The Administrator may list any category or subcategory of sources regulated under section 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect before November 15, 1990).

(5) ADDITIONAL CATEGORIES.—In addition to the categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants accord-

ing to the criteria for listing applicable under those paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 2 years after the date on which the category or subcategory is listed.

(6) SPECIFIC POLLUTANTS.—

(A) IN GENERAL.—With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans, and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall list categories and subcategories of sources ensuring that sources accounting for not less than 90 percent of the aggregate emissions of each such pollutant are subject to standards under paragraph (2) or (4) of subsection (d).

(B) EFFECT OF PARAGRAPH.—This paragraph shall not be construed to require the Administrator to promulgate standards for pollutants described in subparagraph (A) emitted by electric utility steam generating units.

(7) RESEARCH OR LABORATORY FACILITIES.—

(A) DEFINITION OF RESEARCH OR LABORATORY FACILITY.—In this paragraph, the term ''research or laboratory facility'' means a stationary source the primary purpose of which is to conduct research and development into a new process or products, where if the source—

(i) is operated under the close supervision of technically trained personnel; and

(ii) is not engaged in the manufacture of a product for commercial sale in commerce, except in a de minimis manner.

(B) SEPARATE CATEGORY.—The Administrator shall establish a separate category covering research or laboratory facilities as necessary to ensure the equitable treatment of such facilities.

(8) BOAT MANUFACTURING.—When establishing emission standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such a listing would be inconsistent with the goals and requirements of this division.

(9) DELETION FROM LIST.—

(A) UNIQUE CHEMICAL SUBSTANCES.—Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the

Administrator shall delete the source category from the list if it is appropriate because of action taken under subsection (b)(3)(D).

(B) ANY SOURCE CATEGORY.—

(i) IN GENERAL.—The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

(I) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities that may cause a lifetime risk of cancer greater than 1 in 1,000,000 to the individual in the population who is most exposed to emissions of the pollutants from the source (or group of sources in the case of an area source).

(II) In the case of hazardous air pollutants that may result in adverse health effects in humans (other than cancer) or adverse environmental effects, a determination that emissions from no source in the category or subcategory (or group of sources in the case of area sources) exceed a level that is adequate to protect public health with an ample margin of safety, and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of an area source).

(ii) GRANT OR DENIAL.—The Administrator shall grant or deny a petition under this subparagraph within 1 year after the petition is filed.

(d) EMISSION STANDARDS.—

(1) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c).

(B) CLASSES, TYPES, AND SIZES.—The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing the emission standards, except that there shall be no delay in the compliance date for any

standard applicable to any source under subsection (i) as the result of the authority provided by this subparagraph.

(2) STANDARDS AND METHODS.—

(A) IN GENERAL.—Emission standards promulgated under this subsection and applicable to new sources or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements, determines is achievable for new sources or existing sources in the category or subcategory to which the emission standard applies, through application of measures, processes, methods, systems or techniques, including measures that—

(i) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;

(ii) enclose systems or processes to eliminate emissions;

(iii) collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;

(iv) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h); or

(v) are a combination of the measures described in clauses (i) through (iv).

(B) NO COMPROMISE OF INTELLECTUAL PROPERTY RIGHTS.—None of the measures described in clauses (i) through (iv) of subparagraph (A) shall, consistent with section 211114(c) of this title, in any way compromise any United States patent or United States trademark right, or confidential business information, trade secret, or other intellectual property right.

(3) NEW SOURCES AND EXISTING SOURCES.—

(A) NEW SOURCES.—The maximum degree of reduction in emissions that is considered achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator.

(B) EXISTING SOURCES.—An emission standard promulgated under this subsection for existing sources in a category or subcategory—

(i) may be less stringent than standards for new sources in the same category or subcategory; but

(ii) shall not be less stringent, and may be more stringent, than—

(I) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding sources that have, within 18 months before the emission standard is proposed or within 30 months before the emission standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction that complies, or would comply if the source is not subject to the standard, with the lowest achievable emission rate (as defined in section 215101 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources; or

(II) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

(4) HEALTH THRESHOLD.—With respect to pollutants for which a health threshold has been established, the Administrator may consider that threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

(5) ALTERNATIVE STANDARD FOR AREA SOURCES.—With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in categories or subcategories that provide for the use of generally available control technologies or management practices by those sources to reduce emissions of hazardous air pollutants.

(6) REVIEW AND REVISION.—The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section not less often than every 8 years.

(7) OTHER REQUIREMENTS.—No emission standard or other requirement promulgated under this section shall be interpreted, construed, or applied to diminish or replace the requirements of—

(A) a more stringent emission limitation or other applicable requirement established pursuant to section 211111 of this title, chapter 213 or 215, or other authority of this division; or

(B) a standard issued under State authority.

(8) COKE OVENS.—

(A) REGULATIONS ESTABLISHING EMISSION STANDARDS.—

(i) IN GENERAL.—The Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) for coke oven batteries.

(ii) EVALUATIONS.—In establishing such standards, the Administrator shall evaluate—

(I) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

(II) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of the standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

(iii) MINIMUM REQUIREMENTS.—The regulations shall require at a minimum that coke oven batteries will not exceed 8 percent leaking doors, 1 percent leaking lids, 5 percent leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors.

(B) WORK PRACTICE REGULATIONS.—The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate—

(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emission control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

(ii) door and jam cleaning practices.

(C) COKE OVEN BATTERIES ELECTING TO QUALIFY FOR COMPLIANCE DATE EXTENSION.—For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) in accordance with subsection (i)(8), the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed—

(i) 8 percent leaking doors;

(ii) 1 percent leaking lids;

(iii) 5 percent leaking offtakes; and

(iv) 16 seconds visible emissions per charge;

with no exclusion for emissions during the period after the closing of self-sealing doors.

(9) SOURCES LICENSED BY THE NUCLEAR REGULATORY COMMISSION.—No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by regulation, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for the category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection precludes or denies the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides that is more stringent than the standard or limitation in effect under section 211111 of this title or this section.

(10) EFFECTIVE DATE.—Emission standards or other regulations promulgated under this subsection shall be effective on promulgation.

(e) PRIORITIES; JUDICIAL REVIEW.—

(1) PRIORITIES.—In determining priorities for promulgating standards under subsection (d), the Administrator shall consider—

(A) the known or anticipated adverse effects of pollutants on public health and the environment;

(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

(2) JUDICIAL REVIEW.—Notwithstanding section 203102 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) or listing a source category or subcategory under subsection (c) shall be a final agency action subject to judicial review, except that any such action may be reviewed under section 211113 of this title when the Administrator issues emission standards for such a pollutant or category.

(f) EMISSION STANDARDS TO PROTECT HEALTH AND ENVIRONMENT.—

(1) REPORT.—The Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d);

(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

(D) recommendations as to legislation regarding the remaining risk.

(2) EMISSION STANDARDS.—

(A) IN GENERAL.—If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of emission standards for each category or subcategory of sources pursuant to subsection (d), promulgate emission standards for the category or subcategory if promulgation of emission standards is required to provide an ample margin of safety to protect public health in accordance with section 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with section 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect before November 15,

1990), unless the Administrator determines that a more stringent emission standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If emission standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than 1 in 1,000,000, the Administrator shall promulgate emission standards under this subsection for that source category.

(B) EFFECT OF SECTION.—Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of section 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect before November 15, 1990), and set forth in the Federal Register of September 14, 1989 (54 Fed. Reg. 38044).

(C) DEADLINES.—

(i) IN GENERAL.—The Administrator shall determine whether or not to promulgate emission standards under subparagraph (A) and, if the Administrator decides to promulgate emission standards, shall promulgate the emission standards 8 years after promulgation of the emission standards under subsection (d) for each source category or subcategory concerned.

(ii) CATEGORIES OR SUBCATEGORIES FOR WHICH STANDARDS UNDER SUBSECTION (d) WERE REQUIRED TO BE PROMULGATED WITHIN 2 YEARS AFTER NOVEMBER 15, 1990.—In the case of categories or subcategories for which standards under subsection (d) were required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the emission standards under subsection (d) to make the determination under clause (i) and, if required, to promulgate the emission standards under this paragraph.

(3) EFFECTIVE DATE.—Any emission standard established pursuant to this subsection shall become effective on promulgation.

(4) PROHIBITION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), no air pollutant to which an emission standard under this subsection

applies may be emitted from any stationary source in violation of the emission standard.

(B) EXISTING SOURCES.—In the case of an existing source—

(i) the emission standard shall not apply until 90 days after its effective date; and

(ii) the Administrator may grant a waiver permitting an existing source a period of up to 2 years after the effective date of an emission standard to comply with the emission standard if the Administrator finds that such a period is necessary for the installation of controls and that steps will be taken during the period of the waiver to ensure that the health of persons will be protected from imminent endangerment.

(5) AREA SOURCES.—The Administrator is not required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

(6) UNIQUE CHEMICAL SUBSTANCES.—In establishing emission standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish the emission standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

(g) MODIFICATIONS.—

(1) OFFSETS.—

(A) CHANGE NOT A MODIFICATION.—

(i) IN GENERAL.—A physical change in, or change in the method of operation of, a major source that results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if the increase in the quantity of actual emissions of any hazardous air pollutant from the source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from the source that is considered more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B).

(ii) SHOWING.—The owner or operator of the source shall submit a showing to the Administrator (or the State) that an

increase described in clause (i) has been offset as described in that clause.

(B) GUIDANCE.—The Administrator shall, after notice and opportunity for comment, publish guidance with respect to implementation of this subsection. The guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) sufficient to facilitate the offset showing authorized by subparagraph (A). The guidance shall not authorize offsets between pollutants where the increased pollutant (or more than 1 pollutant in a stream of pollutants) causes adverse effects on human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in those types of pollutants.

(2) MODIFICATION; CONSTRUCTION OR RECONSTRUCTION.—

(A) MODIFICATION.—No person may modify a major source of hazardous air pollutants in a State unless the Administrator or the State determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such a determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(B) CONSTRUCTION OR RECONSTRUCTION.—No person may construct or reconstruct any major source of hazardous air pollutants in a State unless the Administrator or the State determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such a determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

(3) PROCEDURES FOR MODIFICATION.—The Administrator (or the State) shall establish reasonable procedures for ensuring that the requirements applying to modifications under this section are reflected in the permit.

(h) WORK PRACTICE STANDARDS AND OTHER REQUIREMENTS.—

(1) IN GENERAL.—For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu of prescribing or enforcing an emission standard, promulgate a design, equipment, work practice, or operational standard, or combination thereof, that in the Administrator's

judgment is consistent with subsection (d) or (f). If the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of the design or equipment standard such requirements as will ensure the proper operation and maintenance of any such element of design or equipment.

(2) EMISSION STANDARD NOT FEASIBLE.—For the purpose of this subsection, the Administrator may determine that it is not feasible to prescribe or enforce an emission standard in any situation in which the Administrator determines that—

(A)(i) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture the pollutant; or

(ii) any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law; or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

(3) ALTERNATIVE STANDARD.—If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of the pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of the alternative by the source for purposes of compliance with this section with respect to that pollutant.

(4) NUMERICAL STANDARD.—Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is feasible to promulgate and enforce a standard in such terms.

(i) SCHEDULE FOR COMPLIANCE.—

(1) PRECONSTRUCTION AND OPERATING REQUIREMENTS.—After the effective date of any emission standard, limitation, or regulation under subsection (d), (f), or (h), no person may construct any new major source or reconstruct any existing major source subject to the emission standard, regulation, or limitation unless the Administrator (or a State with a permit program approved under subdivision 6) determines that the source, if properly constructed, reconstructed, and operated, will comply with the standard, regulation, or limitation.

(2) SPECIAL RULE.—Notwithstanding paragraph (1), a new source that commences construction or reconstruction after a standard, limitation, or regulation applicable to the source is proposed and before the standard, limitation, or regulation is promulgated shall not be required

to comply with the promulgated standard until the date that is 3 years after the date of promulgation if—

(A) the promulgated standard, limitation, or regulation is more stringent than the standard, limitation, or regulation proposed; and

(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

(3) COMPLIANCE SCHEDULE FOR EXISTING SOURCES.—

(A) PROHIBITION.—After the effective date of any emission standard, limitation, or regulation promulgated under this section and applicable to a source, no person may operate the source in violation of the standard, limitation, or regulation except that, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of the standard, limitation, or regulation, except as provided in subparagraph (B) and paragraphs (4) through (8).

(B) EXTENSION PERMIT.—The Administrator (or a State with a program approved under subdivision 6) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) if such an additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b).

(4) PRESIDENTIAL EXEMPTION.—The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement the standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(5) EARLY REDUCTION.—

(A) IN GENERAL.—

(i) PERMIT.—The Administrator (or a State acting pursuant to a permit program approved under subdivision 6) shall

issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 percent or more in emissions of hazardous air pollutants (95 percent in the case of hazardous air pollutants that are particulates) from the source, to meet an alternative emission limitation reflecting the reduction in lieu of an emission limitation promulgated under subsection (d) for a period of 6 years after the compliance date for the otherwise applicable standard, if reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed.

(ii) EFFECT OF PARAGRAPH.—Nothing in this paragraph precludes a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by clause (i).

(B) REDUCTION DETERMINATION.—The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, so long as there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 if the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflect verifiable data based on information for the source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 211114 of this title.

(C) ENFORCEABLE EMISSION LIMITATION.—For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to subdivision 6 an enforceable emission limitation for hazardous air pollutants reflecting the reduction that qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f), and the Administrator shall, for the purpose of determining whether a standard under subsection (f) is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

(D) LIMITATION.—With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities, including chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 percent reduction in such high-risk pollutants qualifying for an alternative emission limitation under this paragraph.

(6) OTHER REDUCTIONS.—Notwithstanding the requirements of this section, no existing source that has installed—

(A) best available control technology (as defined in section 213102 of this title); or

(B) technology required to meet a lowest achievable emission rate (as defined in section 215101 of this title);

prior to the promulgation of a standard under this section applicable to the source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with the standard under this section until the date that is 5 years after the date on which the installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such regulations and guidance as are necessary to implement this paragraph.

(7) EXTENSION FOR NEW SOURCES.—A source for which construction or reconstruction is commenced after the date an emission standard applicable to the source is proposed pursuant to subsection (d) but before the date on which an emission standard applicable to the source is proposed pursuant to subsection (f) shall not be required to comply with the emission standard under subsection (f) until the date that is 10 years after the date on which construction or reconstruction is commenced.

(8) COKE OVENS.—

(A) DATE FOR ACHIEVEMENT OF EMISSION LIMITATIONS.—Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C) and subparagraph (B) shall not be required to achieve emission limitations promulgated under subsection (f) until January 1, 2020.

(B) INTERIM EMISSION LIMITATIONS.—

(i) IN GENERAL.—The Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. The emission limitations shall reflect the lowest achievable emission rate (as defined in section 215101 of this

title) for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery.

(ii) STRINGENCY.—The emission limitations under clause (i) shall be no less stringent than—

(I) 3 percent leaking doors (5 percent leaking doors for 6-meter batteries);

(II) 1 percent leaking lids;

(III) 4 percent leaking offtakes; and

(IV) 16 seconds visible emissions per charge;

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent).

(iii) MEASUREMENT METHODOLOGY; TERMS.—The rulemaking in which the emission limitations are promulgated shall establish an appropriate measurement methodology for determining compliance with the emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emission standard would not be practicable or enforceable. The measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall ensure that the final test methods are consistent with the performance of such best technology and practices.

(iv) REVIEW AND REVISION.—The Administrator shall review the emission limitations promulgated under clause (i) and revise, as necessary, the emission limitations to reflect the lowest achievable emission rate (as defined in section 215101 of this title) at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under clause (i). Notwithstanding paragraph (2), the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

(C) ELECTION TO COMPLY.—Prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) by the date on which those emission limitations would otherwise apply to

the coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraph (B). Any such owner or operator shall be legally bound to comply with the emission limitations promulgated under subsection (f) with respect to that coke oven battery. If no such emission limitations have been promulgated for the coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) for that coke oven battery.

(D) EFFECT OF RECONSTRUCTION.—

(i) DEFINITION OF RECONSTRUCTION.—In this subparagraph, the term ''reconstruction'' includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

(ii) EFFECT.—Notwithstanding this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject the source to emission limitations under subsection (f) that are more stringent than those established under subparagraph (B) until January 1, 2020.

(j) AREA SOURCE PROGRAM.—

(1) FINDINGS AND PURPOSE.—Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with area sources, including a reduction of not less than 75 percent in the incidence of cancer attributable to emissions from area sources.

(2) RESEARCH PROGRAM.—

(A) IN GENERAL.—The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas that includes within the program—

(i) ambient monitoring for a broad range of hazardous air pollutants (including volatile organic compounds, metals, pes-

ticides, and products of incomplete combustion) in a representative number of urban locations;

(ii) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that area sources make to public health risks from hazardous air pollutants; and

(iii) consideration of atmospheric transformation and other factors that can elevate public health risks from such pollutants.

(B) HEALTH EFFECTS TO BE CONSIDERED.—The health effects considered under the program include carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction, and other acute and chronic effects, including the role of such pollutants as precursors of ozone or acid aerosol formation.

(3) NATIONAL STRATEGY.—

(A) IN GENERAL.—Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, after notice and opportunity for public comment, submit to Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) CONTENTS.—

(i) IN GENERAL.—The strategy shall—

(I) identify not less than 30 hazardous air pollutants that, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b); and

(II) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c).

(ii) PERCENTAGE OF SOURCES SUBJECT TO STANDARDS.—When identifying categories and subcategories of sources under this subparagraph, the Administrator shall ensure that sources accounting for 90 percent or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d).

(C) REQUIREMENTS.—The strategy shall—

(i) include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this division or

other laws (including the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.), and the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)) or by the States; and

(ii) achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 percent, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this division or other laws.

(D) RESEARCH NEEDS.—The strategy may identify research needs in monitoring, analytical methodology, modeling, or pollution control techniques and make recommendations for changes in law that would further the goals and objectives of this subsection.

(E) EFFECT OF SUBSECTION.—Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

(F) IMPLEMENTATION.—The Administrator shall implement the strategy as expeditiously as practicable, ensuring that all sources are in compliance with all requirements.

(G) AMBIENT MONITORING AND EMISSIONS MODELING.—As part of the strategy, the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

(4) AREAWIDE ACTIVITIES.—The Administrator shall encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 percent to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices that may be applicable to various categories or subcategories of area sources.

(k) STATE PROGRAMS.—

(1) IN GENERAL.—Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (q). A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emission standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this division.

(2) GUIDANCE.—The Administrator shall publish guidance that would be useful to States in developing programs for submittal under this subsection. The guidance shall provide for the registration of all facilities producing, processing, handling, or storing any substance listed pursuant to subsection (q) in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including hazardous air pollutants listed pursuant to subsection (b).

(3) TECHNICAL ASSISTANCE.—The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 211103 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring, and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) GRANTS.—On application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator considers appropriate, to the State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to

this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (j).

(5) APPROVAL OR DISAPPROVAL.—

(A) IN GENERAL.—Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall approve or disapprove the program.

(B) DISAPPROVAL.—The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

(i) the authorities contained in the program are not adequate to ensure compliance by all sources within the State with each applicable standard, regulation, or requirement established by the Administrator under this section;

(ii) adequate authority does not exist, or adequate resources are not available, to implement the program;

(iii) the schedule for implementing the program and ensuring compliance by affected sources is not sufficiently expeditious; or

(iv) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this division.

(C) NOTIFICATION OF DISAPPROVAL.—If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to this subsection.

(6) WITHDRAWAL.—Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action that will ensure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless, prior to withdrawal, the State is notified and the reasons for withdrawal are stated in writing and made public.

(7) AUTHORITY TO ENFORCE.—Nothing in this subsection precludes the Administrator from enforcing any applicable emission standard or requirement under this section.

(8) LOCAL PROGRAM.—The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection, and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

(9) PERMIT AUTHORITY.—Nothing in this subsection affects the authorities and obligations of the Administrator or the State under subdivision 6.

(l) ATMOSPHERIC DEPOSITION TO GREAT LAKES AND COASTAL WATER.—

(1) DEFINITION OF COASTAL WATER.—In this subsection, the term ''coastal water'' means—

(A) an estuary selected pursuant to subparagraph (A) or listed pursuant to subparagraph (B) of section 320(a)(2) of the Federal Water Pollution Control Act (33 U.S.C. 1330(a)(2)); or

(B) an estuarine research reserve designated pursuant to section 315 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1461).

(2) DEPOSITION ASSESSMENT.—The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal water. As part of the program, the Administrator shall—

(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal water, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (3) and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (5);

(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal water;

(D) evaluate any adverse effects on public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of the deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) and drinking water standards established pursuant to the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

(E) sample for such pollutants in biota of the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal water and characterize the sources of the pollutants.

(3) GREAT LAKES MONITORING NETWORK.—

(A) IN GENERAL.—The Administrator shall oversee, in accordance with annex 15 of the Great Lakes Water Quality Agreement of 1978 (T.I.A.S. 11551; KAV 255), the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

(B) MONITORING FACILITIES.—As part of the network provided for in this paragraph, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

(C) USE OF DATA.—The Administrator shall use the data provided by the network to—

(i) identify and track the movement of hazardous air pollutants through the Great Lakes;

(ii) determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants; and

(iii) support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement of 1978 (T.I.A.S. 11551; KAV 255).

(D) FORMAT.—The Administrator shall ensure that the data collected by the Great Lakes atmospheric deposition monitoring network are in a format compatible with databases sponsored by the International Joint Commission, Canada, and the States of the Great Lakes region.

(4) MONITORING FOR THE CHESAPEAKE BAY AND LAKE CHAMPLAIN.—

(A) ATMOSPHERIC DEPOSITION STATIONS.—The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmos-

pheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds.

(B) ACTIVITIES.—The Administrator shall—

(i) determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain;

(ii) investigate the sources of air pollutants deposited in the watersheds;

(iii) evaluate the health and environmental effects of such pollutant loadings; and

(iv) sample such pollutants in biota within the watersheds, as necessary to characterize such effects.

(5) MONITORING FOR COASTAL WATER.—The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal water and watersheds of coastal water and shall make any information collected through such networks available to the public. As part of that effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings.

(m) MISCELLANEOUS PROVISIONS.—

(1) ELECTRIC UTILITY STEAM GENERATING UNITS.—The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this division. The Administrator shall report the results of the study to Congress. The Administrator shall develop and describe in the report alternative control strategies for emissions that may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section if the Administrator finds that regulation is appropriate and necessary after considering the results of the study.

(2) PUBLICLY OWNED TREATMENT WORKS.—The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial, and residential discharges that contribute to such emissions, and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that

may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling, and risk assessment methods for use in implementing this subsection.

(3) OIL AND GAS WELLS; PIPELINE FACILITIES.—

(A) NO AGGREGATION OF UNITS.—Notwithstanding subsection (a)—

(i) emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not the units are in a contiguous area or under common control, to determine whether the units or stations are major sources; and

(ii) in the case of any oil or gas exploration or production well (with its associated equipment), the emissions from those units shall not be aggregated for any purpose under this section.

(B) NO LISTING AS AREA SOURCE CATEGORY.—

(i) IN GENERAL.—Except as provided in clause (ii), the Administrator shall not list oil and gas production wells (with their associated equipment) as an area source category under subsection (c).

(ii) EXCEPTION.—The Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1,000,000 if the Administrator determines that emissions of hazardous air pollutants from the wells present more than a negligible risk of adverse effects on public health.

(4) RCRA FACILITIES.—In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), the Administrator shall—

(A) take into account any regulations of such emissions that are promulgated under that subtitle; and

(B) to the maximum extent practicable and consistent with this section, ensure that the requirements of that subtitle and this section are consistent.

(n) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—

(1) REQUEST OF THE ACADEMY.—The Administrator shall enter into appropriate arrangements with the National Academy of Sciences (re-

ferred to in this subsection as the ''Academy'') to conduct a review of—

(A) risk assessment methodology used by EPA to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

(B) improvements in the methodology.

(2) ELEMENTS TO BE STUDIED.—In conducting the review, the Academy should consider—

(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals and other exposed individuals).

(3) OTHER HEALTH EFFECTS OF CONCERN.—To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including inheritable genetic mutations, birth defects, and reproductive dysfunctions.

(4) REPORT.—A report on the results of the review shall be submitted to the Committee on Environment and Public Works of the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Administrator.

(5) ASSISTANCE.—The Administrator shall assist the Academy in gathering any information that the Academy considers necessary to carry out this subsection. The Administrator may use any authority under this division to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by the person as necessary to carry out this subsection.

(6) AUTHORIZATION.—Of the funds authorized to be appropriated to the Administrator by this division, such amounts as are required shall be available to carry out this subsection.

(7) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—The Administrator shall consider, but need not adopt, the recommendations contained in the report of the Academy and the views of the Science Advisory Board, with respect to the report. Prior to the promulgation of any standard under subsection (f), and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the Academy will

not be implemented. The publication of the revised Guidelines shall be a final agency action for purposes of section 211113 of this title.

(o) MICKEY LELAND NATIONAL URBAN AIR TOXICS RESEARCH CENTER.—

(1) ESTABLISHMENT.—The Administrator shall oversee the establishment of a national urban air toxics research center to be known as the Mickey Leland National Urban Air Toxics Research Center (referred to in this subsection as the ''Center'') and to be located at a university, hospital, or other facility capable of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The geographic site of the Center should be directed to Harris County, Texas, to take full advantage of the well-developed scientific community presence onsite at the Texas Medical Center and the extensive data compiled for the comprehensive monitoring system.

(2) BOARD OF DIRECTORS.—The Center shall be governed by a Board of Directors (referred to in this subsection as the ''Board'') to be comprised of 9 members, the appointment of whom shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate, and the President. The members of the Board shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution, and industrial hygiene. The duties of the Board shall be to determine policy and research guidelines, submit views from Center sponsors and the public, and issue periodic reports of findings and activities of the Center.

(3) SCIENTIFIC ADVISORY PANEL.—The Board shall be advised by a Scientific Advisory Panel (referred to in this subsection as the ''Panel''), the 13 members of which shall be appointed by the Board and include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Centers for Disease Control, EPA, the National Cancer Institute, and others. The Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda and reviewing proposals and applications, and shall advise on the awarding of research grants.

(4) FUNDING.—The Center shall be established and funded with Federal funds and private funds.

(p) SAVINGS PROVISIONS.—

(1) STANDARDS PREVIOUSLY PROMULGATED.—Any standard under section 112 of the Clean Air Act (42 U.S.C. 7412) in effect before November 15, 1990, shall remain in effect after that date unless modified as provided in that section before that date or under Public Law 101–549 (104 Stat. 2399) (commonly known as the Clean Air Act Amendments of 1990). Except as provided in paragraph (3), any standard under that section that had been promulgated, but had not taken effect, before November 15, 1990, shall not be affected by Public Law 101–549 unless modified as provided in that section before November 15, 1990, or under Public Law 101–549. If a timely petition for review of any such standard under section 307 of the Clean Air Act (42 U.S.C. 7607) was pending on November 15, 1990, the standard shall be upheld if it complies with section 112 of the Clean Air Act (42 U.S.C. 7412) as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may apply the requirements of this section or the requirements of section 112 of the Clean Air Act (42 U.S.C. 7412) as in effect before November 15, 1990.

(2) SPECIAL RULES FOR RADIONUCLIDE EMISSIONS.—

(A) NO STANDARD FOR CERTAIN CATEGORIES.—

(i) IN GENERAL.—Notwithstanding paragraph (1), no standard shall be established under this section for radionuclide emissions from—

(I) elemental phosphorous plants;

(II) grate calcination elemental phosphorous plants;

(III) phosphogypsum stacks; or

(IV) any subcategory of the foregoing.

(ii) CONTINUED EFFECTIVENESS OF PRIOR LAW.—Section 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect prior to November 15, 1990) shall remain in effect for radionuclide emissions from plants and stacks described in clause (i).

(B) OTHER CATEGORIES.—Notwithstanding paragraph (1), section 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect prior to November 15, 1990) shall remain in effect for radionuclide emissions from—

(i) non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission;

(ii) coal-fired utility and industrial boilers;

(iii) underground uranium mines;

(iv) surface uranium mines; and

(v) disposal of uranium mill tailings piles;

unless the Administrator, in the Administrator's discretion, applies the requirements of this section to the sources of radionuclides described in any of clauses (i) through (v).

(3) MEDICAL RESEARCH OR TREATMENT FACILITIES.—If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for medical research or treatment facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to medical research or treatment facilities. If the Administrator determines that the regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for medical research or treatment facilities, as provided in subsection (d)(9).

(q) PREVENTION OF ACCIDENTAL RELEASES.—

(1) DEFINITIONS.—In this subsection:

(A) ACCIDENTAL RELEASE.—The term ''accidental release'' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(B) REGULATED SUBSTANCE.—The term ''regulated substance'' means a substance listed under paragraph (3).

(C) RETAIL FACILITY.—The term ''retail facility'' means a stationary source at which more than ½ of the income is obtained from direct sales to end users or at which more than ½ of the fuel sold, by volume, is sold through a cylinder exchange program.

(D) STATIONARY SOURCE.—The term ''stationary source'' means 1 or more buildings, structures, pieces of equipment, installations, or substance-emitting stationary activities—

(i) that belong to the same industrial group;

(ii) that are located on a property or 2 or more contiguous properties;

(iii) that are under the control of the same person (or persons under common control); and

(iv) from which an accidental release may occur.

(2) PURPOSE AND GENERAL DUTY.—

(A) OBJECTIVE.—It shall be the objective of the regulations and programs authorized under this subsection to prevent, and minimize the consequences of, accidental releases.

(B) GENERAL DUTY.—The owners and operators of stationary sources producing, processing, handling, or storing regulated substances have a general duty in the same manner and to the same

extent as under section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 654) to—

(i) identify hazards that may result from accidental releases using appropriate hazard assessment techniques;

(ii) design and maintain a safe facility taking such steps as are necessary to prevent accidental releases; and

(iii) minimize the consequences of accidental releases that do occur.

(C) NO CITIZEN SUITS.—For purposes of this paragraph, section 203104 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph.

(D) EFFECT OF PARAGRAPH.—Nothing in this section shall be interpreted, construed, or applied to create, or held to imply the creation of, any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person that may result from an accidental release.

(3) LIST OF SUBSTANCES.—

(A) IN GENERAL.—The Administrator shall promulgate an initial list of 100 substances that, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death or injury to humans or serious adverse effects on human health or the environment.

(B) USE OF LIST UNDER THE EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT OF 1986.—For purposes of promulgating the list under subparagraph (A), the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), with such modifications as the Administrator considers appropriate.

(C) SUBSTANCES TO BE INCLUDED.—The initial list shall include ammonia, anhydrous ammonia, anhydrous hydrogen chloride, anhydrous sulfur dioxide, bromine, chlorine, ethylene oxide, hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, methyl chloride, methyl isocyanate, phosgene, sulfur trioxide, toluene diisocyanate, and vinyl chloride.

(D) NUMBER OF SUBSTANCES.—The initial list shall include at least 100 substances that pose the greatest risk of causing death or injury to humans or serious adverse effects on human health or the environment from accidental releases.

(E) EXPLANATION.—Regulations establishing the list shall include an explanation of the basis for establishing the list.

(F) REVISION; REVIEW.—The list—

(i) may be revised from time to time by the Administrator on the Administrator's own motion or by petition; and

(ii) shall be reviewed at least every 5 years.

(G) LIMITATIONS.—No air pollutant for which a primary NAAQS has been established shall be included on the list. No substance, practice, process, or activity regulated under subdivision 7 shall be subject to regulations under this subsection.

(H) ADDITION AND DELETION.—The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list under subsection (b).

(4) FACTORS TO BE CONSIDERED.—In listing substances under paragraph (3), the Administrator—

(A) shall consider—

(i) the severity of any acute adverse health effects associated with accidental releases of the substance;

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) THRESHOLD QUANTITY.—At the time at which any substance is listed pursuant to paragraph (3), the Administrator shall establish by regulation a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance that, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death or injury to humans or serious adverse effects on human health for which the substance was listed. The Administrator may establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

(6) CHEMICAL SAFETY BOARD.—

(A) ESTABLISHMENT.—There is established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board (referred to in this paragraph as the ''Board'').

(B) MEMBERSHIP.—The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

(C) DUTIES.—

(i) IN GENERAL.—The Board shall—

(I) investigate (or cause to be investigated), determine, and report to the public in writing the facts, conditions, circumstances and cause or probable cause of any accidental release resulting in a fatality, serious injury, or substantial property damages;

(II) issue periodic reports to Federal, State, and local agencies concerned with the safety of chemical production, processing, handling, and storage, and other interested persons (including EPA and the Occupational Safety and Health Administration) that—

(aa) recommend measures to reduce the likelihood or the consequences of accidental releases and propose corrective steps to make chemical production, processing, handling, and storage as safe and free from risk of injury as is possible; and

(bb) may include proposed regulations or orders that should be issued by the Administrator under this section or by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) to prevent or minimize the consequences of any release of substances that may cause death or injury to humans or other serious adverse effects on human health or substantial

property damage as the result of an accidental release; and

(III) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction.

(ii) REPORTING.—Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy the regulations under clause (i)(III). The National Response Center shall promptly notify the Board of any releases that are within the Board's jurisdiction.

(D) EXPERTISE AND EXPERIENCE OF OTHER AGENCIES.—The Board may utilize the expertise and experience of other agencies.

(E) COORDINATION WITH OTHER AGENCIES.—The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to ensure coordination of functions and to limit duplication of activities, which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases that are transportation-related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration to limit duplication of activities. In no event shall the Board forgo an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

(F) RESEARCH; STUDIES.—The Board may conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence that indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies, and associations and organizations from the industrial, commercial, and nonprofit sectors.

(G) NO ADMISSION INTO EVIDENCE.—No part of the conclusions, findings, or recommendations of the Board relating to any

accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in the report.

(H) RECOMMENDATIONS TO THE ADMINISTRATOR ON THE USE OF HAZARD ASSESSMENTS.—

(i) RECOMMENDATIONS.—The Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances that are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of releases that do occur and a description of the information and analysis that would be appropriate to include in any hazard assessment. The Board shall make recommendations with respect to the role of risk management plans as required by paragraph (7)(B)(ii) in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(ii) RESPONSE BY THE ADMINISTRATOR.—

(I) IN GENERAL.—Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to the recommendation formally and in writing not later than 180 days after receipt of the recommendation. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

(aa) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; or

(bb) decline to initiate a rulemaking or issue orders as recommended.

(II) REASONS.—Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from

the Administrator setting forth the reasons for the determination.

(I) RECOMMENDATIONS TO THE SECRETARY OF LABOR WITH RESPECT TO ACCIDENTAL RELEASES.—

(i) RECOMMENDATIONS.—The Board may make recommendations with respect to accidental releases to the Secretary of Labor.

(ii) RESPONSE BY THE SECRETARY OF LABOR.—

(I) IN GENERAL.—Whenever the Board submits a recommendation with respect to accidental releases to the Secretary of Labor, the Secretary shall respond to the recommendation formally and in writing not later than 180 days after receipt of the recommendation. The response to the Board's recommendation by the Secretary shall indicate whether the Secretary will—

(aa) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; or

(bb) decline to initiate a rulemaking or issue orders as recommended.

(II) REASONS.—Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for the determination.

(J) RECOMMENDATIONS TO THE ADMINISTRATOR AND THE ADMINISTRATOR OF THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION RELATING TO RISK MANAGEMENT PLANS, GENERAL REQUIREMENTS FOR THE PREVENTION OF ACCIDENTAL RELEASES, AND MITIGATION OF POTENTIAL ADVERSE EFFECTS.—The Board shall issue a report to the Administrator and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases that should be applicable to any stationary source han-

dling any regulated substance in more than threshold amounts. The Board may include proposed regulations or orders that should be issued by the Administrator under this subsection or by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.). Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider the recommendations before promulgating regulations required by paragraph (7)(B).

(K) POWERS.—

(i) IN GENERAL.—The Board, or on authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

(I) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence;

(II) require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require;

(III) on presenting appropriate credentials and a written notice of inspection authority—

(aa) enter any property where an accidental release causing a fatality, serious injury, or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C); and

(bb) inspect at reasonable times records, processes, controls, and facilities and take such samples as are relevant to the investigation; and

(IV) use any information-gathering authority of the Administrator under this division, including the subpoena power provided in section 203102(a)(1) of this title.

(ii) RIGHTS TO PARTICIPATE.—Whenever the Administrator or the Board conducts an inspection of a facility pursu-

ant to this subsection, employees and their representatives shall have the same rights to participate in the inspection as are provided under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.).

(L) RULES; TRANSACTIONS.—The Board may establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board may, without regard to section 6101 of title 5, enter into contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

(M) ENFORCEMENT.—After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(i)(III) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by that subparagraph. The Administrator may enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(i)(III) using the authorities of sections 211113 and 211114 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 203102, 203103, 203104, 211113, 211114, 211116, and 211119 of this title and any other enforcement provision of this division, as a request made by the Administrator under section 211114 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in that section.

(N) SUPPORT AND FACILITIES.—The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

(O) AVAILABILITY OF RECORDS, REPORTS, AND INFORMATION.—

(i) IN GENERAL.—Consistent with subparagraph (G) and section 211114(c) of this title and except as provided in clause (ii), any records, reports, or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, Congress, and the public.

(ii) SUBSTANTIAL HARM TO COMPETITIVE POSITION.—On a showing satisfactory to the Board by any person that records, reports, or information or any particular part thereof (other than release data or emission data) to which the Board has access, if made public, is likely to cause substantial harm to

the person's competitive position, the Board shall consider the record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such a record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this division or when relevant under any proceeding under this division. This subparagraph does not constitute authority to withhold records, reports, or information from Congress.

(P) SUBMISSIONS AND TRANSMITTALS BY THE BOARD; REPORTS; PERFORMANCE OF FUNCTIONS.—

(i) COPY TO CONGRESS.—Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation, or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, the Board shall concurrently transmit a copy thereof to Congress.

(ii) REPORTS NOT SUBJECT TO REVIEW.—No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court.

(iii) NO AUTHORITY TO REQUIRE PRIOR APPROVAL OR REVIEW OF SUBMISSIONS.—No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations, or reports to any officer or agency of the United States for approval or review prior to the submission of the recommendations, testimony, comments, or reports to Congress.

(iv) PERFORMANCE OF FUNCTIONS.—In the performance of their functions established by this division, in carrying out any duties under this subsection, the members, officers, and employees of the Board shall not be responsible to or subject to supervision or direction of any officer or employee or agent of EPA, the Department of Labor, or any other agency of the United States, except that the President may remove any member, officer, or employee of the Board for inefficiency, neglect of duty, or malfeasance in office.

(v) TITLE 5.—Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

(Q) ANNUAL REPORT.—The Board shall annually submit to the President and Congress a report that includes—

(i) information on accidental releases that have been investigated by or reported to the Board during the previous year;

(ii) recommendations for legislative or administrative action that the Board has made;

(iii) the actions that have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement those recommendations;

(iv) an identification of priorities for study and investigation in the succeeding year;

(v) a description of progress in the development of risk-reduction technologies; and

(vi) a description of the response to and implementation of significant research findings on chemical safety in the public and private sector.

(7) PREVENTION OF ACCIDENTAL RELEASES OF REGULATED SUBSTANCES.—

(A) REQUIREMENTS TO PREVENT ACCIDENTAL RELEASES.—To prevent accidental releases of regulated substances, the Administrator may promulgate release prevention, detection, and correction requirements that may include monitoring, recordkeeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this subparagraph shall have an effective date, as determined by the Administrator, ensuring compliance as expeditiously as practicable.

(B) REASONABLE REGULATIONS AND APPROPRIATE GUIDANCE FOR THE PREVENTION AND DETECTION OF ACCIDENTAL RELEASES OF REGULATED SUBSTANCES.—

(i) IN GENERAL.—

(I) PROMULGATION.—The Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretary of Transportation and Secretary of Labor in promulgating the regulations.

(II) CONTENTS.—The regulations shall—

(aa) as appropriate, cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such accidental releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections;

(bb) include procedures and measures for emergency response after an accidental release of a regulated substance to protect human health and the environment;

(cc) cover storage and operations;

(dd) as appropriate, recognize differences in size, operations, processes, class, and categories of sources and the voluntary actions of sources to prevent such accidental releases and respond to such accidental releases; and

(ee) be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at a source in more than threshold amounts is first listed under paragraph (3), whichever is later.

(ii) RISK MANAGEMENT PLANS.—

(I) IN GENERAL.—The regulations under this subparagraph shall require the owner or operator of a stationary source at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of regulated substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

(II) CONTENTS.—A risk management plan shall provide for compliance with the requirements of this subsection and include—

(aa) a hazard assessment to assess the potential effects of an accidental release of any regulated substance;

(bb) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring, and em-

ployee training measures to be used at the source; and

(cc) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

(III) HAZARD ASSESSMENTS.—A hazard assessment under subclause (II)(aa) shall include an estimate of potential release quantities, a determination of downwind effects (including potential exposures to affected populations), a previous release history of the past 5 years (including the size, concentration, and duration of releases), and an evaluation of worst case accidental releases.

(IV) GUIDELINES.—At the time at which regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

(iii) AVAILABILITY OF RISK MANAGEMENT PLANS.—The owner or operator of a stationary source covered by clause (ii) shall—

(I) register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by regulation, require; and

(II) submit the risk management plan to—

(aa) the Chemical Safety and Hazard Investigation Board;

(bb) the State in which the stationary source is located; and

(cc) any local agency or entity having responsibility for planning for or responding to accidental releases that may occur at the source.

(iv) PUBLIC AVAILABILITY.—A risk management plan shall be available to the public under section 211114(c) of this title.

(v) AUDITING.—The Administrator shall establish, by regulation, an auditing system to regularly review and, if necessary, require revision in risk management plans to ensure that the risk management plans comply with this subparagraph. Each risk management plan shall be updated periodically as required by the Administrator, by regulation.

(C) CONSULTATION; COORDINATION.—In carrying out this paragraph, the Administrator shall—

(i) consult with the Secretary of Labor and the Secretary of Transportation; and

(ii) coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation.

(D) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DEFINITIONS.—In this subparagraph:

(I) COVERED PERSON.—The term ''covered person'' means—

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vi).

(II) OFFICIAL USE.—The term ''official use'' means an action of a Federal, State, or local government agency or an entity described in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(III) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term ''off-site consequence analysis information'' means the portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic database created by the Administrator from those portions.

(IV) RISK MANAGEMENT PLAN.—The term ''risk management plan'' means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

(ii) REGULATIONS.—The President shall—

(I) assess—

(aa) the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet; and

(bb) the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(II) based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and—

(aa) allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

(bb) allows other public access to off-site consequence analysis information as appropriate;

(cc) allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a ''State or local covered person'') to off-site consequence analysis information relating to stationary sources located in the person's State;

(dd) allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person's State to a State or local covered person in a contiguous State; and

(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

(I) IN GENERAL.—Off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5.

(II) APPLICABILITY.—Subclause (I) applies to off-site consequence analysis information submitted to the Administrator at any time.

(iv) PROHIBITION OF UNAUTHORIZED DISCLOSURE OF INFORMATION BY COVERED PERSON.—

(I) IN GENERAL.—A covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)).

(II) CRIMINAL PENALTIES.—Criminal penalties for a violation of a restriction or prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) are provided under section 732 of title 18.

(III) APPLICABILITY.—If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction—

(aa) subclause (I) and section 732 of title 18 shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

(IV) LIST.—The Administrator shall maintain and make publicly available a list of all stationary sources that have provided notification under subclause (III)(bb).

(v) NOTICE.—The Administrator shall provide notice of the definition of official use as provided in clause (i) and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties established by this division to each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

(vi) QUALIFIED RESEARCHERS.—

(I) IN GENERAL.—The Administrator, in consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

(II) LIMITATION ON DISSEMINATION.—The system shall not allow a qualified researcher to disseminate, or make available on the internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

(vii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis information by means of a central database under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

(viii) VOLUNTARY INDUSTRY ACCIDENT PREVENTION STANDARDS.—EPA, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (2).

(ix) EFFECT ON STATE OR LOCAL LAW.—

(I) IN GENERAL.—Subject to subclause (II), this subparagraph (including the regulations promulgated under

this subparagraph) shall supersede any provision of State or local law that is inconsistent with this subparagraph (including the regulations).

(II) AVAILABILITY OF INFORMATION UNDER STATE LAW.—Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

(x) REPORT ON RESULT OF REGULATIONS.—

(I) IN GENERAL.—The Attorney General, in consultation with appropriate Federal, State, and local government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of the report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate Federal, State, and local government agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit the report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate and other relevant committees of Congress.

(II) NONAVAILABILITY OF INFORMATION DEVELOPED OR RECEIVED FOR REPORT.—Information developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclause (I) shall be exempt from disclosure under section 552 of

title 5 if disclosure of the information would pose a threat to national security.

(xi) SCOPE.—This subparagraph—

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

(xii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

(E) DISTINCTIONS.—Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices, and systems, taking into consideration factors that include the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source.

(8) RESEARCH ON HAZARD ASSESSMENTS.—The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment that may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) ORDER AUTHORITY.—

(A) IN GENERAL.—In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate the danger or threat, and the district court of the United States for the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including

issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 203103 of this title rather than this paragraph whenever the authority of that section is adequate to protect human health and the environment.

(B) ENFORCEMENT.—An order issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 203103 of this title.

(C) GUIDANCE.—The Administrator shall publish guidance for using the order authorities established by this paragraph. The guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9606), sections 308, 309, 311(c), and 504(a) of the Federal Water Pollution Control Act (33 U.S.C. 1318, 1319, 1321(c), 1364(a)), sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act (42 U.S.C. 6927, 6928, 6934, 6973), sections 1431 and 1445 of the Safe Drinking Water Act (42 U.S.C. 300i, 300j–4), sections 5 and 7 of the Toxic Substances Control Act (15 U.S.C. 2604, 2606), and sections 203103, 211113, and 211114 of this title.

(10) STATE AUTHORITY.—Nothing in this subsection shall preclude, deny, or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation, or standard in effect under this subsection or that applies to a substance not subject to this subsection.

(11) CONSISTENCY WITH ASME, ASNI, AND ASTM STANDARDS AND RECOMMENDATIONS.—Any regulations promulgated pursuant to this subsection shall, to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers, the American National Standards Institute, or ASTM International.

(12) CONCERNS OF SMALL BUSINESS.—The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

(13) RADIONUCLIDES.—Nothing in this subsection shall be interpreted, construed, or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radio-

nuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

(14) PROHIBITION.—It shall be unlawful for any person to operate any stationary source subject to a regulation or requirement imposed under this subsection in violation of the regulation or requirement. Each regulation or requirement under this subsection shall, for purposes of sections 203102, 203104, 211113, 211114, 211116, and 211119 of this title and other enforcement provisions of this division, be treated as a standard in effect under subsection (d).

(15) PERMITS.—Notwithstanding subdivision 6 or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under that subdivision solely because the source is subject to regulations or requirements under this subsection.

(16) OCCUPATIONAL SAFETY AND HEALTH.—In exercising any authority under this subsection, the Administrator shall not, for purposes of section 4(b)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

## § 211113. Federal enforcement

(a) DEFINITIONS.—In this section:

(1) OPERATOR.—

(A) IN GENERAL.—The term ''operator'' includes any person who is a part of senior management personnel or is a corporate officer.

(B) EXCLUSIONS.—Except in the case of a knowing and willful violation, the term ''operator'' does not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not a part of senior management personnel and not a corporate officer.

(2) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—The term ''period of federally assumed enforcement'' means a period described in subsection (b)(2)(C).

(b) IN GENERAL.—

(1) ORDER TO COMPLY WITH SIP.—Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of the finding. At any time after the expiration of 30 days following

the date on which the notice of violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring the person to comply with the requirements or prohibitions of the plan or permit;

(B) issue an administrative penalty order in accordance with subsection (e); or

(C) bring a civil action in accordance with subsection (c).

(2) STATE FAILURE TO ENFORCE SIP OR PERMIT PROGRAM.—

(A) NOTICE TO STATE.—Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subdivision 6 are so widespread that the violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subdivision 6.

(B) PUBLIC NOTICE.—If the Administrator finds that the failure extends beyond the 30th day after the notice (90 days in the case of such a permit program), the Administrator shall give public notice of that finding.

(C) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—During the period beginning with the public notice under subparagraph (B) and ending when the State satisfies the Administrator that the State will enforce the plan or permit program, the Administrator may enforce any requirement or prohibition of the plan or permit program with respect to any person by—

(i) issuing an order requiring the person to comply with the requirement or prohibition;

(ii) issuing an administrative penalty order in accordance with subsection (e); or

(iii) bringing a civil action in accordance with subsection (c).

(3) EPA ENFORCEMENT OF OTHER REQUIREMENTS.—Except for a requirement or prohibition enforceable under paragraph (1) or (2), when, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subdivision, section 203103 of this title, subdivision 5, 6, or 7 (including a requirement or prohibition of any regulation, plan, order, waiver, or permit promul-

gated, issued, or approved under those provisions, or for the payment of any fee owed to the United States under this division, other than subdivision 3), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (b);

(B) issue an order requiring the person to comply with the requirement or prohibition;

(C) bring a civil action in accordance with subsection (c) or section 203105 of this title; or

(D) request the Attorney General to commence a criminal action in accordance with subsection (d).

(4) REQUIREMENTS FOR ORDERS.—

(A) OPPORTUNITY TO CONFER.—An order issued under this subsection (other than an order relating to a violation of section 211112 of this title) shall not take effect until the person to which it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(B) COPY TO STATE AIR POLLUTION CONTROL AGENCY.—A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs.

(C) CORPORATIONS.—In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of the order (or notice) shall be issued to appropriate corporate officers.

(D) CONTENTS.—Any order issued under this subsection shall—

(i) state with reasonable specificity the nature of the violation;

(ii) specify a time for compliance that the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements; and

(iii) require the person to which it is issued to comply with the requirement as expeditiously as practicable, but in no event longer than 1 year after the date the order is issued.

(E) NONRENEWABILITY.—An order issued under this subsection shall be nonrenewable.

(F) EFFECT.—No order issued under this subsection shall—

(i) preclude the State or the Administrator from assessing any penalties or otherwise affect or limit the authority of the

State or the United States to enforce under other provisions of this division; or

(ii) affect any person's obligations to comply with any section of this division or with a term or condition of any permit or applicable implementation plan promulgated or approved under this division.

(5) FAILURE TO COMPLY WITH NEW SOURCE REQUIREMENTS.—

(A) IN GENERAL.—Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of this division relating to the construction of new sources or the modification of existing sources, the Administrator may—

(i) issue an order prohibiting the construction or modification of any major stationary source in any area to which the requirement or prohibition applies;

(ii) issue an administrative penalty order in accordance with subsection (e); or

(iii) bring a civil action under subsection (c).

(B) CRIMINAL ACTION.—Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (d) at any time for any violation described in subparagraph (A).

(c) CIVIL JUDICIAL ENFORCEMENT.—

(1) IN GENERAL.—The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both—

(A) whenever the person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit;

(B) whenever the person has violated, or is in violation of, any other requirement or prohibition of this subdivision, section 203103 of this title, or subdivision 5, 6, or 7 (including a requirement or prohibition of any regulation, order, waiver or permit promulgated, issued, or approved under this division, or for the payment of any fee owed the United States under this division (other than subdivision 3); or

(C) whenever the person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (b)(5)(A) has been made.

(2) TIME FOR ACTION.—An action under paragraph (1)(A) shall be commenced—

(A) during any period of federally assumed enforcement; or

(B) more than 30 days following the date of the Administrator's notification under subsection (b)(1) that the person has violated, or is in violation of, the requirement or prohibition.

(3) PLACE FOR ACTION.—Any action under this subsection may be brought in the United States district court for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and the court shall have jurisdiction to restrain the violation, to require compliance, to assess a civil penalty, to collect any fees owed the United States under this division (other than subdivision 3) and any noncompliance assessment and nonpayment penalty owed under section 211119 of this title, and to award any other appropriate relief.

(4) NOTICE TO STATE AIR POLLUTION CONTROL AGENCY.—Notice of the commencement of an action under this subsection shall be given to the appropriate State air pollution control agency.

(5) COSTS.—In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney's fees and expert witness's fees) to the party or parties against which the action was brought if the court finds that the action was unreasonable.

(d) CRIMINAL PENALTIES.—

(1) IN GENERAL.—Criminal penalties for a violation described in paragraph (2) are provided under section 732 of title 18.

(2) VIOLATIONS.—The violations referred to in paragraph (1) are as follows:

(A) A knowing violation by a person of—

(i) a requirement or prohibition of an applicable implementation plan—

(I) during any period of federally assumed enforcement; or

(II) more than 30 days after having been notified by the Administrator under subsection (b)(1) that the person is violating the requirement or prohibition);

(ii)(I) subsection (b)(1);

(II) section 203103, 211111(j), 211112, 211113(b)(1), 211114, 211128, 213107(a), 213109, 235102(a), or 235103(c) of this title; or

(III) subdivision 5 or 7 of division A of subtitle II of title 55;

(iii) a requirement of a regulation, order, waiver, or permit promulgated or approved under a section or subdivision specified in clause (ii); or

(iv) a requirement for the payment of a fee owed the United States under this division (other than subdivision 3);

(B)(i) A knowing making of any false material statement, representation, or certification in, or omission of material information from, or knowing alteration, concealment, or failure to file or maintain any notice, application, record, report, plan, or other document required pursuant to this division to be filed or maintained (whether with respect to the requirements imposed by the Administrator or with respect to the requirements imposed by a State).

(ii) A knowing failure to notify or report as required under this division.

(iii) A knowing falsification, tampering with, rendering inaccurate, or failure to install any monitoring device or method required to be maintained or followed under this division.

(C) A knowing failure to pay any fee owed the United States under subdivision 1, 2, 5, 6, or 7.

(D) A negligent release by a person into the ambient air of any hazardous air pollutant listed pursuant to section 211112 of this title or of any extremely hazardous substance listed pursuant to section 302(a)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 211112 of this title, if, at the time, the person negligently places another person in imminent danger of death or serious bodily injury.

(E) A knowing release by a person into the ambient air of any hazardous air pollutant listed pursuant to section 211112 of this title or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 211112 of this title, if, at the time, the person knows that the person thereby places another person in imminent danger of death or serious bodily injury.

(e) ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES.—

(1) IN GENERAL.—

(A) ISSUANCE OF ADMINISTRATIVE ORDER.—The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000 per day of violation whenever, on the basis of any available information, the Administrator finds that the person—

(i) has violated or is violating any requirement or prohibition of an applicable implementation plan; or

(ii) has violated or is violating any other requirement or prohibition of this subdivision or subdivision 1, 5, 6, or 7, including a requirement or prohibition of any regulation, order, waiver, permit, or plan promulgated, issued, or approved under this division;

(iii) has failed to pay any fee owed the United States under this division (other than subdivision 3); or

(iv) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (b)(5) has been made.

(B) TIME FOR ISSUANCE.—An administrative order under subparagraph (A)(i) shall be issued—

(i) during any period of federally assumed enforcement; or

(ii) more than 30 days following the date of the Administrator's notification under subsection (b)(1) of a finding that the person has violated or is violating the requirement or prohibition.

(C) LIMITATION.—The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the 1st alleged date of violation occurred not more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2) PROCEDURE.—

(A) OPPORTUNITY FOR A HEARING.—An administrative order under paragraph (1) shall be issued after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before

issuing such an order, the Administrator shall give to the person to be assessed an administrative penalty written notice of the Administrator's proposal to issue the order and provide the person an opportunity to request a hearing on the order, within 30 days after the date on which the notice is received by the person.

(B) COMPROMISE, MODIFICATION, OR REMISSION OF ADMINISTRATIVE PENALTY.—The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty that may be imposed under this subsection.

(3) FIELD CITATION PROGRAM.—

(A) IN GENERAL.—The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator.

(B) ELECTION TO PAY OR REQUEST HEARING.—Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator by regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such a hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence.

(C) NO DEFENSE TO FURTHER ENFORCEMENT.—Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in this division, if the violation continues.

(4) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any person against which a civil penalty is assessed under paragraph (3) or to which an administrative penalty order is issued under paragraph (1) may seek review of the assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which the person resides, or where the person's principal place of business is located, by filing in the court within 30 days after the date on which the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under

paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General.

(B) RECORD.—Within 30 days after the date of a filing under subparagraph (A), the Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued.

(C) SCOPE OF REVIEW.—The court shall not set aside or remand the order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion.

(D) NO OTHER JUDICIAL REVIEW.—An order or penalty assessment described in subparagraph (A) shall not be subject to review by any court except as provided in this paragraph.

(E) RECOVERY OF CIVIL PENALTIES.—In any proceeding under this paragraph, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) FAILURE TO PAY ASSESSMENT OR COMPLY WITH ADMINISTRATIVE ORDER.—

(A) IN GENERAL.—If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(i) after the order or assessment has become final; or

(ii) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator;

the Administrator shall request the Attorney General to bring a civil action in an appropriate United States district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or decision or the date of the final judgment, as the case may be).

(B) VALIDITY, AMOUNT, AND APPROPRIATENESS NOT SUBJECT TO REVIEW.—In a civil action under subparagraph (A), the validity, amount, and appropriateness of the order or assessment shall not be subject to review.

(C) ENFORCEMENT EXPENSES.—Any person that fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to the civil penalty and interest, the enforcement expenses of the United States, in-

cluding attorney's fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be 10 percent of the aggregate amount of the person's outstanding penalties and nonpayment penalties accrued as of the beginning of each such quarter.

(f) PENALTY ASSESSMENT CRITERIA.—

(1) FACTORS.—In determining the amount of any civil penalty to be assessed under this section, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require)—

(A) the size of the business;

(B) the economic impact of the civil penalty on the business;

(C) the violator's full compliance history and good faith efforts to comply;

(D) the duration of the violation as established by any credible evidence (including evidence other than the applicable test method);

(E) payment by the violator of penalties previously assessed for the same violation;

(F) the economic benefit of noncompliance; and

(G) the seriousness of the violation.

(2) LIMITATION.—The court shall not assess a penalty for noncompliance with an administrative subpoena under section 203102(a) of this title, or an action under section 211114 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with the subpoena or action.

(3) CIVIL PENALTY FOR EACH DAY OF VIOLATION.—A civil penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a civil penalty may be assessed under subsection (c) or (e)(1) or section 203104(b) of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of the notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(g) AWARDS.—

(1) IN GENERAL.—The Administrator may pay an award, not to exceed $10,000, to any person that furnishes information or services that lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subdivision or subdivision 1, 5, 6, or 7 enforced under this section.

(2) AVAILABILITY OF APPROPRIATIONS.—A payment under paragraph (1) is subject to available appropriations for such payments as provided in annual appropriation Acts.

(3) INELIGIBILITY OF GOVERNMENT OFFICERS AND EMPLOYEES.—Any officer or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection.

(4) ADDITIONAL CRITERIA.—The Administrator may, by regulation, prescribe additional criteria for eligibility for an award under this subsection.

(h) SETTLEMENTS; PUBLIC PARTICIPATION.—

(1) OPPORTUNITY TO COMMENT.—At least 30 days before a consent order or settlement agreement of any kind under this division to which the United States is a party (other than an enforcement action under this section, section 211119 of this title, or subdivision 3, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons that are not named as parties or intervenors to the action or matter to comment in writing.

(2) CONSIDERATION OF COMMENTS; WITHHOLDING OR WITHDRAWAL OF CONSENT.—The Administrator or the Attorney General, as appropriate—

(A) shall promptly consider any such written comments; and

(B) may withdraw or withhold consent to the proposed order or agreement if the comments disclose facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this division.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection shall apply to civil or criminal penalties under this division.

**§ 211114. Recordkeeping, inspections, monitoring, and entry**

(a) AUTHORITY OF ADMINISTRATOR OR AUTHORIZED REPRESENTATIVE.—

(1) PURPOSES.—The Administrator may take the actions described in paragraph (2) for the purpose of—

(A) developing or assisting in the development of—

(i) any implementation plan under section 211110 or 211111(d) of this title;

(ii) any standard of performance under section 211111 of this title;

(iii) any emission standard under section 211112 of this title; or

(iv) any regulation of solid waste combustion under section 211128 of this title;

(B) determining whether any person is in violation of any such standard or any requirement of such a plan; or

(C) carrying out any provision of this division (except a provision of subdivision 3 with respect to a manufacturer of new motor vehicles or new motor vehicle engines).

(2) ACTIONS.—For any of the purposes stated in paragraph (1)—

(A) the Administrator may require any person that owns or operates any emission source, that manufactures emission control equipment or process equipment, that the Administrator believes may have information necessary for the purposes set forth in this subsection, or that is subject to any requirement of this division (other than a manufacturer subject to the provisions of section 221106(c) or 221108 of this title with respect to a provision of subdivision 3) on a one-time, periodic, or continuous basis to—

(i) establish and maintain such records as the Administrator may reasonably require;

(ii) make such reports as the Administrator may reasonably require;

(iii) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods, as the Administrator may reasonably require;

(iv) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);

(v) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

(vi) submit compliance certifications in accordance with paragraph (3); and

(vii) provide such other information as the Administrator may reasonably require; and

(B) the Administrator or an authorized representative of the Administrator, on presentation of his or her credentials—

(i) shall have a right of entry to, on, or through any premises of a person described in subparagraph (A) or in which any records required to be maintained under subparagraph (A) are located; and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under subparagraph (A), and sample any emissions that a person is required to sample under subparagraph (A).

(3) ENHANCED MONITORING; SUBMISSION OF COMPLIANCE CERTIFICATIONS.—

(A) IN GENERAL.—The Administrator shall, in the case of any person that is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications.

(B) COMPLIANCE CERTIFICATIONS.—A compliance certification shall include—

(i) identification of the applicable requirement that is the basis of the certification;

(ii) the method used for determining the compliance status of the source;

(iii) the compliance status;

(iv) whether compliance is continuous or intermittent; and

(v) such other facts as the Administrator may require.

(C) EFFECT OF SUBMISSION OF COMPLIANCE CERTIFICATE.—Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this division.

(D) REGULATIONS.—The Administrator shall promulgate regulations to provide guidance and to implement this paragraph.

(b) STATE ENFORCEMENT.—

(1) IN GENERAL.—A State may develop and submit to the Administrator a procedure for carrying out this section in the State. If the Administrator finds that the State procedure is adequate, the Administrator may delegate to the State any authority that the Administrator has to carry out this section.

(2) EFFECT OF SUBSECTION.—Nothing in this subsection precludes the Administrator from carrying out this section in a State.

(c) PUBLIC AVAILABILITY OF RECORDS, REPORTS, AND INFORMATION.—

(1) IN GENERAL.—Except as provided in paragraph (2), any records, reports or information obtained under subsection (a) shall be available to the public.

(2) TRADE SECRETS.—On a showing satisfactory to the Administrator by any person that records, reports, or information, or any particular part thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the Administrator shall consider the record, report, or information or particular part thereof confidential in accordance with section 1905 of title 18, except that the record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this division or when relevant in any proceeding under this division.

(d) NOTICE OF PROPOSED ENTRY, INSPECTION, OR MONITORING.—

(1) IN GENERAL.—In the case of any emission standard or limitation or other requirement that is adopted by a State as part of an applicable implementation plan, before carrying out an entry, inspection, or monitoring under subsection (a)(2)(B) with respect to the emission standard, limitation, or other requirement, the Administrator (or the Administrator's representative) shall provide the State air pollution control agency with reasonable prior notice of that action, indicating the purpose of the action.

(2) PROHIBITION OF USE OF INFORMATION TO INFORM AFFECTED PERSON.—No State air pollution control agency that receives notice under paragraph (1) of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has a reasonable basis for believing that a State air pollution control agency is so using or will so use such information, notice to the State air pollution control agency under paragraph (1) is not required until such time as the Administrator determines that the State air pollution control agency will no longer so use information contained in a notice under paragraph (1).

(3) EFFECT OF SECTION.—Nothing in this section shall be construed to require notification to any State air pollution control agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement that is not part of an applicable implementation plan or that was promulgated by the Administrator under section 211110(c) of this title.

(4) EFFECT OF SUBSECTION.—Nothing in this subsection shall be construed to provide that any failure of the Administrator to comply with the requirements of this subsection shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding the failure to comply with those requirements.

### § 211115. International air pollution

(a) ENDANGERMENT OF PUBLIC HEALTH OR WELFARE IN FOREIGN COUNTRIES FROM POLLUTION EMITTED IN UNITED STATES.—Whenever the Administrator, on receipt of reports, surveys, or studies from any duly constituted international agency, has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests the Administrator to do so with respect to such pollution that the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which the emissions originate.

(b) PREVENTION OR ELIMINATION OF ENDANGERMENT.—The notice of the Administrator shall be deemed to be a finding under section 211110(a)(3)(H)(ii) of this title that requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment described in subsection (a). Any foreign country so affected by the emission of the pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) RECIPROCITY.—This section shall apply only to a foreign country that the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) RECOMMENDATIONS.—Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no NAAQS has been established under section 211109 of this title unless the Administrator, after consultation with all agencies that were party to the conference, rescinds any such recommendation on grounds of obsolescence.

### § 211116. Retention of State authority

(a) IN GENERAL.—Except as otherwise provided in subsections (c), (e), and (f) of section 119 of the Clean Air Act (42 U.S.C. 1857c–10) (as in effect before August 7, 1977) and in sections 221109, 221111(d)(4), and 223104 of this title, and subject to subsection (b), nothing in this division

shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce—

(1) any standard or limitation respecting emissions of air pollutants; or

(2) any requirement respecting control or abatement of air pollution.

(b) STRINGENCY.—If an emission standard or limitation is in effect under an applicable implementation plan or under section 211111 or 211112 of this title, a State or political subdivision may not adopt or enforce any emission standard or limitation that is less stringent than the standard or limitation under the plan or section.

**§ 211117. Advisory committees**

(a) ESTABLISHMENT.—The Administrator shall from time to time establish advisory committees—

(1) to obtain assistance in the development and implementation of this division, including air quality criteria, recommended control techniques, standards, research and development; and

(2) to encourage continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution.

(b) MEMBERSHIP.—Committee members shall include persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

(c) COMPENSATION.—The members of any advisory committee appointed pursuant to this division who are not officers or employees of the United States while attending conferences or meetings or while otherwise serving at the request of the Administrator shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(d) CONSULTATION.—The Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence experts, and Federal departments and agencies before—

(1) issuing criteria for an air pollutant under section 211108(a)(2) of this title;

(2) publishing any list under section 211111(b)(1) or 211112(b)(1) of this title;

(3) publishing any standard under section 211111 or 211112 of this title; or

(4) publishing any regulation under section 221102(a) of this title.

**§ 211118. Control of pollution from Federal facilities**

(a) GENERAL COMPLIANCE.—

(1) IN GENERAL.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(A) having jurisdiction over any property or facility; or

(B) engaged in any activity resulting, or which may result, in the discharge of air pollutants;

and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner and to the same extent as any nongovernmental entity.

(2) APPLICABILITY.—Paragraph (1) shall apply—

(A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement);

(B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program;

(C) to the exercise of any Federal, State, or local administrative authority; and

(D) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner.

(3) IMMUNITY.—This subsection shall apply notwithstanding any immunity of agencies, officers, agents, or employees described in paragraph (1) under any law or rule of law.

(4) PERSONAL LIABILITY.—No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he or she is not otherwise liable.

(b) EXEMPTIONS.—

(1) EXEMPTION OF PARTICULAR EMISSION SOURCES.—

(A) IN GENERAL.—The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with a requirement described in subsection (a) if the President determines it to be in the paramount interest of the United States to do so, except that—

(i) no exemption may be granted from section 211111 of this title; and

(ii) an exemption from section 211112 of this title may be granted only in accordance with subsection (i)(4) of that section.

(B) LACK OF APPROPRIATION.—No exemption under subparagraph (A) shall be granted due to lack of appropriation unless the President specifically requests such an appropriation as a part of the budgetary process and Congress fails to make available the requested appropriation.

(C) EXEMPTION PERIOD.—Any exemption under subparagraph (A) shall be for a period of not more than 1 year, but additional exemptions may be granted for periods of not more than 1 year on the President's making a new determination.

(2) EXEMPTION OF WEAPONRY, EQUIPMENT, AIRCRAFT, VEHICLES, OR OTHER CLASSES OR CATEGORIES OF PROPERTY.—

(A) IN GENERAL.—The President may, if the President determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property that are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and that are uniquely military in nature.

(B) RECONSIDERATION.—The President shall reconsider the need for such regulations at 3-year intervals.

(3) REPORTS.—The President shall report each January to Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with the President's reason for granting each such exemption.

(c) GOVERNMENT VEHICLES.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under subchapter II or III of chapter 215 except for such vehicles as are considered military tactical vehicles.

(d) VEHICLES OPERATED ON FEDERAL INSTALLATIONS.—

(1) IN GENERAL.—Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees that operate a motor vehicle on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance program established under subchapter II or III of chapter 215 for the State in which the property or facility

is located (without regard to whether the vehicle is registered in the State).

(2) PROOF OF COMPLIANCE.—A department, agency, and instrumentality shall use 1 of the following methods to establish proof of compliance with paragraph (1):

(A) Presentation by the vehicle owner of a valid certificate of compliance from the vehicle inspection and maintenance program.

(B) Presentation by the vehicle owner of proof of vehicle registration within the geographic area covered by the vehicle inspection and maintenance program (except for any program whose enforcement mechanism is not through the denial of vehicle registration).

(C) Another method approved by the vehicle inspection and maintenance program administrator.

**§ 211119. Noncompliance penalty**

(a) DEFINITION OF OPERATOR.—In this section:

(1) IN GENERAL.—The term ''operator'' includes any person who is a part of senior management personnel or is a corporate officer.

(2) EXCLUSIONS.—Except in the case of a knowing and willful violation, the term ''operator'' does not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not a part of senior management personnel and not a corporate officer.

(b) ASSESSMENT AND COLLECTION.—

(1) IN GENERAL.—

(A) REGULATIONS.—After notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against a person described in paragraph (2)(A).

(B) DELEGATION OF AUTHORITY TO A STATE.—

(i) IN GENERAL.—A State may develop and submit to the Administrator a plan for carrying out this section in the State. If the Administrator finds that the State plan meets the requirements of this section, the Administrator may delegate to the State any authority that the Administrator has to carry out this section.

(ii) AUTHORITY OF THE ADMINISTRATOR.—Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in the State under the circumstances described in subsection (c)(2)(B).

(2) AUTHORITY.—

(A) ASSESSMENT AND COLLECTION.—

(i) IN GENERAL.—Except as provided in subparagraph (B) or (C), a State to which authority has been delegated under paragraph (1) or the Administrator shall assess and collect a noncompliance penalty against every person that owns or operates—

(I) a major stationary source (other than a primary nonferrous smelter that received a primary nonferrous smelter order under section 119 of the Clean Air Act (42 U.S.C. 7419) (as in effect before the repeal of that section)) that is not in compliance with any emission limitation, emission standard, or compliance schedule under any applicable implementation plan (whether or not the source is subject to a Federal or State consent decree);

(II) a stationary source that is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 203103, 211111, 211112, or 213109 of this title;

(III) a stationary source that is not in compliance with any requirement of subdivision 5, 6, or 7; or

(IV) any source described in subclause (I), (II), or (III) (for which an extension, order, or suspension described in subparagraph (B) or a Federal or State consent decree is in effect) or a primary nonferrous smelter that received a primary nonferrous smelter order under section 119 of the Clean Air Act (42 U.S.C. 7419) (as in effect before the repeal of that section) that is not in compliance with any interim emission control requirement or schedule of compliance under the extension, order, suspension, or consent decree.

(ii) COSTS.—For purposes of subsection (g)(1), in the case of a penalty assessed with respect to a source described in clause (i)(III), the costs described in subsection (g)(1) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance described in clause (i)(III).

(B) EXEMPTIONS IF FAILURE TO COMPLY IS DUE TO CERTAIN EXTENSIONS, ORDERS, OR SUSPENSIONS.—

(i) IN GENERAL.—Notwithstanding the requirements of subclauses (I) and (II) of subparagraph (A)(i), the owner or

operator of any source shall be exempted from the duty to pay a noncompliance penalty under those requirements with respect to that source if, in accordance with the procedures in subsection (c)(5), the owner or operator demonstrates that the failure of the source to comply with any such requirement is due solely to—

(I) a conversion by the source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 113(d)(5) of the Clean Air Act (42 U.S.C. 7413(d)(5)) (as in effect before November 15, 1990) or section 119 of the Clean Air Act (42 U.S.C. 7419) (as in effect before August 7, 1977);

(II) in the case of a coal-burning source granted an extension under the 2d sentence of section 119(c)(1) of the Clean Air Act (42 U.S.C. 1857c–10(c)(1)) (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under subsections (a) and (b) of section 2 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792) or under any legislation that supersedes those subsections;

(III) the use of innovative technology sanctioned by an enforcement order under section 113(d)(4) of the Clean Air Act (42 U.S.C. 7413(d)(4)) (as in effect before November 15, 1990);

(IV) an inability to comply with any such requirement, for which inability the source received an order under section 113(d) of the Clean Air Act (42 U.S.C. 7413(d)) (as in effect before November 15, 1990) or an order under section 113 of the Clean Air Act (42 U.S.C. 7413) (as in effect before August 7, 1977) that has the effect of permitting a delay or violation of any requirement of this division (including a requirement of an applicable implementation plan), which inability results from reasons entirely beyond the control of the owner or operator of the source or of any entity controlling, controlled by, or under common control with the owner or operator of the source; or

(V) the conditions by reason of which a temporary emergency suspension is authorized under subsection (d) or (e) of section 211110 of this title.

(ii) CESSATION OF EFFECTIVENESS.—An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

(C) EXEMPTION IF FAILURE TO COMPLY IS DE MINIMIS IN NATURE AND IN DURATION.—The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if the Administrator finds that the instance of noncompliance is de minimis in nature and in duration.

(c) CONTENTS OF REGULATIONS.—Regulations under subsection (b) shall—

(1) permit the assessment and collection of a penalty by a State if the State has a delegation of authority in effect under subsection (b)(1)(B)(i);

(2) provide for the assessment and collection of a penalty by the Administrator, if—

(A) a State does not have a delegation of authority in effect under subsection (b)(1)(B)(i); or

(B) a State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

(3) require a State, or if a State fails to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person described in subsection (b)(2)(A)(i) with respect to each source owned or operated by the person that is not in compliance as provided in subsection (b) not later than 30 days after the discovery of the noncompliance;

(4) require each person to which notice is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (g)(1)) and the schedule of payments (determined in accordance with subsection (g)(2)) for each such source and, within 45 days after the issuance of the notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information

necessary for an independent verification of the calculation, to the State and to the Administrator; or

(B) submit a petition, within 45 days after the issuance of the notice, challenging the notice or alleging entitlement to an exemption under subsection (b)(2)(B) with respect to a particular source;

(5) require the Administrator to provide a hearing on the record (within the meaning of subchapter II of chapter 5 of title 5) and to make a decision on the petition (including findings of fact and conclusions of law) not later than 90 days after the receipt of any petition under paragraph (4)(B), unless the State agrees to provide a hearing that is substantially similar to such a hearing on the record and to make a decision on the petition (including findings and conclusions) within the 90-day period;

(6)(A) authorize the Administrator on the Administrator's initiative to review the decision of the State under paragraph (5) and disapprove the decision if it is not in accordance with the requirements of this section; and

(B) on petition for such a review, require the Administrator to do so not later than 60 days after receipt of the petition, notice, and public hearing and a showing by the petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section;

(7) require payment, in accordance with subsections (f) and (g), of the penalty by each person to which notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which the notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to the source;

(8) authorize a State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by an owner or operator under paragraph (4) if the Administrator finds, after notice and opportunity for a hearing on the record, that the penalty or schedule does not meet the requirements of this section; and

(9) require a final adjustment of the penalty within 180 days after a source comes into compliance in accordance with subsection (g)(3).

(d) NONCOMPLIANCE PENALTY ESTABLISHED BY A STATE.—

(1) NOTICE.—In any case in which a State establishes a noncompliance penalty under this section, the State shall provide notice of the noncompliance penalty to the Administrator.

(2) APPLICABILITY.—A noncompliance penalty established by a State under this section shall apply unless the Administrator, within 90 days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator.

(3) OBJECTION.—If the Administrator objects, the Administrator shall immediately establish a substitute noncompliance penalty applicable to the source.

(e) CONTRACT TO ASSIST IN DETERMINING AMOUNT OF PENALTY ASSESSMENT OR PAYMENT SCHEDULE.—

(1) IN GENERAL.—If the owner or operator of any stationary source to which a notice is issued under subsection (c)(3)—

(A)(i) does not submit a timely petition under subsection (c)(4)(B); or

(ii) submits a petition under subsection (c)(4)(B) that is denied; and

(B) fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification of the calculation;

the State (or the Administrator, as the case may be) may enter into a contract with any person that has no financial interest in the owner or operator of the source (or in any person controlling, controlled by, or under common control with the source) to assist in determining the amount of the penalty assessment or payment schedule with respect to the source.

(2) COST.—The cost of carrying out a contract under paragraph (1) may be added to the penalty to be assessed against the owner or operator of the source.

(f) PAYMENT.—All penalties assessed by the Administrator under this section shall be paid to the Treasury. All penalties assessed by a State under this section shall be paid to the State.

(g) AMOUNT OF PENALTY.—

(1) AMOUNT.—

(A) IN GENERAL.—The amount of the penalty that shall be assessed and collected with respect to any source under this section shall be equal to—

(i) the amount determined in accordance with regulations promulgated by the Administrator under subsection (b), which is not less than the economic value that a delay in compliance may have for the owner of the source, including—

(I) the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed 10 years;

(II) operation and maintenance costs forgone as a result of noncompliance; and

(III) any additional economic value that such a delay may have for the owner or operator of the source; minus

(ii) the amount of any expenditure made by the owner or operator of the source during any such quarter for the purpose of bringing the source into, and maintaining compliance with, the requirement, to the extent that the expenditure is not taken into account in the calculation of the penalty under clause (i).

(B) SUBTRACTION OF EXPENDITURE.—To the extent that any expenditure under subparagraph (A)(ii) made during any quarter is not subtracted for that quarter from the costs under subparagraph (A)(i), the expenditure may be subtracted for any subsequent quarter from those costs.

(C) MINIMUM AMOUNT.—In no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(2) PAYMENT IN INSTALLMENTS.—

(A) DEFINITION OF PERIOD OF COVERED NONCOMPLIANCE.—In this paragraph, the term ''period of covered noncompliance'' means the period that begins on the date of issuance of a notice of noncompliance under subsection (c)(3) and ending on the date on which the source comes into (or for the purpose of establishing the schedule of payments, is estimated to come into) compliance with the requirement.

(B) IN GENERAL.—The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any adjustment or any subtraction under paragraph (1)(A)(ii)) after the 1st payment shall be equal.

(C) 1ST PAYMENT.—The 1st payment shall be due on the date that is 6 months after the date of issuance of the notice of noncompliance under subsection (b)(3) with respect to any source. The 1st payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for the source.

(3) REVIEW OF ACTUAL EXPENDITURES.—On making a determination that a source with respect to which a penalty has been paid under this section is in compliance and is maintaining compliance with the applicable requirement, a State (or the Administrator as the case may be) shall—

(A) review the actual expenditures made by the owner or operator of the source for the purpose of attaining and maintaining compliance; and

(B) within 180 days after the source comes into compliance—

(i) provide reimbursement with interest (to be paid by the State or Secretary of the Treasury, as the case may be) at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any overpayment by the owner or operator; or

(ii) assess and collect an additional payment with interest at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any underpayment by the owner or operator.

(4) QUARTERLY NONPAYMENT PENALTY.—An owner or operator that fails to pay the amount of any penalty with respect to any source under this section on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which the failure to pay persists. The nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of the owner or operator's penalties and nonpayment penalties with respect to the source that are unpaid as of the beginning of the quarter.

(h) JUDICIAL REVIEW.—Any action pursuant to this section, including any objection of the Administrator under subsection (d)(3), shall be considered a final action for purposes of judicial review of any penalty under section 211113 of this title.

(i) OTHER ORDERS, PAYMENTS, SANCTIONS, OR REQUIREMENTS.—Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this division and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this division or State or local law.

(j) MORE STRINGENT EMISSION LIMITATIONS OR OTHER REQUIREMENTS.—In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this division after August 7, 1977, that is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any,

or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the noncompliance penalty under this section shall be the date on which the source is required to be in full compliance with the emission limitation or requirement, but in no event later than 3 years after the approval or promulgation of the emission limitation or requirement.

(k) DETERMINATION OF NUMBER OF DAYS.—For purposes of determining the number of days of violation for which an assessment may be made under this section, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of the notice and each day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

**§ 211120. Consultation**

(a) PROCESS.—In carrying out the requirements of this division requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements, or preconstruction review of direct sources of air pollution; or

(2) any measure described in chapter 213 or 215;

a State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments, and any Federal land manager having authority over Federal land to which the State plan applies, as part of the plan.

(b) REGULATIONS.—The process provided under subsection (a) shall be in accordance with regulations promulgated by the Administrator to ensure adequate consultation.

(c) JUDICIAL REVIEW.—Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan described in subsection (a) may petition for judicial review of an action described in subsection (a) on the basis of a violation of the requirements of this section.

**§ 211121. Listing of certain unregulated pollutants**

(a) RADIOACTIVE POLLUTANTS, CADMIUM, ARSENIC, AND POLYCYCLIC ORGANIC MATTER.—

(1) REVIEW AND DETERMINATION.—After notice and opportunity for public hearing, the Administrator shall review all available relevant in-

formation and determine whether emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic, and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution that may reasonably be anticipated to endanger public health.

(2) AFFIRMATIVE DETERMINATION.—If the Administrator makes an affirmative determination with respect to a substance described in paragraph (1), the Administrator, simultaneously with the determination, shall—

(A) include the substance in the list published under section 211108(a)(1) or 211112(b)(1) of this title (in the case of a substance that, in the judgment of the Administrator, causes, or contributes to, air pollution that may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness);

(B) include each category of stationary sources emitting the substance in significant amounts in the list published under section 211111(b)(1) of this title, or take any combination of such actions; or

(C) take both such actions.

(b) REVISION AUTHORITY.—Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list described in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).

(c) SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, AND BYPRODUCT MATERIAL.—

(1) CONSULTATION.—Before listing any source material, special nuclear material, or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

(2) INTERAGENCY AGREEMENT.—Not later than 6 months after listing any source material, special nuclear material, or byproduct material (or component or derivative thereof), the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to sources and facilities that are under the jurisdiction of the Nuclear Regulatory Commission. The agreement shall, to the maximum extent practicable consistent with this division, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this division respecting the emission of

source material, special nuclear material, or byproduct material (and components and derivatives thereof) from those sources or facilities.

(3) PUBLIC HEALTH AND SAFETY.—In case of any standard or emission limitation promulgated by the Administrator, under this division or by any State (or the Administrator) under any applicable implementation plan under this division, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of the standard or limitation to a source or facility under the jurisdiction of the Nuclear Regulatory Commission would endanger public health or safety, the standard or limitation shall not apply to those facilities or sources unless the President determines otherwise within 90 days after the date of the determination.

**§ 211122. Stack heights**

(a) DEFINITIONS.—In this section:

(1) DISPERSION TECHNIQUE.—The term ''dispersion technique'' includes any intermittent or supplemental control of an air pollutant varying with atmospheric conditions.

(2) GOOD ENGINEERING PRACTICE.—

(A) IN GENERAL.—The term ''good engineering practice'', with respect to the height of a stack at a source, means the height necessary to ensure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies, and wakes that may be created by the source itself, nearby structures, or nearby terrain obstacles (as determined by the Administrator).

(B) LIMITATION.—For purposes of subparagraph (A), stack height consistent with good engineering practice shall not exceed 2½ times the height of a source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under subparagraph (A).

(b) HEIGHTS IN EXCESS OF GOOD ENGINEERING PRACTICE; OTHER DISPERSION TECHNIQUES.—

(1) IN GENERAL.—The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subdivision shall not be affected in any manner by—

(A) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator); or

(B) any other dispersion technique.

(2) APPLICABILITY.—Paragraph (1) shall not apply with respect to stack heights in existence before December 31, 1970, or dispersion techniques implemented before that date.

(3) EMISSION LIMITATION FOR CERTAIN COAL-FIRED STEAM ELECTRIC GENERATING UNITS.—In establishing an emission limitation for coal-fired steam electric generating units are subject to section 211118 of this title and that commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(c) LIMITATION.—In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

(d) REGULATIONS.—After notice and opportunity for public hearing, the Administrator shall promulgate regulations to carry out this section.

**§ 211123. Assurance of adequacy of State plans**

(a) STATE REVIEW OF IMPLEMENTATION PLANS THAT RELATE TO MAJOR FUEL BURNING SOURCES.—Each State shall review the provisions of its implementation plan that relate to major fuel burning sources and shall determine—

(1) the extent to which compliance with requirements of the implementation plan is dependent on the use by major fuel burning stationary sources of petroleum products or natural gas;

(2) the extent to which the implementation plan may reasonably be anticipated to be inadequate to meet the requirements of this division in the State on a reliable and long-term basis by reason of its dependence on the use of petroleum products or natural gas; and

(3) the extent to which compliance with the requirements of the implementation plan is dependent on use of coal or coal derivatives that is not locally or regionally available.

(b) SUBMISSION TO ADMINISTRATOR.—Each State shall submit the results of its review and its determination under subsection (a) to the Administrator promptly on completion of the review.

(c) PLAN REVISION.—

(1) REVISION.—The Administrator shall review the submissions of the States under subsection (b) and shall require a State to revise its implementation plan if, in the judgment of the Administrator, revision is necessary to ensure that the implementation plan will be adequate to ensure compliance with the requirements of this division in the State on a reliable and long-term basis, taking into account the actual or po-

tential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

(2) CONSIDERATIONS; CONSULTATION.—Before requiring an implementation plan revision under this subsection with respect to any State, the Administrator shall—

(A) take into account the report of the review conducted by the State under paragraph (1); and

(B) consult with the Governor of the State respecting the required revision.

**§ 211124. Measures to prevent economic disruption or unemployment**

(a) DEFINITION OF LOCALLY OR REGIONALLY AVAILABLE COAL OR COAL DERIVATIVES.—In this section, the term ''locally or regionally available coal or coal derivative'' means coal or a coal derivative that is, or in the judgment of a State or the Administrator can feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which a major fuel burning stationary source is located.

(b) DETERMINATION THAT ACTION IS NECESSARY.—After notice and opportunity for a public hearing, the Governor of any State in which a major fuel burning stationary source described in this subsection (or class or category thereof) is located, the Administrator or the President (or a designee of the President) may determine that action under subsection (c) is necessary to prevent or minimize significant local or regional economic disruption or unemployment that would otherwise result from use by the source (or class or category) of—

(1) coal or coal derivatives other than locally or regionally available coal;

(2) petroleum products;

(3) natural gas; or

(4) any combination of fuels described in paragraphs (1) through (3);

to comply with the requirements of a State implementation plan.

(c) USE OF LOCALLY OR REGIONALLY AVAILABLE COAL OR COAL DERIVATIVES TO COMPLY WITH IMPLEMENTATION PLAN REQUIREMENTS.—

(1) IN GENERAL.—On a determination under subsection (b)—

(A) the Governor, with the written consent of the President or a designee of the President;

(B) a designee of the President, with the written consent of the Governor; or

(C) the President;

may by regulation or order prohibit any such major fuel burning stationary source (or class or category thereof) from using fuels other than locally or regionally available coal or coal derivatives to comply with implementation plan requirements.

(2) CONSIDERATION OF FINAL COST.—In taking any action under this subsection, the Governor, the President, or the President's designee, as the case may be, shall take into account the final cost to the consumer of such an action.

(d) CONTRACTS; SCHEDULES.—

(1) IN GENERAL.—The Governor, in the case of an action under subsection (c)(1)(A), or the Administrator, in the case of an action under subparagraph (B) or (C) of subsection (c)(1), shall, by regulation or order, require each source to which the action applies to—

(A) enter into long-term contracts of at least 10 years in duration (except as the President or the President's designee may otherwise permit or require by regulation or order for good cause) for supplies of regionally available coal or coal derivatives;

(B) enter into contracts to acquire any additional means of emission limitation that the Administrator or the State determines may be necessary to comply with the requirements of this division while using such coal or coal derivatives as fuel; and

(C) comply with such schedules (including increments of progress), timetables, and other requirements as may be necessary to ensure compliance with the requirements of this division.

(2) TIMING.—Requirements under this subsection shall be established simultaneously with, and as a condition of, any action under subsection (c).

(e) EXISTING OR NEW MAJOR FUEL BURNING STATIONARY SOURCES.—This section applies only to existing or new major fuel burning stationary sources that—

(1) have the design capacity to produce 250,000,000 British thermal units per hour (or the equivalent), as determined by the Administrator; and

(2) are not in compliance with the requirements of an applicable implementation plan or are prohibited from burning oil or natural gas, or both, under any other authority of law.

(f) ACTIONS NOT TO BE DEEMED MODIFICATIONS OF MAJOR FUEL BURNING STATIONARY SOURCES.—Except as may otherwise be provided by regulation by a State or the Administrator for good cause, any action required to be taken by a major fuel burning stationary source under this sec-

tion shall not be deemed to constitute a modification for purposes of paragraphs (2) and (3) of section 211111(a) of this title.

(g) TREATMENT OF PROHIBITIONS, REGULATIONS, OR ORDERS AS REQUIREMENTS OR PARTS OF PLANS UNDER OTHER PROVISIONS.—For purposes of sections 211113 and 211119 of this title, a prohibition under subsection (c), and a corresponding regulation or order under subsection (d), shall be treated as a requirement of section 211113 of this title. For purposes of any plan (or portion thereof) promulgated under section 211110(c) of this title, any regulation or order under subsection (d) corresponding to a prohibition under subsection (c) shall be treated as a part of the plan. For purposes of section 211113 of this title, a prohibition under subsection (c), applicable to any source, and a corresponding regulation or order under subsection (d), shall be treated as part of the applicable implementation plan for the State in which the subject source is located.

(h) DELEGATION OF PRESIDENTIAL AUTHORITY.—The President may delegate the President's authority under this section to an officer or employee of the United States designated by the President on a case-by-case basis or in any other manner that the President considers suitable.

### § 211125. Interstate pollution abatement

(a) WRITTEN NOTICE TO ALL NEARBY STATES.—Each applicable implementation plan shall require each major proposed new (or modified) source—

(1) that is subject to chapter 213; or

(2) that may significantly contribute to levels of air pollution in excess of the NAAQSes in any air quality control region outside the State in which the source intends to locate (or make the modification);

to provide written notice to all nearby States the air pollution levels of which may be affected by the source at least 60 days prior to the date on which commencement of construction is to be permitted by the State providing notice.

(b) PETITION FOR FINDING THAT MAJOR SOURCES EMIT OR WOULD EMIT PROHIBITED AIR POLLUTANTS.—Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of section 211110(a)(3)(D)(ii) of this title or this section. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) VIOLATIONS.—

(1) IN GENERAL.—Notwithstanding any permit granted by a State in which a source is located (or intends to locate), it shall be a violation of this section and the applicable implementation plan in that State—

(A) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of section 211110(a)(3)(D)(ii) of this title or this section; or

(B) for any major existing source to operate more than 3 months after such a finding has been made with respect to it.

(2) CONTINUED OPERATION.—The Administrator may permit the continued operation of a source described in paragraph (1)(B) beyond the expiration of the 3-month period if the source complies with such emission limitations and compliance schedules (containing increments of progress) as the Administrator may provide to bring about compliance with the requirements contained in section 211110(a)(3)(D)(ii) of this title or this section as expeditiously as practicable, but in no case later than 3 years after the date of the finding.

**§ 211126. Public notification**

(a) IN GENERAL.—A State implementation plan shall contain measures that will be effective to notify the public during any calendar year on a regular basis of instances or areas in which any primary NAAQS is exceeded or was exceeded during any portion of the preceding calendar year to—

(1) advise the public of the health hazards associated with such pollution; and

(2) enhance public awareness of—

(A) the measures that can be taken to prevent those standards from being exceeded; and

(B) the ways in which the public can participate in regulatory efforts and other efforts to improve air quality.

(b) MEASURES.—Measures under subsection (a) may include—

(1) the posting of warning signs on interstate highway access points to metropolitan areas; or

(2) television, radio, or press notices or information.

(c) GRANTS.—The Administrator may make grants to States to assist in carrying out this section.

**§ 211127. State boards**

(a) IN GENERAL.—An applicable implementation plan shall contain requirements that—

(1) any board or body that approves permits or enforcement orders under this division have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this division; and

(2) any potential conflicts of interest by members of such a board or body or the head of an executive agency with similar powers be adequately disclosed.

(b) REQUIREMENTS RESPECTING CONFLICTS OF INTEREST.—A State may adopt any requirements respecting conflicts of interest for boards or bodies or heads of executive agencies described in subsection (a), or any other entities, that are more stringent than the requirements of paragraphs (1) and (2) of subsection (a), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

**§ 211128. Solid waste combustion**

(a) DEFINITIONS.—In this section:

(1) EXISTING SOLID WASTE INCINERATION UNIT.—The term ''existing solid waste incineration unit'' means a solid waste unit that is not a new solid waste incineration unit or modified solid waste incineration unit.

(2) EXISTING UNIT.—The term ''existing unit'' means an existing solid waste incineration unit.

(3) MEDICAL WASTE.—The term ''medical waste'' has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(4) MODIFIED SOLID WASTE INCINERATION UNIT.—The term ''modified solid waste incineration unit'' means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (b) if—

(A) the cumulative cost of the modifications, over the life of the unit, exceed 50 percent of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with the construction or installation) updated to current costs; or

(B) the modification is a physical change in or change in the method of operation of the unit that increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 211111 of this title.

(5) MUNICIPAL WASTE.—

(A) IN GENERAL.—The term ''municipal waste'' means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard waste, food waste, plastic, leather, rubber, and other combustible material and noncombustible material such as metal, glass, and rock.

(B) EXCLUSIONS.—The term ''municipal waste'' does not include industrial process waste or medical waste that is segregated from other waste described in subparagraph (A).

(C) INCINERATION UNITS.—An incineration unit shall not be considered to be combusting municipal waste for purposes of this section if the incineration unit combusts a fuel feed stream 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(6) NEW SOLID WASTE INCINERATION UNIT.—The term ''new solid waste incineration unit'', with respect to any requirement that the Administrator proposes under this section establishing an emission standard or other requirement that would be applicable to the unit or a modified solid waste incineration unit, means a solid waste incineration unit the construction of which is commenced after the date on which the Administrator proposes the requirement.

(7) NEW UNIT.—The term ''new unit'' means a new solid waste incineration unit.

(8) SOLID WASTE.—The term ''solid waste'' has the meaning established by the Administrator pursuant to the Solid Waste Disposal Act (42 U.S.C. 6901 et seq.).

(9) SOLID WASTE INCINERATION UNIT.—

(A) IN GENERAL.—The term ''solid waste incineration unit'' means a distinct operating unit of any facility that combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels).

(B) EXCLUSIONS.—The term ''solid waste incineration unit'' does not include—

(i) an incinerator or other unit required to have a permit under section 3005 of the Solid Waste Disposal Act (42 U.S.C. 6925);

(ii) a materials recovery facility (including a primary or secondary smelter) that combusts waste for the primary purpose of recovering metal;

(iii) a qualifying small power production facility (as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)) or qualifying cogeneration facility (as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)) that burns homogeneous waste (such as a unit that burns tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of

a qualifying cogeneration facility that burns homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) that are used for industrial, commercial, heating or cooling purposes; or

(iv) an air curtain incinerator, if the air curtain incinerator burns only wood waste, yard waste, and clean lumber and complies with opacity limitations established by the Administrator by regulation.

(10) UNIT.—The term ''unit'' means a solid waste incineration unit.

(b) NEW SOURCE PERFORMANCE STANDARDS.—

(1) IN GENERAL.—The Administrator shall establish performance standards and other requirements pursuant to this section and section 211111 of this title for each category of solid waste incineration units. The standards shall include emission limitations and other requirements applicable to new units and guidelines (under section 211111(d) of this title and this section) and other requirements applicable to existing units.

(2) EMISSION STANDARD.—

(A) MAXIMUM DEGREE OF REDUCTION IN EMISSIONS.—Standards applicable to solid waste incineration units promulgated under this section and section 211111 of this title shall reflect the maximum degree of reduction in emissions of air pollutants listed under paragraph (4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impacts and energy requirements, determines is achievable for new units or existing units in each category.

(B) CLASSES, TYPES, AND SIZES OF UNITS.—The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular, and other types of units), and sizes of units within a category in establishing the standards.

(C) STRINGENCY.—The degree of reduction in emissions that is considered achievable for new units in a category shall not be less stringent than the emission control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emission standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emission limitation achieved by the best performing 12 percent of units in the category (excluding units that first met lowest achievable emission rates 18 months before the date on which the emission standards

are proposed or 30 months before the date on which the emission standards are promulgated, whichever is later).

(3) CONTROL METHODS AND TECHNOLOGIES.—Standards under this section and section 211111 of this title applicable to solid waste incineration units shall—

(A) be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion; and

(B) incorporate for new units siting requirements that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment.

(4) NUMERICAL EMISSION LIMITATIONS.—

(A) IN GENERAL.—The performance standards promulgated under this section and section 211111 of this title and applicable to solid waste incineration units shall specify numerical emission limitations for the following:

(i) particulate matter (total and fine);

(ii) opacity (as appropriate);

(iii) sulfur dioxide;

(iv) hydrogen chloride;

(v) nitrogen oxides;

(vi) carbon monoxide;

(vii) lead;

(viii) cadmium;

(ix) mercury; and

(x) dioxins and dibenzofurans.

(B) SURROGATE SUBSTANCES.—The Administrator may promulgate numerical emission limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters, or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

(5) REVIEW AND REVISION.—Not later than 5 years after the initial promulgation of any performance standards and other requirements under this section and section 211111 of this title applicable to a category of units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 211111 of this title, revise the standards and requirements.

(c) EXISTING UNITS.—

(1) GUIDELINES.—Performance standards under this section and section 211111 of this title for units shall include guidelines promulgated pursuant to this section and section 211111(d) of this title appli-

cable to existing units. The guidelines shall include, as provided in this section, each of the elements required by subsections (b) (notwithstanding any restriction in section 211111(d) of this title regarding issuance of such limitations), (d), (e), (f), and (h)(3).

(2) STATE PLANS.—Not later than 1 year after the Administrator promulgates guidelines for a category of units, a State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to that category of units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines are promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. A State may modify and resubmit a plan that has been disapproved by the Administrator.

(3) FEDERAL PLAN.—The Administrator shall develop, implement, and enforce a plan for existing units within any category located in any State that has not submitted an approvable plan under this subsection with respect to units in that category within 2 years after the date on which the Administrator promulgated the relevant guidelines. The plan shall ensure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date on which the relevant guidelines are promulgated.

(d) MONITORING.—

(1) IN GENERAL.—The Administrator shall, as part of each performance standard promulgated pursuant to subsection (b) and section 211111 of this title, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

(A) to monitor emissions from the unit at the point at which the emissions are emitted into the ambient air (or within the stack, combustion chamber, or pollution control equipment, as appropriate) and at such other points as are necessary to protect public health and the environment;

(B) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

(C) to report the results of the monitoring.

(2) CONTENTS.—The regulations shall—

(A) contain provisions regarding the frequency of monitoring, test methods, and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring;

(B) require that any monitoring reports or test results indicating an exceedance of any standard under this section be reported separately and in a manner that facilitates review for purposes of enforcement actions; and

(C) require that copies of the results of the monitoring be maintained on file at the facility concerned and that copies be made available for inspection and copying by members of the public during business hours.

(e) OPERATOR TRAINING.—The Administrator shall develop and promote a model State program for the training and certification of unit operators and high-capacity fossil fuel-fired plant operators. The Administrator may authorize any State to implement a model program for the training of unit operators and high-capacity fossil fuel-fired plant operators if the State adopts a program that is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (b) and section 211111 of this title for any category of units, it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from the unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

(f) PERMITS.—

(1) IN GENERAL.—Beginning on the later of—

(A) the date that is 36 months after the promulgation of a performance standard under subsection (b) and section 211111 of this title applicable to a category of units; or

(B) the effective date of a permit program under subdivision 6 in the State in which the unit is located;

each unit in the category shall operate pursuant to a permit issued under this subsection and subdivision 6.

(2) RENEWAL.—A permit required by this subsection may be renewed under subdivision 6.

(3) DURATION.—Notwithstanding any other provision of this division, a permit for a unit combusting municipal waste issued under this division shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. A permit shall continue in effect after the date of issuance until the date of ter-

mination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such a determination shall be made at regular intervals of not more than 5 years during the term of the permit, after public comment and public hearing.

(4) LIMITATION.—No permit for a unit may be issued under this division by an agency, instrumentality, or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

(5) COMPLIANCE WITH EMISSION LIMITATIONS OR IMPLEMENTATION OF OTHER MEASURES.—

(A) IN GENERAL.—Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emission limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment.

(B) DISCRETIONARY DECISION.—The Administrator's determination under subparagraph (A) is a discretionary decision.

(g) EFFECTIVE DATE AND ENFORCEMENT.—

(1) NEW UNITS.—Performance standards and other requirements promulgated pursuant to this section and section 211111 of this title and applicable to new solid waste incineration units shall be effective as of the date that is 6 months after the date of promulgation.

(2) EXISTING UNITS.—Performance standards and other requirements promulgated pursuant to this section and section 211111 of this title and applicable to existing units shall be effective as expeditiously as practicable after approval of a State plan under subsection (c)(2) (or promulgation of a plan by the Administrator under subsection (c)(3)) but in no event later than 3 years after the State plan is approved or 5 years after the date on which the standards or requirements are promulgated, whichever is earlier.

(3) PROHIBITION.—It shall be unlawful for any owner or operator of any solid waste incineration unit to which a performance standard, emission limitation, or other requirement promulgated pursuant to this section and section 211111 of this title applies to operate the unit in violation of the performance standard, emission limitation, or requirement or for any other person to violate an applicable requirement of this section.

(4) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections 203102, 203103, 203104, 211111(j), 211113, 211114, 211116, and 211119 of this title and other provisions for the enforcement of this division, each performance standard, emission limitation, or other requirement established pursuant to this section by the Administrator or a State or local government shall be treated in the same manner as a standard of performance under section 211111 of this title that is an emission limitation.

(h) OTHER AUTHORITY.—

(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation, or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation, or standard in effect under this section or under any other provision of this division.

(2) OTHER AUTHORITY UNDER THIS DIVISION.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a NAAQS, except that no solid waste incineration unit subject to performance standards under this section and section 211111 of this title shall be subject to standards under section 211112(d) of this title.

(3) RESIDUAL RISK.—

(A) IN GENERAL.—The Administrator shall promulgate standards under section 211112(f) of this title for a category of solid waste incineration units, if promulgation of such standards is required under section 211112(f) of this title.

(B) STANDARDS.—For purposes of subparagraph (A) only—

(i) the performance standards under subsection (b) and section 211111 of this title applicable to a category of units shall be deemed to be standards under section 211112(d)(2) of this title; and

(ii) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (b)(4) and no others.

(4) ACID RAIN.—A solid waste incineration unit shall not be a utility unit as defined in subdivision 5 if more than 80 percent of its annual average fuel consumption measured on a British thermal unit basis, during a period or periods to be determined by the Administrator, is

from a fuel (including any waste burned as a fuel) other than a fossil fuel.

(5) REQUIREMENTS OF CHAPTERS 213 AND 215.—No requirement of an applicable implementation plan under section 213107 or 215102(c)(5) of this title may be used to weaken the standards in effect under this section.

### § 211129. Emission factors

(a) DEFINITION OF EMISSION FACTOR.—In this section, the term ''emission factor'' means a method by which to estimate the quantity of emissions of an air pollutant for purposes of this division.

(b) REVIEW AND REVISION OF EMISSION FACTORS.—At least every 3 years, the Administrator shall review and, if necessary, revise, the emission factors for carbon monoxide, volatile organic compounds, and nitrogen oxides from sources of those air pollutants (including area sources and mobile sources).

(c) ADDITIONAL EMISSION FACTORS.—The Administrator shall establish emission factors for sources for which no emission factors have previously been established by the Administrator.

(d) EMISSIONS ESTIMATING TECHNIQUES.—The Administrator shall permit any person to demonstrate improved emissions estimating techniques, and following approval of such techniques, the Administrator shall authorize the use of the techniques. Any such technique may be approved only after appropriate public participation.

### § 211130. Land use authority

Nothing in this division—

(1) constitutes an infringement on the authority of counties and cities to plan or control land use; or

(2) provides or transfers authority over land use.

# Chapter 213—Prevention of Significant Deterioration of Air Quality

**Subchapter I—General Provisions**



**Subchapter II—Visibility Protection**

# Subchapter I—General Provisions

## § 213101. Purposes

The purposes of this chapter are—

(1) to protect public health and welfare from any actual or potential adverse effect that in the Administrator's judgment may reasonably be anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air, notwithstanding attainment and maintenance of all NAAQSes;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

(3) to ensure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to ensure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to ensure that any decision to permit increased air pollution in any area to which this chapter applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

## § 213102. Definitions

In this chapter:

(1) BASELINE CONCENTRATION.—

(A) IN GENERAL.—The term ''baseline concentration'' means, with respect to a pollutant, the ambient concentration levels that exist at the time of the 1st application for a permit in an area subject to this chapter, based on air quality data available in EPA or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit.

(B) PROJECTED EMISSIONS TAKEN INTO ACCOUNT.—Ambient concentration levels described in subparagraph (A) shall take into account all projected emissions in, or that may affect, the area from any major emitting facility on which construction commenced prior to January 6, 1975, but that had not begun operation by the date of the baseline air quality concentration determination.

(C) SULFUR OXIDES; PARTICULATE MATTER.—Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commences after January 6, 1975, shall not be included in the baseline and shall be counted against the max-

imum allowable increases in pollutant concentrations established under this chapter.

(2) BEST AVAILABLE CONTROL TECHNOLOGY.—The term ''best available control technology'' means an emission limitation that—

(A) is based on the maximum degree of reduction of each pollutant subject to regulation under this division emitted from or that results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for the major emitting facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant;

(B) does not result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard established pursuant to section 211111 or 211112 of this title; and

(C) does not allow emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph to increase above levels that would have been required under section 169(3) of the Clean Air Act (42 U.S.C. 7479(3)) as in effect before November 15, 1990.

(3) COMMENCE.—The term ''commence'', as applied to construction of a major emitting facility, means to—

(A) obtain all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws (including regulations); and

(B)(i) begin, or cause to begin, a continuous program of physical on-site construction of the major emitting facility; or

(ii) enter into a binding agreement or contractual obligation, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the major emitting facility to be completed within a reasonable time.

(4) CONSTRUCTION.—The term ''construction'', when used in connection with any source or facility, includes the modification (as defined in section 211111(a) of this title) of the source or facility.

(5) MAJOR EMITTING FACILITY.—

(A) IN GENERAL.—The term ''major emitting facility'' means—

(i) any of the stationary sources of air pollutants identified in subparagraph (B) that emit, or have the potential to emit,

100 tons per year or more of any air pollutant from the types of stationary sources identified in subparagraph (B); and

(ii) any other source with the potential to emit 250 tons per year or more of any air pollutant.

(B) IDENTIFIED STATIONARY SOURCES.—The stationary sources referred to in subparagraph (A)(i) are—

(i) fossil fuel-fired steam electric plants of more than 250,000,000 British thermal units per hour heat input;

(ii) coal cleaning plants (thermal dryers);

(iii) kraft pulp mills;

(iv) Portland cement plants;

(v) primary zinc smelters;

(vi) iron and steel mill plants;

(vii) primary aluminum ore reduction plants;

(viii) primary copper smelters;

(ix) municipal incinerators capable of charging more than 50 tons of refuse per day;

(x) hydrofluoric, sulfuric, and nitric acid plants;

(xi) petroleum refineries;

(xii) lime plants;

(xiii) phosphate rock processing plants;

(xiv) coke oven batteries;

(xv) sulfur recovery plants;

(xvi) carbon black plants (furnace process);

(xvii) primary lead smelters;

(xviii) fuel conversion plants;

(xix) sintering plants;

(xx) secondary metal production facilities;

(xxi) chemical process plants;

(xxii) fossil-fuel boilers of more than 250,000,000 British thermal units per hour heat input;

(xxiii) petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels;

(xxiv) taconite ore processing facilities;

(xxv) glass fiber processing plants; and

(xxvi) charcoal production facilities.

(C) EXCLUSIONS.—The term ''major emitting facility'' does not include a new or modified facility that is a nonprofit health or education institution that has been exempted by a State.

(6) NECESSARY PRECONSTRUCTION APPROVALS OR PERMITS.—The term ''necessary preconstruction approvals or permits'' means the per-

mits or approvals required by a permitting authority as a precondition to undertaking any activity described in paragraph (3)(B).

### § 213103. Plan requirements

In accordance with the policy of section 211101(b)(1) of this title, each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this chapter, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 211107 of this title as attainment or unclassifiable.

### § 213104. Initial classifications

(a) AREAS DESIGNATED AS CLASS I.—

(1) AREAS THAT MAY NOT BE REDESIGNATED.—All—

(A) international parks;

(B) national wilderness areas that exceed 5,000 acres;

(C) national memorial parks that exceed 5,000 acres; and

(D) national parks that exceed 6,000 acres;

that were in existence on August 7, 1977, shall be class I areas and may not be redesignated.

(2) AREAS THAT MAY BE REDESIGNATED.—All areas that were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas that may be redesignated as provided in this chapter.

(3) BOUNDARY CHANGES.—The extent of the areas designated as class I under this section shall conform to any changes in the boundaries of those areas that occur.

(b) AREAS DESIGNATED AS CLASS II.—All areas in a State designated pursuant to section 211107(d) of this title as attainment or unclassifiable that are not established as class I under subsection (a) shall be class II areas unless redesignated under section 213106 of this title.

### § 213105. Increments and ceilings

(a) PARTICULATE MATTER AND SULFUR OXIDE; REQUIREMENT THAT MAXIMUM ALLOWABLE INCREASES AND MAXIMUM ALLOWABLE CONCENTRATIONS NOT BE EXCEEDED.—In the case of particulate matter and sulfur oxide, an applicable implementation plan shall contain measures ensuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, particulate matter and sulfur oxide shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under section 213107(d)(2)(C)(iii)(II) of this title) for a pollutant based on concentrations permitted under NAAQSes for any period other than an annual period, reg-

ulations shall permit such maximum allowable increase to be exceeded during 1 such period per year.

(b) MAXIMUM ALLOWABLE INCREASES IN CONCENTRATIONS OVER BASELINE CONCENTRATIONS.—

(1) CLASS I AREAS.—For any class I area, the maximum allowable increase in concentrations of particulate matter and sulfur oxide over the baseline concentration of those pollutants shall not exceed the following amounts:

| Pollutant | Maximum allowable increase (in micrograms per cubic meter) |
|---|---|
| Particulate matter: | |
| Annual geometric mean | 5 |
| Twenty-four-hour maximum | 10 |
| Sulfur dioxide: | |
| Annual arithmetic mean | 2 |
| Twenty-four-hour maximum | 5 |
| Three-hour maximum | 25 |

(2) CLASS II AREAS.—For any class II area, the maximum allowable increase in concentrations of particulate matter and sulfur oxide over the baseline concentration of those pollutants shall not exceed the following amounts:

| Pollutant | Maximum allowable increase (in micrograms per cubic meter) |
|---|---|
| Particulate matter: | |
| Annual geometric mean | 19 |
| Twenty-four-hour maximum | 37 |
| Sulfur dioxide:. | |
| Annual arithmetic mean | 20 |
| Twenty-four-hour maximum | 91 |
| Three-hour maximum | 512 |

(3) CLASS III AREAS.—For any class III area, the maximum allowable increase in concentrations of particulate matter and sulfur oxide over the baseline concentration of those pollutants shall not exceed the following amounts:

| Pollutant | Maximum allowable increase (in micrograms per cubic meter) |
|---|---|
| Particulate matter: | |
| Annual geometric mean | 37 |
| Twenty-four-hour maximum | 75 |
| Sulfur dioxide:. | |
| Annual arithmetic mean | 40 |
| Twenty-four-hour maximum | 182 |
| Three-hour maximum | 700 |

(4) ANY AREA TO WHICH THIS CHAPTER APPLIES.—The maximum allowable concentration of any air pollutant in any area to which this chapter applies shall not exceed a concentration for that pollutant for each period of exposure equal to—

(A) the concentration permitted under the secondary NAAQS; or

(B) the concentration permitted under the primary NAAQS;

whichever concentration is lower for the pollutant for that period of exposure.

(c) ORDERS OR REGULATIONS FOR DETERMINING COMPLIANCE WITH MAXIMUM ALLOWABLE INCREASES IN AMBIENT CONCENTRATIONS OF AIR POLLUTANTS.—

(1) CONCENTRATIONS OF CERTAIN POLLUTANTS NOT TAKEN INTO ACCOUNT.—In the case of any State that has a plan approved by the Administrator for purposes of carrying out this chapter, the Governor of the State may, after notice and opportunity for public hearing, issue orders or promulgate regulations providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of the pollutant shall not be taken into account:

(A) Concentrations of the pollutant attributable to the increase in emissions from stationary sources that have converted from the use of petroleum products, or natural gas, or both, by reason of an order that is in effect under subsections (a) and (b) of section 2 of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792) (or any subsequent legislation that supersedes those subsections) over the emissions from those stationary sources before the effective date of the order.

(B) Concentrations of the pollutant attributable to the increase in emissions from stationary sources that have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act (16 U.S.C. 791a et seq.) over the emissions from those stationary sources before the effective date of the plan.

(C) Concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities.

(D) The increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources that are included in the baseline concentration.

(2) TIME PERIOD.—No action taken with respect to a source under subparagraph (A) or (B) of paragraph (1) shall apply more than 5 years after the effective date of an order described in paragraph (1)(A) or the plan described to in paragraph (1)(B), whichever is applicable.

If both such an order and such a plan are applicable, no such action shall apply more than 5 years after the later of the effective dates.

(3) SUBMISSION TO THE ADMINISTRATOR.—No action under this subsection shall take effect unless the Governor submits the order or regulation providing for an exclusion to the Administrator and the Administrator determines that the order or regulation is in compliance with this subsection.

### § 213106. Area redesignation

(a) AUTHORITY OF STATES TO REDESIGNATE AREAS.—

(1) CLASS I.—Except as otherwise provided under subsection (c), a State may redesignate such areas as the State considers appropriate as class I areas.

(2) CLASS I OR CLASS II.—

(A) IN GENERAL.—The following areas may be redesignated only as class I or class II:

(i) An area that exceeds 10,000 acres and is a national monument, national primitive area, national preserve, national recreation area, national wild and scenic river, national wildlife refuge, national lakeshore, or national seashore.

(ii) A national park or national wilderness area established after August 7, 1977, that exceeds 10,000 acres.

(B) EXTENT OF AREAS.—The extent of the areas described in clauses (i) and (ii) of subparagraph (A) shall conform to any changes in the boundaries of those areas that occur.

(3) CLASS III.—

(A) IN GENERAL.—Any area (other than an area described in clause (i) or (ii) of paragraph (2)(A) or an area established as class I under section 213104(a)(1) of this title) may be redesignated by a State as class III if—

(i)(I) the redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation); and

(II) general purpose units of local government representing a majority of the residents of the area to be redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(ii) the redesignation will not cause, or contribute to, concentrations of any air pollutant that exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(iii) the redesignation otherwise meets the requirements of this chapter.

(B) INDIAN TRIBES.—Subparagraph (A)(i)(I) does not apply to area redesignations by an Indian tribe.

(b) PROCEDURE.—

(1) NOTICE AND HEARING; NOTICE TO FEDERAL LAND MANAGER; WRITTEN COMMENTS AND RECOMMENDATIONS; REGULATIONS; DISAPPROVAL OF REDESIGNATION.—

(A) NOTICE OF HEARING.—Prior to redesignation of any area under this chapter, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas that may be affected by the proposed redesignation. Prior to any such public hearing, a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection, and prior to any such redesignation, the description and analysis of those effects shall be reviewed and examined by the redesignating authorities.

(B) FEDERAL LAND MANAGERS.—Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if the area includes any Federal land, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to the intended notice of redesignation. In redesignating any area under this section with respect to which a Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between the redesignation and the recommendations and an explanation of the inconsistency (including the reasons for making the redesignation against the recommendation of the Federal land manager).

(C) REGULATIONS.—The Administrator shall promulgate regulations to ensure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major

emitting facility that may be permitted to be constructed and operated only if the area is designated or redesignated as class III.

(2) DISAPPROVAL OF REDESIGNATION.—The Administrator may disapprove the redesignation of any area only if the Administrator finds, after notice and opportunity for public hearing, that the redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 213104(a) of this title or of subsection (a). If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation that was disapproved.

(c) INDIAN RESERVATIONS.—Land within the exterior boundaries of a reservation of a federally recognized Indian tribe may be redesignated only by the appropriate Indian governing body.

(d) RESOLUTION OF DISPUTES BETWEEN STATES AND INDIAN TRIBES.—

(1) NEGOTIATIONS.—If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with the redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State that the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this subchapter within the affected State or tribal reservation, the Governor or Indian governing body may request the Administrator to enter into negotiations with the parties involved to resolve the dispute.

(2) RECOMMENDATIONS.—If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the land involved.

(3) FAILURE TO REACH AGREEMENT.—If the parties involved do not reach agreement, the Administrator shall resolve the dispute and the Administrator's determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of the plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the land involved is of sufficient size to allow effective air quality management or have air quality-related values of such an area.

### § 213107. Preconstruction requirements

(a) MAJOR EMITTING FACILITIES ON WHICH CONSTRUCTION IS COMMENCED.—No major emitting facility may be constructed in any area to which this chapter applies unless—

(1) a permit is issued for the proposed major emitting facility in accordance with this chapter setting forth emission limitations for the major emitting facility that conform to the requirements of this chapter;

(2)(A) the proposed permit is subjected to a review in accordance with this section;

(B) the required analysis is conducted in accordance with regulations promulgated by the Administrator; and

(C) a public hearing is held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on—

(i) the air quality impact of the source;

(ii) alternatives thereto;

(iii) control technology requirements; and

(iv) other appropriate considerations;

(3) the owner or operator of the major emitting facility demonstrates, as required pursuant to section 211110(h) of this title, that emissions from construction or operation of the major emitting facility will not cause, or contribute to, air pollution in excess of—

(A) any maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this chapter applies more than 1 time per year;

(B) any NAAQS in any air quality control region; or

(C) any other applicable emission standard or standard of performance under this division;

(4) the proposed major emitting facility is subject to the best available control technology for each pollutant subject to regulation under this division emitted from, or that results from, the major emitting facility;

(5) the provisions of subsection (d) with respect to protection of class I areas are complied with for the major emitting facility;

(6) there is an analysis of any air quality impacts projected for the area as a result of growth associated with the major emitting facility;

(7) the person that owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this chapter agrees to conduct such monitoring as may be necessary to determine the effect that emissions from any such major emitting facility may have, or is having, on air quality in any area that may be affected by emissions from the source; and

(8) in the case of a source that proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the

maximum allowable increments applicable in a class II area and where no standard under section 211111 of this title has been promulgated subsequent to August 7, 1977, for that source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) EXCEPTION.—The demonstration pertaining to maximum allowable increases required under subsection (a)(3) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility that was in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4), will be less than 50 tons per year and for which the owner or operator of the major emitting facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the secondary NAAQS for particulate matter or sulfur oxides.

(c) PERMIT APPLICATIONS.—Any completed permit application under section 211110 of this title for a major emitting facility in any area to which this chapter applies shall be granted or denied not later than 1 year after the date of filing of the completed application.

(d) ACTION TAKEN ON PERMIT APPLICATIONS; NOTICE; ADVERSE IMPACT ON AIR QUALITY RELATED VALUES; VARIANCE; EMISSION LIMITATIONS.—

(1) TRANSMITTAL OF COPY OF PERMIT APPLICATION TO ADMINISTRATOR; NOTICE OF ACTION.—Each State shall—

(A) transmit to the Administrator a copy of each permit application relating to a major emitting facility received by the State; and

(B) provide notice to the Administrator of every action related to the consideration of the permit.

(2) FEDERAL LAND MANAGER; FEDERAL OFFICIAL CHARGED WITH RESPONSIBILITY.—

(A) NOTICE.—The Administrator shall provide notice of the permit application to the Federal land manager and the Federal official charged with direct responsibility for management of any land within a class I area that may be affected by emissions from the proposed major emitting facility.

(B) RESPONSIBILITY.—The Federal land manager and the Federal official charged with direct responsibility for management of land within a class I area that may be affected by emissions from the proposed major emitting facility shall have an affirmative responsibility to protect the air quality-related values (including visi-

bility) of any such land within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on those values.

(C) CHANGE IN AIR QUALITY; ADVERSE IMPACT ON AIR QUALITY-RELATED VALUES; NO ADVERSE IMPACT.—

(i) CHANGE IN AIR QUALITY.—In any case where the Federal official charged with direct responsibility for management of any land within a class I area or the Federal land manager of the land, the Administrator, or the Governor of an adjacent State containing a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in the area and identifying the potential adverse impact of the change, a permit shall not be issued unless the owner or operator of the major emitting facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations that exceed the maximum allowable increases for a class I area.

(ii) ADVERSE IMPACT ON THE AIR QUALITY-RELATED VALUES.—In any case where the Federal land manager demonstrates to the satisfaction of the State that the emissions from the major emitting facility will have an adverse impact on the air quality-related values (including visibility) of the land, notwithstanding the fact that the change in air quality resulting from emissions from the major emitting facility will not cause or contribute to concentrations that exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) NO ADVERSE IMPACT ON AIR QUALITY-RELATED VALUES.—

(I) IN GENERAL.—In any case where the owner or operator of the major emitting facility demonstrates to the satisfaction of the Federal land manager, and the Federal land manager so certifies, that the emissions from the major emitting facility will have no adverse impact on the air quality-related values of the land (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from the major emitting facility will cause or contribute to concentrations that exceed the maximum allowable increases for class I areas, the State may issue a permit.

(II) COMPLIANCE WITH EMISSION LIMITATIONS.—In the case of a permit issued pursuant to subclause (I), the major emitting facility shall comply with such emission limitations under the permit as may be necessary to ensure that emissions of particulate matter and sulfur oxides from the major emitting facility will not cause or contribute to concentrations of particulate matter or sulfur oxides that exceed the following maximum allowable increases over the baseline concentration for particulate matter and sulfur oxides:

| | Maximum allowable increase (in micrograms per cubic meter) |
|---|---|
| Particulate matter: | |
| Annual geometric mean | 19 |
| Twenty-four-hour maximum | 37 |
| Sulfur dioxide: | |
| Annual arithmetic mean | 20 |
| Twenty-four-hour maximum | 91 |
| Three-hour maximum | 325 |

(D) VARIANCE.—

(i) IN GENERAL.—In any case where the owner or operator of a proposed major emitting facility that has been denied a permit under subparagraph (C)(iii)(I) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24 hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the Federal land manager's recommendation (if any) and subject to the concurrence of the Federal land manager, may grant a variance from the maximum allowable increase. If a variance is granted, a permit may be issued to the source pursuant to the requirements of this subparagraph.

(ii) NO CONCURRENCE.—In any case in which a Governor recommends a variance under this subparagraph in which the Federal land manager does not concur, the recommendations of the Governor and the Federal land manager shall be transmitted to the President. The President may approve the Governor's recommendation if the President finds that the variance is in the national interest. No Presidential finding shall

be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove the recommendation within 90 days after receipt by the President of the recommendations of the Governor and the Federal land manager.

(iii) COMPLIANCE WITH EMISSION LIMITATIONS.—

(I) DEFINITIONS.—

(aa) HIGH TERRAIN AREA.—In this clause, the term ''high terrain area'', with respect to any major emitting facility, means any area having an elevation of 900 feet or more above the base of the stack of the major emitting facility.

(bb) LOW TERRAIN AREA.—The term ''low terrain area'' means any area other than a high terrain area.

(II) COMPLIANCE.—In the case of a permit issued pursuant to this subparagraph, the major emitting facility shall comply with such emission limitations under the permit as may be necessary to ensure that emissions of sulfur oxides from the major emitting facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that exceed the following maximum allowable increases for such areas over the baseline concentration for sulfur oxides and to ensure that the emissions will not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE
(In micrograms per cubic meter)

| Period of exposure | Low terrain areas | High terrain areas |
|---|---|---|
| 24-hr maximum | 36 | 62 |
| 3-hr maximum | 130 | 221 |

(e) ANALYSIS.—

(1) IN GENERAL.—The review provided for in subsection (a) shall be preceded by an analysis of the ambient air quality at the proposed site and in areas that may be affected by emissions from the major emitting facility for each pollutant subject to regulation under this division

that will be emitted from the major emitting facility. The review shall be conducted in accordance with regulations of the Administrator, promulgated under this subsection, and may be conducted by the State, any general purpose unit of local government, or the major emitting facility applying for a permit.

(2) CONTINUOUS AIR QUALITY MONITORING.—The analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from the major emitting facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this chapter. The data shall be gathered over a period of 1 calendar year preceding the date of application for a permit under this chapter unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of the analysis shall be available at the time of the public hearing on the application for the permit.

(3) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall promulgate regulations respecting the analysis required under this subsection.

(B) CONTENTS.—The regulations—

(i) shall not require the use of any automatic or uniform buffer zone or zones;

(ii) shall require an analysis of—

(I) the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from the major emitting facility for each pollutant regulated under this division that will be emitted from, or that results from the construction or operation of, the major emitting facility;

(II) the size and nature of the proposed major emitting facility;

(III) the degree of continuous emission reduction that could be achieved by the major emitting facility; and

(IV) such other factors as may be relevant in determining the effect of emissions from a proposed major emitting facility on any air quality control region;

(iii) shall require that the results of the analysis be available at the time of the public hearing on the application for the permit; and

(iv) shall specify with reasonable particularity each air quality model to be used under specified sets of conditions for purposes of this chapter.

(4) ADJUSTMENT OF MODELS.—Any model or models designated under the regulations may be adjusted based on a determination, after notice and opportunity for public hearing, by the Administrator that an adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this chapter.

**§ 213108. Other pollutants**

(a) HYDROCARBONS, CARBON MONOXIDE, PETROCHEMICAL OXIDANTS, AND NITROGEN OXIDES.—In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and promulgate regulations to prevent the significant deterioration of air quality that would result from the emissions of those pollutants. In the case of pollutants for which NAAQSes are promulgated after August 7, 1977, the Administrator shall promulgate such regulations not more than 2 years after the date of promulgation of the NAAQSes.

(b) EFFECTIVE DATE OF REGULATIONS.—Regulations under subsection (a) shall become effective 1 year after the date of promulgation.

(c) STATE IMPLEMENTATION PLAN PROVISIONS.—A State implementation plan shall contain provisions to conform the regulations under subsection (a), which provisions shall be submitted to the Administrator, who shall approve or disapprove the provisions within 25 months after the date of promulgation of the regulations in the same manner as is required under section 211110 of this title.

(d) CONTENTS OF REGULATIONS.—The regulations shall—

(1) provide—

(A) specific numerical measures against which permit applications may be evaluated;

(B) a framework for stimulating improved control technology; and

(C) protection of air quality values; and

(2) fulfill the goals and purposes set forth in sections 211101 and 213101 of this title.

(e) SPECIFIC MEASURES TO FULFILL GOALS AND PURPOSES.—The regulations—

(1) shall provide specific measures at least as effective as the increments established in section 213105 of this title to fulfill the goals and purposes set forth in sections 211101 and 213101 of this title; and

(2) may contain air quality increments, emission density requirements, or other measures.

(f) AREA CLASSIFICATION PLAN NOT REQUIRED.—

(1) IN GENERAL.—With respect to any air pollutant (other than a sulfur oxide or particulate matter) for which a NAAQS is established, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 211110(c) of this title contains other provisions that, when considered as a whole, the Administrator finds will carry out the purposes of section 213101 of this title at least as effectively as an area classification plan for that pollutant.

(2) MAXIMUM ALLOWABLE INCREASES.—The other provisions described in paragraph (1) need not require the establishment of maximum allowable increases with respect to a pollutant for any area to which this section applies.

(g) PM–10 INCREMENTS.—

(1) IN GENERAL.—The Administrator may substitute, for the maximum allowable increases in particulate matter specified in sections 213105(b) and 213107(d)(2)(C)(iii)(II) of this title, maximum allowable increases in particulate matter with an aerodynamic diameter smaller than or equal to 10 micrometers.

(2) STRINGENCY.—Such substituted maximum allowable increases shall be of equal stringency in effect as those specified in the provisions for which they are substituted.

### § 213109. Enforcement

The Administrator shall, and a State may, take such measures, including issuance of an order or seeking injunctive relief, as are necessary to prevent the construction or modification of a major emitting facility that—

(1) does not conform to the requirements of this chapter; or

(2)(A) is proposed to be constructed in any area designated pursuant to section 211107(d) of this title as attainment or unclassifiable; and

(B) is not subject to an implementation plan that meets the requirements of this chapter.

## Subchapter II—Visibility Protection

### § 213201. Visibility protection for mandatory class I Federal areas

(a) DEFINITIONS.—In this section:

(1) AS EXPEDITIOUSLY AS PRACTICABLE.—The term ''as expeditiously as practicable'' means as expeditiously as practicable but in no event later than 5 years after the date of approval of a plan revision

under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 211110(c) of this title for purposes of this section).

(2) BEST AVAILABLE RETROFIT TECHNOLOGY.—The term ''best available retrofit technology'', with respect to a source, means retrofit technology that a State (or the Administrator in determining emission limitations that reflect such technology) determines is the best available after taking into consideration—

(A) the costs of compliance;

(B) the energy and non-air-quality environmental impacts of compliance;

(C) any existing pollution control technology in use at the source;

(D) the remaining useful life of the source; and

(E) the degree of improvement in visibility that may reasonably be anticipated to result from the use of the technology.

(3) IMPAIRMENT OF VISIBILITY.—The term ''impairment of visibility'' includes reduction in visual range and atmospheric discoloration.

(4) MAJOR STATIONARY SOURCE.—The term ''major stationary source'' means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant:

(A) Fossil fuel-fired steam electric plants of more than 250,000,000 British thermal units per hour heat input.

(B) Coal cleaning plants (thermal dryers).

(C) Kraft pulp mills.

(D) Portland cement plants.

(E) Primary zinc smelters.

(F) Iron and steel mill plants.

(G) Primary aluminum ore reduction plants.

(H) Primary copper smelters.

(I) Municipal incinerators capable of charging more than 250 tons of refuse per day.

(J) Hydrofluoric, sulfuric, and nitric acid plants.

(K) Petroleum refineries.

(L) Lime plants.

(M) Phosphate rock processing plants.

(N) Coke oven batteries.

(O) Sulfur recovery plants.

(P) Carbon black plants (furnace process).

(Q) Primary lead smelters.

(R) Fuel conversion plants.

(S) Sintering plants.

(T) Secondary metal production facilities.

(U) Chemical process plants.

(V) Fossil-fuel boilers of more than 250,000,000 British thermal units per hour heat input.

(W) Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.

(X) Taconite ore processing facilities.

(Y) Glass fiber processing plants.

(Z) Charcoal production facilities.

(5) MANDATORY CLASS I FEDERAL AREA.—The term ''mandatory class I Federal area'' means a Federal area that may not be designated as other than class I under this chapter.

(6) MANMADE AIR POLLUTION.—The term ''manmade air pollution'' means air pollution that results directly or indirectly from human activity.

(7) REASONABLE PROGRESS.—The term ''reasonable progress'', with respect to a source, means progress that is determined to be reasonable after taking into consideration—

(A) the costs of compliance;

(B) the time necessary for compliance;

(C) the energy and non-air-quality environmental impacts of compliance; and

(D) the remaining useful life of the source.

(b) PREVENTION OF FUTURE AND REMEDYING OF EXISTING IMPAIRMENT OF VISIBILITY.—

(1) NATIONAL GOAL.—Congress declares as a national goal the prevention of any future impairment of visibility, and the remedying of any existing impairment of visibility, in mandatory class I Federal areas that results from manmade air pollution.

(2) IDENTIFICATION OF AREAS WHERE VISIBILITY IS AN IMPORTANT VALUE.—The Secretary of the Interior, in consultation with other Federal land managers, shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise the identifications. The Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which the Secretary of the Interior determines that visibility is an important value.

(3) REPORT.—

(A) IN GENERAL.—The Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1).

(B) CONTENTS OF REPORT.—The report shall—

(i) include recommendations for—

(I) methods for identifying, characterizing, determining, quantifying, and measuring impairment of visibility in mandatory class I Federal areas;

(II) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to impairment of visibility; and

(III) methods for preventing and remedying such manmade air pollution and resulting impairment of visibility; and

(ii) identify the classes or categories of sources and the types of air pollutants that, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(c) REGULATIONS.—

(1) IN GENERAL.—After notice and public hearing, the Administrator shall promulgate regulations to ensure—

(A) reasonable progress toward meeting the national goal specified in subsection (b)(1); and

(B) compliance with the requirements of this section.

(2) CONTENTS.—Regulations under paragraph (1) shall—

(A) provide guidelines to the States, taking into account the recommendations under subsection (b)(3) on appropriate techniques and methods for implementing this section (as provided in subclauses (I) through (III) of subsection (b)(3)(B)(i)); and

(B) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (b)(2) is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory class I Federal area) to contain such emission limitations, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (b)(1), including—

(i) except as otherwise provided pursuant to subsection (d), a requirement that each major stationary source that was in existence on August 7, 1977, but which had not been in oper-

ation for more than 15 years as of that date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 211110(c) of this title) emits any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory class I Federal area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 211110(c) of this title) for controlling emissions from the source for the purpose of eliminating or reducing any impairment of visibility; and

(ii) a long-term (10- to 15-year) strategy for making reasonable progress toward meeting the national goal specified in subsection (b)(1).

(3) CERTAIN FOSSIL FUEL-FIRED GENERATING POWERPLANTS.—In the case of a fossil fuel-fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this subsection shall be determined pursuant to guidelines promulgated by the Administrator under paragraph (2)(A).

(d) EXEMPTIONS.—

(1) IN GENERAL.—The Administrator may, by regulation, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (c)(2)(B)(i), on a determination by the Administrator that the source does not or will not, by itself or in combination with other sources, emit any air pollutant that may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) CERTAIN FOSSIL FUEL-FIRED POWERPLANTS.—Paragraph (1) does not apply to any fossil fuel-fired powerplant with total design capacity of 750 megawatts or more unless the owner or operator of the powerplant demonstrates to the satisfaction of the Administrator that the powerplant is located at such a distance from all mandatory class I Federal areas listed by the Administrator under subsection (b)(2) that the powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant that may reasonably be anticipated to cause or contribute to significant impairment of visibility in any mandatory class I Federal area.

(3) CONCURRENCE.—An exemption under this subsection shall be effective only on concurrence by the appropriate Federal land manager

or Federal land managers with the Administrator's determination under this subsection.

(e) CONSULTATION WITH APPROPRIATE FEDERAL LAND MANAGERS.—Before holding a public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 211110(c) of this title) shall—

(1) consult in person with the appropriate Federal land manager or Federal land managers; and

(2) include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(f) BUFFER ZONES.—In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

(g) NONDISCRETIONARY DUTY.—For purposes of section 203104(b)(2) of this title, the meeting of the national goal specified in subsection (b)(1) by any specific date or dates shall not be considered to be a nondiscretionary duty of the Administrator.

**§ 213202. Visibility**

(a) STUDIES.—

(1) RESEARCH.—

(A) IN GENERAL.—The Administrator, in conjunction with the National Park Service and other appropriate Federal agencies, shall conduct research to identify and evaluate—

(i) sources and source regions of visibility impairment in class I areas; and

(ii) regions that provide predominantly clean air in class I areas.

(B) INCLUSIONS.—The research shall include—

(i) expansion of current visibility-related monitoring in class I areas;

(ii) assessment of current sources of visibility-impairing pollution and clean air corridors;

(iii) adaptation of regional air quality models for the assessment of visibility; and

(iv) studies of atmospheric chemistry and physics of visibility.

(2) ASSESSMENT AND EVALUATION.—Based on the findings available from the research required in paragraph (1), other available scientific and technical data, studies, and other available information pertaining to visibility source-receptor relationships, the Administrator shall con-

duct an assessment and evaluation that identifies, to the extent possible, sources and source regions of visibility impairment including natural sources and source regions of clear air for class I areas.

(b) IMPACTS OF OTHER PROVISIONS.—Every 5 years, the Administrator shall conduct an assessment of actual progress and improvement in visibility in class I areas. The Administrator shall prepare a written report on each assessment and transmit copies of the reports to the appropriate committees of Congress.

(c) VISIBILITY TRANSPORT COMMISSIONS.—

(1) VISIBILITY TRANSPORT REGIONS.—

(A) ESTABLISHMENT.—When, on the Administrator's motion or by petition from the Governors of at least 2 affected States, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from 1 or more States contributes significantly to visibility impairment in class I areas located in the affected States, the Administrator may establish a visibility transport region for such pollutants that includes those States.

(B) ADDITION AND REMOVAL OF STATES.—The Administrator, on the Administrator's own motion, on petition from the Governor of any affected State, or on the recommendations of a visibility transport commission established under paragraph (2), may—

(i) add any State or portion of a State to a visibility transport region when the Administrator determines that the interstate transport of air pollutants from that State significantly contributes to visibility impairment in a class I area located within the visibility transport region; or

(ii) remove any State or portion of a State from a visibility transport region when the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the protection or enhancement of visibility in any class I area in the visibility transport region.

(2) VISIBILITY TRANSPORT COMMISSIONS.—

(A) ESTABLISHMENT.—When the Administrator establishes a visibility transport region under paragraph (1), the Administrator shall establish a visibility transport commission comprised of (as a minimum) each of the following members:

(i) The Governor of each State in the visibility transport region, or the Governor's designee.

(ii) The Administrator, or the Administrator's designee.

(iii) A representative of each Federal agency charged with the direct management of each class I area within the visibility transport region.

(B) VOTING.—Decisions of, and recommendations and requests to the Administrator, by a visibility transport commission may be made only by a majority vote of all members other than the Administrator and the Federal agency representatives (or designees).

(C) FEDERAL ADVISORY COMMITTEE ACT.—A visibility transport commission shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(d) DUTIES.—

(1) IN GENERAL.—A visibility transport commission—

(A) shall assess the scientific and technical data, studies, and other currently available information, including studies conducted pursuant to subsection (a)(1), pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the visibility transport region; and

(B) shall, within 4 years after establishment of the visibility transport commission, issue a report to the Administrator recommending what measures, if any, should be taken under this division to remedy the adverse impacts.

(2) MEASURES TO BE ADDRESSED.—A report under paragraph (1)(B) shall address at least the following measures:

(A) The establishment of clean air corridors in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected class I areas.

(B) The imposition of the requirements of chapter 215 affecting the construction of new major stationary sources or major modifications to existing sources in such clean air corridors specifically including the alternative siting analysis provisions of section 215103(a)(1)(E) of this title.

(C) The promulgation of regulations under section 213201 of this title to address long range strategies for addressing regional haze that impairs visibility in affected class I areas.

(e) DUTIES OF ADMINISTRATOR.—

(1) IN GENERAL.—The Administrator shall, taking into account the studies pursuant to subsection (a)(1) and the reports pursuant to subsection (d) and any other relevant information, within 18 months after receipt of the report described in subsection (d), carry out the Administrator's regulatory responsibilities under section 213201 of this title,

including criteria for measuring reasonable progress toward the national goal.

(2) REGULATIONS.—Any regulations promulgated under section 213201 of this title pursuant to this subsection shall require affected States to revise within 12 months their implementation plans under section 211110 of this title to contain such emission limitations, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

(f) GRAND CANYON VISIBILITY TRANSPORT COMMISSION.—The Administrator pursuant to subsection (c) shall establish a visibility transport commission for the region affecting visibility in Grand Canyon National Park.

# Chapter 215—Plan Requirements for Nonattainment Areas



# Subchapter I—Nonattainment Areas In General

## § 215101. Definitions

In this chapter:

(1) LOWEST ACHIEVABLE EMISSION RATE.—

(A) IN GENERAL.—The term ''lowest achievable emission rate'', with respect to a source, means the rate of emissions that reflects the more stringent of—

(i) the most stringent emission limitation that is contained in the implementation plan of any State for that class or category of source, unless the owner or operator of the proposed source demonstrates that such an emission limitation is not achievable; or

(ii) the most stringent emission limitation that is achieved in practice by that class or category of source.

(B) EFFECT OF APPLICATION OF TERM.—In no event shall the application of the term ''lowest achievable emission rate'' permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(2) MODIFY.—

(A) IN GENERAL.—The term ''modify'', with respect to a stationary source, means to make or undergo any physical change in, or change in the method of operation of, the stationary source that—

(i) increases the amount of any air pollutant emitted by the stationary source; or

(ii) results in the emission of any air pollutant not previously emitted.

(B) CONVERSION TO COAL.—A conversion to coal by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792(a)) or any enactment that supersedes that Act shall not be considered to be a modification for purposes of subparagraph (A).

(3) NONATTAINMENT AREA.—The term ''nonattainment area'' means, for any air pollutant, an area that is designated nonattainment with respect to that air pollutant within the meaning of section 211107(d) of this title.

(4) REASONABLE FURTHER PROGRESS.—The term ''reasonable further progress'' means such annual incremental reductions in emissions of an air pollutant as are required by this chapter or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

**§ 215102. Nonattainment plan provisions in general**

(a) CLASSIFICATIONS AND ATTAINMENT DATES.—

(1) CLASSIFICATIONS.—

(A) IN GENERAL.—On or after the date on which the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 211107(d) of this title with respect to any NAAQS (or any revised standard), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in the area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of the standard in that area.

(B) PROCEDURE.—The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except that the Administrator shall provide an opportunity for at least 30 days for written comment. A classification shall not be subject to sections 553 to 557 of title 5 and shall not be subject to judicial review until the Administrator takes final action under subsection (i) or (j) of section 211110 or section 215111 of this title with respect to any plan submissions required by virtue of the classification.

(C) NONAPPLICABILITY.—This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this chapter.

(2) ATTAINMENT DATES FOR NONATTAINMENT AREAS.—

(A) PRIMARY NAAQSES.—The attainment date for an area designated nonattainment with respect to a primary NAAQS shall be the date by which attainment can be achieved as expeditiously as practicable, but not later than 5 years after the date on which the area was designated nonattainment under section 211107(d) of this title, except that the Administrator may extend the attainment date to the extent that the Administrator determines to be appropriate, for a period not longer than 10 years after the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) SECONDARY NAAQSES.—The attainment date for an area designated nonattainment with respect to a secondary NAAQS shall be the date by which attainment can be achieved as expeditiously as practicable after the date on which the area was designated nonattainment under section 211107(d) of this title.

(C) EXTENSION.—

(i) IN GENERAL.—On application by any State, the Administrator may extend for 1 additional year (referred to in this subparagraph as the ''extension year'') the attainment date determined by the Administrator under subparagraph (A) or (B) if—

(I) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(II) in accordance with guidance published by the Administrator, not more than a minimal number of exceedances of the relevant NAAQS has occurred in the area in the year preceding the extension year.

(ii) LIMITATION.—Not more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) NONAPPLICABILITY.—This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this chapter.

(b) SCHEDULE FOR PLAN SUBMISSIONS.—At the time at which the Administrator promulgates the designation of an area as nonattainment with respect to a NAAQS under section 211107(d) of this title, the Administrator shall establish a schedule according to which the State containing the area shall submit a plan or plan provision (including plan items) meeting the applicable requirements of subsection (c) and section 211110(a)(3) of this title. The schedule shall, at a minimum, include a date or dates, extending not later than 3 years after the date of the nonattainment designation, for the submission of a plan or plan provision (including plan items) meeting the applicable requirements of subsection (c) and section 211110(a)(3) of this title.

(c) NONATTAINMENT PLAN PROVISIONS.—

(1) IN GENERAL.—The plan provisions (including plan items) shall provide for—

(A) implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology); and

(B) attainment of the primary NAAQSes.

(2) REASONABLE FURTHER PROGRESS.—The plan provisions (including plan items) shall require reasonable further progress.

(3) INVENTORY.—The plan provisions (including plan items) shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area, including such periodic revisions as the Administrator may determine to be necessary to ensure that the requirements of this chapter are met.

(4) IDENTIFICATION AND QUANTIFICATION.—The plan provisions (including plan items) shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants that will be allowed, in accordance with section 215103(a)(1)(A)(ii) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable NAAQS by the applicable attainment date.

(5) PERMITS FOR NEW AND MODIFIED MAJOR STATIONARY SOURCES.—The plan provisions (including plan items) shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 215103 of this title.

(6) OTHER MEASURES.—The plan provisions (including plan items) shall include enforceable emission limitations and such other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights) and schedules and timetables for compliance as may be necessary or appropriate to provide for attainment of the standard in the area by the applicable attainment date specified in this chapter.

(7) COMPLIANCE WITH SECTION 211110(a)(3).—The plan provisions (including plan items) shall meet the applicable provisions of section 211110(a)(3) of this title.

(8) EQUIVALENT TECHNIQUES.—On application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) CONTINGENCY MEASURES.—The plan (including plan items) shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress or to attain the primary NAAQS by the attainment date applicable under this chapter. The measures shall be included in the plan as contingency

measures to take effect in any such case without further action by the State or the Administrator.

(d) PLAN PROVISIONS REQUIRED IN RESPONSE TO FINDING OF PLAN INADEQUACY.—

(1) IN GENERAL.—Any plan provision for a nonattainment area that is required to be submitted in response to a finding by the Administrator pursuant to section 211110(i)(5) of this title shall—

(A) correct the plan deficiency (or deficiencies) specified by the Administrator; and

(B) meet all other applicable plan requirements of section 211110 of this title and this chapter.

(2) ADJUSTMENT OF DATES.—The Administrator may reasonably adjust the dates otherwise applicable under those requirements to the provision (except for attainment dates that have not yet elapsed) to the extent necessary to achieve a consistent application of the requirements.

(3) GUIDELINES, INTERPRETATIONS, AND INFORMATION.—

(A) IN GENERAL.—In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this division, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(B) PUBLIC AVAILABILITY.—Guidelines, interpretations, and information issued under subparagraph (A) shall be available to the public.

(e) FUTURE MODIFICATION OF STANDARD.—If the Administrator relaxes a primary NAAQS, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas that have not attained that standard as of the date of the relaxation. The requirements shall provide for controls that are not less stringent than the controls applicable to areas designated nonattainment before the relaxation.

**§ 215103. Permit requirements**

(a) IN GENERAL.—

(1) IN GENERAL.—The permit program required by section 215102(c)(5) of this title shall provide that permits to construct and operate may be issued if—

(A) in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation

plan approved under section 211110 of this title and this chapter, the permitting agency determines that—

(i) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources that are not major emitting facilities and from the proposed source, will be sufficiently less than total emissions from existing sources (as determined in accordance with the regulations under this subparagraph) prior to the application for the permit to construct or modify so as to represent (when considered together with the plan provisions required under section 215102 of this title) reasonable further progress; or

(ii) in the case of a new or modified major stationary source that is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of the pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels that exceed the allowance permitted for the pollutant for the area from new or modified major stationary sources under section 215102(c) of this title;

(B) the proposed source is required to comply with the lowest achievable emission rate;

(C) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by the owner or operator (or by any entity controlling, controlled by, or under common control with the owner or operator) in the State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this division;

(D) the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this chapter; and

(E) an analysis of alternative sites, sizes, production processes, and environmental control techniques for the proposed source demonstrates that benefits of the proposed source significantly

outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

(2) FEDERALLY ENFORCEABLE EMISSION REDUCTIONS.—Any emission reductions required as a precondition of the issuance of a permit under paragraph (1)(A) shall be federally enforceable before a permit may be issued.

(b) PROHIBITION OF USE OF OLD GROWTH ALLOWANCES.—Any growth allowance included in an applicable implementation plan to meet the requirements of section 172(b)(5) of the Clean Air Act (42 U.S.C. 7502(b)(5)) (as in effect on November 14, 1990) shall not be valid for use in any area that received a notice under section 110(a)(2)(H)(ii) of the Clean Air Act (42 U.S.C. 7410(a)(2)(H)(ii)) (as in effect on November 14, 1990) or under section 211110(i)(1) of this title that its applicable implementation plan containing the allowance is substantially inadequate.

(c) OFFSETS.—

(1) IN GENERAL.—The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this chapter for increased emissions of any air pollutant only by obtaining emission reductions of the air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain the emission reductions in another nonattainment area if—

(A) the other area has a nonattainment classification that is equal to or higher than that of the area in which the source is located; and

(B) emissions from the other area contribute to a violation of the NAAQS in the nonattainment area in which the source is located.

(2) EMISSION REDUCTION REQUIREMENTS.—Emission reductions required under paragraph (1)—

(A) shall be, by the time a new or modified source commences operation, in effect and enforceable; and

(B) shall ensure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of the air pollutant from the same or other sources in the area.

(3) CREDITABILITY.—Emission reductions otherwise required by this division shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions that are not otherwise required by this division shall be creditable as emission

reductions for such purposes if the emission reductions meet the requirements of paragraph (1).

(d) CONTROL TECHNOLOGY INFORMATION.—A State shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public.

(e) ROCKET ENGINES OR MOTORS.—

(1) IN GENERAL.—The permitting authority of a State shall allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

(A) PURPOSE.—Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that was permitted to test such engines on November 15, 1990.

(B) OFFSETS.—The source demonstrates to the satisfaction of the permitting authority of the State that—

(i) the source has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels;

(ii) all available offsets are being used; and

(iii) sufficient offsets are not available to the source.

(C) NATIONAL SECURITY.—The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration, or other appropriate Federal agency that the testing of rocket motors or engines at the facility is required for a program essential to national security.

(D) ALTERNATIVE MEASURE.—The source will comply with an alternative measure, imposed by the permitting authority, designed to offset any emission increases beyond permitted levels not directly offset by the source.

(2) EMISSION FEE.—In lieu of imposing any alternative offset measures, the permitting authority may impose an emission fee to be paid to the permitting authority, which shall be in an amount not greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous 3 years. The permitting authority shall utilize the fees in a manner that maximizes emission reductions in that area.

**§ 215104. Planning procedures**

(a) IN GENERAL.—

(1) UPDATED OR NEW PLANNING PROCEDURES.—For any ozone, carbon monoxide, or PM–10 nonattainment area, the State containing the area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under section 215203(a)(2) or 215303(a)(2) of this title, jointly review and update as necessary the planning procedures adopted pursuant to section 174(a) of the Clean Air Act (42 U.S.C. 7504(a)) as in effect on November 14, 1990, or develop new planning procedures pursuant to this subsection, as appropriate.

(2) DETERMINATION.—In preparing the procedures, the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State.

(3) PREPARATION.—The implementation plan required by this chapter shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under paragraph (2).

(4) ORGANIZATION.—The organization shall include—

(A) elected officials of local governments in the affected area; and

(B) representatives of—

(i) the State air quality planning agency;

(ii) the State transportation planning agency;

(iii) the metropolitan planning organization designated to conduct the continuing, cooperative, and comprehensive transportation planning process for the area under section 134 of title 23;

(iv) the organization responsible for the air quality maintenance planning process under regulations implementing this division; and

(v) any other organization with responsibilities for developing, submitting, or implementing the plan required by this chapter.

(5) SAME ORGANIZATION.—The organization may be an organization that carried out the functions described in this subsection before November 15, 1990.

(b) COORDINATION.—The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 211108(e) of this title shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, and those planning processes shall take into account the requirements of this chapter.

(c) JOINT PLANNING.—In the case of a nonattainment area that is included within more than 1 State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.

**§ 215105. EPA grants**

(a) PLAN PROVISION DEVELOPMENT COSTS.—The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by a State under section 215104(a) of this title for payment of the reasonable costs of developing a plan provision under this chapter.

(b) GRANT FUNDS.—The amount granted to any organization under subsection (a) shall be 100 percent of any additional costs of developing a plan provision under this chapter for the 1st 2 fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to the organization for transportation or air quality maintenance planning. Grants under this section shall not be used for construction.

**§ 215106. Maintenance plans**

(a) PLAN PROVISION.—A State that submits a request under section 211107(d) of this title for redesignation of a nonattainment area for any air pollutant as an area that has attained the primary NAAQS for that air pollutant shall submit an applicable State implementation plan provision that—

(1) provides for the maintenance of the primary NAAQS for that air pollutant in the area for at least 10 years after the redesignation; and

(2) contains such additional measures, if any, as may be necessary to ensure such maintenance.

(b) SUBSEQUENT PLAN PROVISIONS.—Eight years after redesignation of any area as an attainment area under section 211107(d) of this title, the State shall submit to the Administrator an additional applicable State implementation plan provision for maintaining the primary NAAQS for 10 years after the expiration of the 10-year period described in subsection (a).

(c) NONATTAINMENT REQUIREMENTS APPLICABLE PENDING PLAN APPROVAL.—Until a plan provision under subsection (b) is approved and an area is redesignated as attainment for any area designated as a nonattain-

ment area, the requirements of this chapter shall continue in effect with respect to the area.

(d) CONTINGENCY PROVISIONS.—A plan provision submitted under this section shall contain such contingency provisions as the Administrator considers necessary to ensure that the State will promptly correct any violation of the standard that occurs after the redesignation of the area as an attainment area. The contingency provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned that were contained in the State implementation plan for the area before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the NAAQS concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.

**§ 215107. Limitations on certain Federal assistance**

(a) ACTIVITIES NOT CONFORMING TO APPROVED OR PROMULGATED PLANS.—

(1) LIMITATION.—

(A) IN GENERAL.—No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity that does not conform to an implementation plan after the implementation plan has been approved or promulgated under section 211110 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan that does not conform to an implementation plan approved or promulgated under section 211110 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of a department, agency, or instrumentality.

(B) CONFORMITY.—An activity shall be considered to conform to an implementation plan if the activity—

(i) conforms to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the NAAQSes and achieving expeditious attainment of the NAAQSes; and

(ii) will not—

(I) cause or contribute to any new violation of any NAAQS in any area;

(II) increase the frequency or severity of any existing violation of any NAAQS in any area; or

(III) delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in any area.

(C) BASIS OF DETERMINATION.—The determination of conformity shall be based on the most recent estimates of emissions, and those estimates shall be determined from the most recent population, employment, travel, and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) TRANSPORTATION PLANS AND PROGRAMS.—

(A) IN GENERAL.—Any transportation plan or program developed pursuant to title 23 or chapter 53 of title 49 shall implement the transportation provisions of any applicable implementation plan approved under this division applicable to all or part of the area covered by the transportation plan or program. No Federal agency may approve, accept, or fund any transportation plan, program, or project unless the plan, program, or project has been found to conform to any applicable implementation plan in effect under this division.

(B) PARTICULAR CASES.—In particular—

(i) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23 or chapter 53 of title 49, or be found to be in conformity by a metropolitan planning organization, until a final determination has been made that—

(I) emissions expected from implementation of the plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan; and

(II) the plan or program will conform to the requirements of paragraph (1)(B)(ii);

(ii) no metropolitan planning organization or other recipient of funds under title 23 or chapter 53 of title 49 shall adopt or approve a transportation improvement program of projects until the recipient of funds determines that the program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan; and

(iii) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of

funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if—

(I) the transportation project meets the requirements of subparagraph (C); or

(II)(aa) the transportation project comes from a conforming plan and program;

(bb) the design concept and scope of the transportation project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(cc) the design concept and scope of the transportation project at the time of the conformity determination for the program was adequate to determine emissions.

(C) TREATMENT OF CERTAIN PROJECTS AS CONFORMING.—Any project not described in subparagraph (B)(iii) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from the project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause those plans and programs to exceed the emission reduction projections and schedules assigned to the plans and programs in the applicable implementation plan.

(D) REDETERMINATION OF CONFORMITY.—The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

(3) DEMONSTRATION OF CONFORMITY.—

(A) IN GENERAL.—Until such time as the implementation plan provision described in paragraph (4)(E) is approved, conformity of

plans, programs, and projects described in this paragraph will be demonstrated if—

(i) the transportation plans and programs—

(I) are consistent with the most recent estimates of mobile source emissions;

(II) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(III) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 215203(b)(2) and 215303(a)(8) of this title; and

(ii) the transportation projects—

(I) come from a conforming transportation plan and program as defined in clause (i); and

(II) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

(B) DETERMINATION FOR TRANSPORTATION PROGRAM OR INDIVIDUAL PROJECT.—With regard to subparagraph (A)(ii)(II), the determination may be made as part of the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

(A) IN GENERAL.—The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities described in paragraph (1).

(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and ensuring conformity in the case of transportation plans, programs, and projects.

(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action may be brought against the Administrator and the Secretary of Transportation under section 203104 of this title to compel promulgation of criteria and procedures under subparagraphs (A) and

(B), and a United States district court shall have jurisdiction to order such promulgation.

(D) REQUIREMENTS.—The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before the organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(D); and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—The procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement, and enforceability.

(F) TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS.—Compliance with the regulations of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 or chapter 53 of title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) APPLICABILITY.—This subsection shall apply only with respect to—

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 215106 of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) NONAPPLICABILITY.—Notwithstanding paragraph (5), this subsection shall not apply with respect to an area designated nonattainment under section 211107(d)(1) of this title until 1 year after the area is first designated nonattainment for a specific NAAQS. This paragraph applies only with respect to the NAAQS for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other NAAQSes for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 215106 of this title (including any pre-existing NAAQS for a pollutant for which a new or revised standard has been issued).

(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

(A) DEFINITION OF AIR POLLUTION CONTROL AGENCY.—In this paragraph, the term ''air pollution control agency'' means an air pollution control agency (as defined in section 201101 of this title) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.

(B) IN GENERAL.—Each conformity determination required under this section for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 shall require a demonstration of conformity for—

(i) the period ending on the final year of the transportation plan; or

(ii) at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of the comments, the longest of the following periods:

(I) The 1st 10-year period of the transportation plan.

(II) The period ending on the latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(III) The period ending on the year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires approval before the subsequent conformity determination.

(C) REGIONAL EMISSIONS ANALYSIS.—The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if that year extends beyond the applicable period as determined under subparagraph (B).

(D) EXCEPTION.—In any case in which an area has an implementation plan provision under section 215106(b) of this title and the Administrator finds the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or approves the provision, the demonstration of conformity, at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 215106(b) of this title.

(E) EFFECT OF ELECTION.—Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

(8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures if—

(i) the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) the substitute control measures are implemented—

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) the substitute and additional control measures are accompanied by evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) the substitute and additional control measures are developed through a collaborative process that includes—

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) consultation with the Administrator; and

(III) reasonable public notice and opportunity for comment; and

(v) the metropolitan planning organization, the State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) ADOPTION.—

(i) EFFECT OF CONCURRENCE.—Concurrence by the metropolitan planning organization, the State air pollution control agency, and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of clauses (i), (ii), (iii) and (iv) of subparagraph (A) are met.

(ii) STATE IMPLEMENTATION PLAN; FEDERAL ENFORCEABILITY.—Once adopted, the substitute or additional control measures become, by operation of law, part of the State implementation plan and become federally enforceable.

(iii) SUBMITTAL.—Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan.

(iv) NO ADDITIONAL PROCESS.—Notwithstanding any other provision of this division, no additional State process shall be necessary to support such an applicable plan provision.

(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph and the funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(9) LAPSE OF CONFORMITY.—

(A) IN GENERAL.—A transportation plan shall lapse if—

(i) a conformity determination required under this subsection for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49, or a transportation improvement program under section 134(j) of title 23 or under section 5303(j) of title 49 is not made by the applicable deadline; and

(ii) the failure to make a conformity determination is not corrected by—

(I) additional measures to reduce motor vehicle emissions sufficient to demonstrate compliance with the requirements of this subsection within 12 months after the deadline; or

(II) other measures sufficient to correct the failures.

(B) EFFECT OF LAPSE.—If a transportation plan lapses under subparagraph (A)—

(i) the conformity determination for the transportation plan or transportation improvement program expires; and

(ii) there is no currently conforming transportation plan or transportation improvement program.

(b) PRIORITY OF ACHIEVING AND MAINTAINING PRIMARY NAAQSES.—Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air quality-related transportation consequences shall give priority in the exercise of that authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of the portions of plans prepared under this section to achieve and maintain the primary NAAQS. The authority to which this subsection extends includes authority exercised under chapter 53 of title 49, title 23, the Housing and Urban Development Act of 1965 (79 Stat. 451), the Housing and Urban Development Act of 1968 (82 Stat. 476), the Housing and Urban Development Act of 1969 (83 Stat. 379), and the Housing and Urban Development Act of 1970 (84 Stat. 1770).

**§ 215108. Interstate transport commissions**

(a) INTERSTATE TRANSPORT REGIONS.—

(1) ESTABLISHMENT.—When, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from 1 or more States contributes significantly to a violation of a NAAQS in 1 or more other States, the Administrator may establish, by regulation, an interstate transport region for the pollutant that includes those States.

(2) ADDITION AND REMOVAL OF STATES.—The Administrator, on the Administrator's own motion, on petition from the Governor of any State, or on the recommendation of an interstate transport commission established under subsection (b), may—

(A) add any State or portion of a State to an interstate transport region established under this subsection when the Administrator has reason to believe that the interstate transport of air pollutants from that State significantly contributes to a violation of the NAAQS in the interstate transport region; or

(B) remove any State or portion of a State from an interstate transport region when the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the NAAQS in any area in the interstate transport region.

(3) PROCEDURE.—

(A) APPROVAL OR DISAPPROVAL.—The Administrator shall approve or disapprove a petition or recommendation under subparagraph (A) or (B) of paragraph (2) within 18 months after its receipt.

(B) PUBLIC PARTICIPATION.—The Administrator shall establish appropriate proceedings for public participation regarding motions, petitions, and recommendations under subparagraphs (A) and (B) of paragraph (2), including notice and comment.

(b) INTERSTATE TRANSPORT COMMISSIONS.—

(1) ESTABLISHMENT.—When the Administrator establishes an interstate transport region under subsection (a), the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the interstate transport region or the Governor's designee.

(B) The Administrator, or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each EPA region affected by the interstate transport region.

(D) An air pollution control official representing each State in the interstate transport region, appointed by the Governor.

(2) VOTING.—Decisions of, and recommendations and requests to the Administrator, by an interstate transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees).

(3) RECOMMENDATIONS.—An interstate transport commission shall—

(A) assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the interstate transport region;

(B) assess strategies for mitigating the interstate pollution; and

(C) recommend to the Administrator such measures as the interstate transport commission determines to be necessary to ensure that the implementation plans for the States in the interstate transport region meet the requirements of section 211110(a)(3)(D) of this title.

(4) FEDERAL ADVISORY COMMITTEE ACT.—An interstate transport commission shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

(c) COMMISSION REQUESTS.—

(1) REQUEST.—An interstate transport commission may request the Administrator to issue a finding under section 211110(i)(5) of this title that the implementation plan for 1 or more of the States in the interstate transport region is substantially inadequate to meet the requirements of section 211110(a)(3)(D) of this title.

(2) PUBLIC PARTICIPATION; SPECIFIC RECOMMENDATIONS.—In acting on a request under paragraph (1), the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission.

(3) APPROVAL OR DISAPPROVAL.—The Administrator shall approve, disapprove, or partially approve and partially disapprove a request under paragraph (1) within 18 months after its receipt and, to the extent that the Administrator approves the request, issue the finding under section 211110(i)(5) of this title at the time of approval. Approval or disapproval of a request shall constitute final agency action within the meaning of section 203102(b) of this title.

**§ 215109. New motor vehicle emission standards in nonattainment areas**

(a) IN GENERAL.—Notwithstanding section 221109(a) of this title, any State that has implementation plan provisions approved under this chapter may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are described in section 221109(a) of this title respecting such vehicles if—

(1) the standards are identical to the California standards for which a waiver has been granted for that model year; and

(2) California and that State adopt the standards at least 2 years before commencement of the model year (as determined by regulations of the Administrator).

(b) EFFECT OF SECTION.—Nothing in this section or in subdivision 3 shall be construed as authorizing any State described in subsection (a) to—

(1) prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards; or

(2) take any action to create, or have the effect of creating, a motor vehicle or motor vehicle engine different from a motor vehicle or engine certified in California under California standards (referred to in this section as a ''3d vehicle'') or otherwise create a 3d vehicle.

**§ 215110. Guidance documents respecting the lowest achievable emission rate**

(a) IN GENERAL.—The Administrator shall issue guidance documents under section 211108 of this title for purposes of assisting States in implementing requirements of this chapter respecting the lowest achievable emission rate.

(b) REVISION.—The guidance documents shall be revised at least every 2 years.

**§ 215111. Sanctions and consequences of failure to attain**

(a) STATE FAILURE.—

(1) IN GENERAL.—Except as provided in paragraph (2), for any implementation plan or plan revision required under this chapter (or required in response to a finding of substantial inadequacy as described in section 211110(i)(5) of this title), if the Administrator—

(A) finds that a State has failed, for an area designated nonattainment under section 211107(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this division applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 211110(i) of this title;

(B) disapproves a submission under section 211110(i) of this title for an area designated nonattainment under section 211107 of this title, based on the submission's failure to meet 1 or more of the elements required by the provisions of this division applicable to such an area;

(C)(i) determines that a State has failed to make any submission as required under this division (other than a submission described under subparagraph (A) or (B)), including an adequate maintenance plan that satisfies the minimum criteria established in relation to the submission under section 211110(i)(1)(A) of this title; or

(ii) disapproves in whole or in part a submission under section 211110(i)(1)(A) of this title; or

(D) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented;

unless the deficiency is corrected within 18 months after the finding, disapproval, or determination under subparagraph (A), (B), (C), or (D), 1 of the sanctions described in subsection (b) shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance.

(2) LACK OF GOOD FAITH.—If the Administrator finds a lack of good faith, sanctions under both paragraphs (2) and (3) of subsection (b) shall apply until the Administrator determines that the State has come into compliance.

(3) DEFICIENCY NOT CORRECTED WITHIN 6 MONTHS.—If the Administrator has selected 1 of the sanctions under subsection (b) and the deficiency is not corrected within 6 months thereafter, sanctions under both paragraphs (2) and (3) of subsection (b) shall apply until the Administrator determines that the State has come into compliance.

(4) WITHHOLDING OF GRANT.—In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of a grant for support of air pollution planning and control programs that the Administrator may award under section 211105 of this title.

(b) SANCTIONS.—

(1) IN GENERAL.—The sanctions available to the Administrator under subsection (a) are as provided in this subsection.

(2) HIGHWAY SANCTIONS.—

(A) IN GENERAL.—The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants under title 23, other than a project or grant for—

(i) safety, if the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents;

(ii) capital programs for public transit;

(iii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(iv) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(v) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(viii) programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(ix) such other transportation-related programs as the Administrator, in consultation with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

(B) CONSIDERATIONS.—In considering measures described in clauses (ii) through (ix) of subparagraph (A), a State should seek to ensure adequate access to downtown, other commercial, and residential areas and avoid increasing or relocating emissions and congestion.

(C) EFFECTIVE DATE.—A prohibition under subparagraph (A) shall become effective on the selection by the Administrator of the sanction.

(3) OFFSETS.—In applying the emissions offset requirements of section 215103 of this title to new or modified sources or emissions units for which a permit is required under this chapter, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) NOTICE OF FAILURE TO ATTAIN.—

(1) DETERMINATION.—As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after that date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) NOTICE.—On making a determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing the determination and identifying each area that the Administrator determined to have failed to attain.

(3) REVISION OR SUPPLEMENTATION.—The Administrator may revise or supplement a determination under paragraph (1) at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) CONSEQUENCES FOR FAILURE TO ATTAIN.—

(1) REVISION OF IMPLEMENTATION PLAN.—Within 1 year after the Administrator publishes a notice under subsection (c)(2), each State

containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2).

(2) REQUIREMENTS.—A revision required under paragraph (1) shall—

(A) meet the requirements of sections 211110 and 215102 of this title; and

(B) include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and other air quality-related and non-air-quality-related health and environmental impacts.

(3) ATTAINMENT DATE.—The attainment date applicable to a revision required under paragraph (1) shall be the same as provided in paragraph (2) of section 215102(a) of this title, except that in applying subparagraph (A) of that paragraph the phrase ''after the date of the notice under section 215111(c)(2) of this title'' shall be substituted for the phrase ''after the date on which the area was designated nonattainment under section 211107(d) of this title'' and for the phrase ''after the date of designation as nonattainment''.

**§ 215112. International border areas**

(a) IMPLEMENTATION PLANS AND REVISIONS.—Notwithstanding any other provision of law, an implementation plan or plan revision required under this division shall be approved by the Administrator if—

(1) the implementation plan or revision meets all the requirements applicable to it under this division other than a requirement that the implementation plan or revision demonstrate attainment and maintenance of the relevant NAAQSes by the attainment date specified under the applicable provision of this division (including a regulation promulgated under that provision); and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan would be adequate to attain and maintain the relevant NAAQSes by the attainment date specified under the applicable provision of this division (including a regulation promulgated under that provision) but for emissions emanating from outside the United States.

(b) ATTAINMENT OF OZONE LEVELS.—Notwithstanding any other provision of law, a State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in the State, the State would have attained the NAAQS for ozone by the applicable attainment date but for emissions emanating from outside the United States, shall not

be subject to paragraph (2) or (5) of section 215202(a) or section 215206 of this title.

(c) ATTAINMENT OF CARBON MONOXIDE LEVELS.—Notwithstanding any other provision of law, a State that establishes to the satisfaction of the Administrator that, with respect to a carbon monoxide nonattainment area in the State, the State has attained the NAAQS for carbon monoxide by the applicable attainment date but for emissions emanating from outside the United States, shall not be subject to section 215302(b)(2) of this title.

(d) ATTAINMENT OF PM–10 LEVELS.—Notwithstanding any other provision of law, a State that establishes to the satisfaction of the Administrator that, with respect to a PM–10 nonattainment area in the State, the State would have attained the NAAQS for carbon monoxide by the applicable attainment date but for emissions emanating from outside the United States, shall not be subject to section 215402(b)(2) of this title.

# Subchapter II—Additional Provisions for Ozone Nonattainment Areas

## § 215201. Definitions

In this subchapter:

(1) APPLICABLE MILESTONE.—The term ''applicable milestone'' means a reduction in omissions described in section 215203(g)(1) of this title.

(2) EXTREME AREA.—The term ''extreme area'' means an area that is classified as an extreme area under section 215202 of this title.

(3) MARGINAL AREA.—The term ''marginal area'' means an area that is classified as a marginal area under section 215202 of this title.

(4) MODERATE AREA.—The term ''moderate area'' means an area that is classified as a moderate area under section 215202 of this title.

(5) NEXT HIGHER CLASSIFICATION.—The term ''next higher classification'', with respect to a classification related to any set of design values in table 1, means the classification that is related to the next higher set of design values in table 1.

(6) SERIOUS AREA.—The term ''serious area'' means an area that is classified as a serious area under section 215202 of this title.

(7) SEVERE AREA.—The term ''severe area'' means an area that is classified as a severe area under section 215202 of this title.

(8) TABLE 1.—The term ''table 1'' means table 1 in section 215202(a)(1) of this title.

## § 215202. Classifications and attainment dates

(a) CLASSIFICATION AND ATTAINMENT DATES FOR 1989 NONATTAINMENT AREAS.—

(1) IN GENERAL.—Each area designated nonattainment for ozone pursuant to section 211107(d) of this title shall be classified at the time of designation, under table 1, by operation of law, as a marginal area, moderate area, serious area, severe area, or extreme area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be achieved as expeditiously as practicable but not later than the date provided in table 1.

TABLE 1

| Area class | Design value* | Primary standard attainment date** |
|---|---|---|
| Marginal | 0.121 up to 0.138 | 3 years after November 15, 1990 |
| Moderate | 0.138 up to 0.160 | 6 years after November 15, 1990 |
| Serious | 0.160 up to 0.180 | 9 years after November 15, 1990 |
| Severe | 0.180 up to 0.280 | 15 years after November 15, 1990 |
| Extreme | 0.280 and above | 20 years after November 15, 1990 |

*The design value is measured in parts per million (ppm).
**The primary standard attainment date is measured from November 15, 1990.

(2) CERTAIN SEVERE AREAS.—Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 part per million, the attainment date shall be 17 years (in lieu of 15 years) after November 15, 1990.

(3) NOTICE.—At the time of publication of the notice under section 211107(d)(4) of this title for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of the ozone nonattainment area. Section 215102(a)(1)(B) of this title shall apply to such a classification.

(4) ADJUSTMENT.—

(A) IN GENERAL.—If an area classified under paragraph (1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which the classification was based, the Administrator may, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in the other category.

(B) CONSIDERATIONS.—In making an adjustment under subparagraph (A), the Administrator may consider—

(i) the number of exceedances of the primary NAAQS for ozone in the area;

(ii) the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport; and

(iii) the mix of sources and air pollutants in the area.

(5) EXTENSION.—

(A) IN GENERAL.—On application by any State, the Administrator may extend for 1 additional year (referred to in this paragraph as an ''extension year'') the date specified in table 1 if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(ii) not more than 1 exceedance of the NAAQS level for ozone has occurred in the area in the year preceding the extension year.

(B) LIMITATION.—Not more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

(1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is designated attainment or unclassifiable for ozone under section 211107(d)(4) of this title and is subsequently redesignated to nonattainment for ozone under section 211107(d)(3) of this title shall, at the time of redesignation, be classified by operation of law in accordance with table 1. Upon its classification, the area shall be subject to the same requirements under section 211110 of this title, subchapter I, and this subchapter that would have applied had the area been so classified at the time of the notice under subsection (a)(3), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date on which the area is classified under this paragraph.

(2) RECLASSIFICATION ON FAILURE TO ATTAIN.—

(A) DETERMINATION.—Within 6 months following the applicable attainment date (including any extension) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the NAAQS by that date.

(B) RECLASSIFICATION.—Except for any severe area or extreme area, any area that the Administrator finds has not attained the NAAQS by that date shall be reclassified by operation of law in accordance with table 1 to the higher of—

(i) the next higher classification for the area; or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (D).

(C) NO RECLASSIFICATION AS EXTREME AREA.—No area shall be reclassified as an extreme area under subparagraph (B)(ii).

(D) NOTICE.—The Administrator shall publish a notice in the Federal Register, not later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (B).

(3) VOLUNTARY RECLASSIFICATION.—The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) FAILURE OF SEVERE AREA TO ATTAIN STANDARD.—

(A) IN GENERAL.—

(i) SANCTIONS.—If any severe area fails to achieve the primary NAAQS for ozone by the applicable attainment date (including any extension)—

(I) the fee provisions under section 215206 of this title shall apply within the severe area; and

(II)(aa) the percent reduction requirements of section 215203(c)(4)(C) of this title shall continue to apply to the severe area; and

(bb) the State shall demonstrate that the required percent reduction has been achieved in each 3-year interval after such failure until the standard is attained.

(ii) FAILURE TO MAKE DEMONSTRATION.—Any failure to make a demonstration under clause (i)(II)(bb) shall be subject to the sanctions provided under this chapter.

(B) DESIGN VALUE ABOVE 0.140 PART PER MILLION OR FAILURE TO ACHIEVE MILESTONE.—In addition to the requirements of subparagraph (A), if the ozone design value for a severe area described in subparagraph (A) is above 0.140 part per million for the year of the applicable attainment date, or if the severe area has failed to achieve its most recent milestone under section 215203(g) of this title, the new source review requirements applicable under this subchapter in extreme areas shall apply in the severe area, for which purpose the terms ''major source'' and ''major

stationary source'' as applied to the severe area shall have the same meaning as when applied to extreme areas.

(C) ADDITIONAL REQUIREMENTS.—In addition to the requirements of subparagraph (A), in the case of an area described in subparagraph (A) and not described in subparagraph (B), the provisions described in subparagraph (B) shall apply beginning 3 years after the applicable attainment date unless the area has attained the standard by the end of that 3-year period.

(D) MODIFICATION OF METHOD OF DETERMINING COMPLIANCE.—If the Administrator modifies the method of determining compliance with the primary NAAQS, a design value or other indicator comparable to 0.140 part per million in terms of its relationship to the standard shall be used in lieu of 0.140 part per million for purposes of applying subparagraphs (B) and (C).

**§ 215203. Plan provisions**

(a) MARGINAL AREAS.—

(1) IN GENERAL.—Each State in which all or part of a marginal area is located shall, with respect to the marginal area (or portion thereof, to the extent specified in this subsection), include in its applicable implementation plan the provisions (including the plan items) described under this subsection.

(2) INVENTORY.—A State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 215102(c)(3) of this title, in accordance with guidance provided by the Administrator.

(3) CORRECTIONS TO STATE IMPLEMENTATION PLAN.—

(A) IN GENERAL.—Within the periods prescribed in this paragraph, a State shall meet the requirements stated in subparagraphs (B) and (C).

(B) REASONABLY AVAILABLE CONTROL TECHNOLOGY CORRECTIONS.—For any marginal area (or, in the Administrator's discretion, any portion of a marginal area), a State applicable implementation plan shall include, within 6 months after the date of classification under section 215202(a) of this title, such requirements concerning reasonably available control technology as were required under section 172(b) of the Clean Air Act (42 U.S.C. 7502(b)) as in effect on November 14, 1990, as interpreted in guidance issued by the Administrator under section 108 of the Clean Air Act (42 U.S.C. 7408) before November 15, 1990.

(C) VEHICLE INSPECTION AND MAINTENANCE.—

(i) STRINGENCY.—For any marginal area (or, in the Administrator's discretion, any portion of a marginal area), the plan for which includes, or was required by section 172(b)(11)(B) of the Clean Air Act (42 U.S.C. 7502(b)(11)(B)) (as in effect before November 15, 1990) to include, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, a State applicable implementation plan shall include any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of the more stringent of—

(I) the program defined in House Report No. 95–294, 95th Congress, 1st Session, 281–291 (1977), as interpreted in guidance of the Administrator issued pursuant to section 172(b)(11)(B) of the Clean Air Act (42 U.S.C. 7502(b)(11)(B)) (as in effect before November 15, 1990); or

(II) the program previously included in the plan.

(ii) GUIDANCE.—

(I) IN GENERAL.—The Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this division, taking into consideration the Administrator's investigations and audits of the program.

(II) COVERAGE.—The guidance shall, at a minimum, cover—

(aa) the frequency of inspections;

(bb) the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area);

(cc) vehicle maintenance by owners and operators;

(dd) audits by the State;

(ee) the test method and measures, including whether centralized or decentralized;

(ff) inspection methods and procedures;

(gg) quality of inspection;

(hh) components covered;

(ii) assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice; and

(jj) effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling.

(III) FLEXIBILITY.—The guidance, which shall be incorporated in the applicable State implementation plans by the States, shall provide a State with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer.

(IV) SUBMISSION OF REVISION.—Not later than 2 years after the Administrator promulgates regulations under section 221102(l)(3) of this title, a State shall submit a revision to the program to meet any requirements that the Administrator may prescribe under that section.

(D) PERMIT PROGRAMS.—A State applicable implementation plan shall include each of the following:

(i) Provisions to require permits, in accordance with sections 215102(e)(5) and 215103 of this title, for the construction and operation of each new or modified major stationary source (with respect to ozone) to be located in the marginal area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) of the Clean Air Act (42 U.S.C. 7502(b)(6)) (as in effect before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(4) PERIODIC INVENTORY.—

(A) GENERAL REQUIREMENT.—Not later than the end of each 3-year period after submission of the inventory under paragraph (2) until the marginal area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of paragraph (2).

(B) EMISSIONS STATEMENTS.—

(i) IN GENERAL.—At least annually, a State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of nitrogen oxides or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe

(or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of nitrogen oxides and volatile organic compounds from that source. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) WAIVER.—A State may waive the application of clause (i) to any class or category of stationary sources that emit less than 25 tons per year of volatile organic compounds or nitrogen oxides if the State, in its submissions under paragraph (2) or subparagraph (A), provides an inventory of emissions from the class or category of sources based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(5) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this chapter, the ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds shall be at least 1.1 to 1.

(6) SCHEDULE.—The Administrator may require States to submit a schedule for submitting any of the revisions or other items required under this subsection.

(7) APPLICABILITY OF SUBSECTION IN LIEU OF OTHER REQUIREMENTS.—The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any marginal area.

(8) CONTINGENCY MEASURES.—Section 215102(c)(9) of this title shall not apply to a marginal area.

(b) MODERATE AREAS.—

(1) IN GENERAL.—Each State in which all or part of a moderate area is located shall include in its applicable implementation plan the provisions described under this subsection and subsection (a).

(2) PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS.—

(A) DEFINITION OF BASELINE EMISSIONS.—In this paragraph, the term ''baseline emissions'' means the total amount of actual volatile organic compound or nitrogen oxide emissions from all anthropogenic sources in a moderate area during calendar year 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(B) GENERAL RULE.—

(i) PLAN PROVISION.—A State applicable implementation plan shall provide for volatile organic compound emission reductions of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. The plan shall provide for such specific annual reductions in emissions of volatile organic compounds and nitrogen oxides as are necessary to attain the primary NAAQS for ozone by the attainment date applicable under this division.

(ii) PERCENTAGE.—

(I) IN GENERAL.—A percentage of less than 15 percent may be used for purposes of clause (i) in the case of a State that demonstrates to the satisfaction of the Administrator that—

(aa) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as are required under subsection (e) in the case of extreme areas (with the exception that, in applying those provisions, the terms ''major source'' and ''major stationary source'' shall include (in addition to the sources described in section 201101 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(bb) reasonably available control technology is required for all existing major sources (as defined in item (aa)); and

(cc) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in an area, in light of technological achievability.

(II) MEASURES ACHIEVED IN PRACTICE.—To qualify for a lesser percentage under this clause, a State shall demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification.

(iii) APPLICABILITY OF SUBPARAGRAPH.—This subparagraph shall not apply in the case of nitrogen oxides for areas

for which the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of nitrogen oxides would not contribute to attainment.

(C) GENERAL RULE FOR CREDITABILITY OF REDUCTIONS.—Except as provided under subparagraph (D), emission reductions are creditable toward the 15 percent required under subparagraph (B) to the extent that the emission reductions have actually occurred, as of 6 years after November 15, 1990, as a result of the implementation of measures required under the applicable implementation plan, regulations promulgated by the Administrator, or a permit under subdivision 6.

(D) LIMITS ON CREDITABILITY OF REDUCTIONS.—Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (B):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid vapor pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 221111(h) of this title.

(iii) Measures required under subsection (a)(3)(B) concerning corrections to implementation plans prescribed under guidance by the Administrator.

(iv) Measures required under subsection (a)(3)(C) concerning corrections to motor vehicle inspection and maintenance programs.

(3) REASONABLY AVAILABLE CONTROL TECHNOLOGY.—

(A) IN GENERAL.—A State applicable implementation plan shall include provisions to require the implementation of reasonably available control technology under section 215102(c)(1) of this title with respect to each of the following:

(i) Each category of volatile organic compound sources in the area covered by a control technique guidelines document issued by the Administrator between November 15, 1990, and the date of attainment.

(ii) All volatile organic compound sources in the area covered by any control technique guideline issued before November 15, 1990.

(iii) All other major stationary sources of volatile organic compounds that are located in the area.

(B) TIME FOR SUBMISSION.—Each provision described in subparagraph (A)(i) shall be submitted within the period set forth by the Administrator in issuing the relevant control technique guidelines document. The provisions with respect to sources described in clauses (ii) and (iii) of subparagraph (A) shall provide for the implementation of the required measures as expeditiously as practicable.

(4) GASOLINE VAPOR RECOVERY.—

(A) DEFINITION OF ADOPTION DATE.—In this paragraph, the term ''adoption date'' means the date of adoption by a State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(B) GENERAL RULE.—

(i) REQUIREMENT.—A State applicable implementation plan shall require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (C), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(ii) GUIDANCE.—The Administrator shall issue guidance as appropriate as to the effectiveness of the system.

(iii) APPLICABILITY.—This subparagraph shall apply only to facilities that sell more than—

(I) 10,000 gallons of gasoline per month; or

(II) in the case of an independent small business marketer of gasoline (as defined in section 209114 of this title), 50,000 gallons per month.

(C) EFFECTIVE DATE.—The date required under subparagraph (B) shall be—

(i) 6 months after the adoption date, in the case of a gasoline dispensing facility for which construction commences after November 15, 1990;

(ii) 1 year after the adoption date, in the case of a gasoline dispensing facility that dispenses at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date, and is not a facility described in clause (i); or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

(5) MOTOR VEHICLE INSPECTION AND MAINTENANCE.—For all moderate areas, a State applicable implementation plan shall include provi-

sions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(3)(C) (without regard to whether the area was required by section 172(b)(11)(B) of the Clean Air Act (42 U.S.C. 7502(b)(11)(B)) (as in effect before November 15, 1990) to have included a specific schedule for implementation of such a program).

(6) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this chapter, the ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds shall be at least 1.15 to 1.

(c) SERIOUS AREAS.—

(1) IN GENERAL.—Except as otherwise specified in paragraph (6), each State in which all or part of a serious area is located shall, with respect to the serious area (or portion thereof, to the extent specified in this subsection), include in its applicable implementation plan (including the plan items) the provisions described under this subsection and subsection (b) (except that any reference to an attainment date in subsection (b), incorporated by reference in this subsection, shall refer to the attainment date for serious areas).

(2) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any serious area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 201101 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(3) ENHANCED MONITORING.—

(A) REGULATIONS.—To obtain more comprehensive and representative data on ozone air pollution, the Administrator shall promulgate regulations, after notice and public comment, for enhanced monitoring of ozone, nitrogen oxides, and volatile organic compounds. The regulations shall cover the location and maintenance of monitors.

(B) STATE ACTION.—Immediately following the promulgation of regulations by the Administrator relating to enhanced monitoring, a State shall commence such actions as may be necessary to adopt and implement a program based on the regulations to improve monitoring for ambient concentrations of ozone, nitrogen oxides, and volatile organic compounds and to improve monitoring of emissions of nitrogen oxides and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of those air pollutants.

(4) ATTAINMENT DEMONSTRATIONS; REASONABLE FURTHER PROGRESS DEMONSTRATIONS.—

(A) IN GENERAL.—A State applicable implementation plan shall include an attainment demonstration described in subparagraph (B) and a reasonable further progress demonstration described in subparagraph (C).

(B) ATTAINMENT DEMONSTRATION.—A State applicable implementation plan shall include a demonstration that the plan will provide for attainment of the ozone NAAQS by the applicable attainment date. The attainment demonstration shall be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(C) REASONABLE FURTHER PROGRESS DEMONSTRATION.—

(i) VOLATILE ORGANIC COMPOUND CONTROL.—

(I) IN GENERAL.—A State applicable implementation plan shall include a demonstration that the plan will result in volatile organic compound emission reductions from the baseline emissions (as defined in subsection (b)(2)(A)) equal to 1 of the following amounts averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(aa) At least 3 percent of baseline emissions each year.

(bb) An amount less than 3 percent of baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such a lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

(II) LESS THAN 3 PERCENT REDUCTION.—To lessen the 3 percent requirement under subclause (I)(bb), a State shall demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each applicable milestone under subsection (g) and revised to reflect such new measures (if any) achieved in practice by

sources in the same category in any State, allowing a reasonable amount of time to implement the measures.

(III) CALCULATION OF EMISSION REDUCTIONS.—The emission reductions described in this clause shall be calculated in accordance with subparagraphs (C) and (D) of subsection (b)(2). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before that period, calculated in accordance with subsection (b)(2), that exceed the 15-percent amount of reductions required under subsection (b)(2)(B).

(ii) NITROGEN OXIDE CONTROL.—A provision under this subparagraph may contain, in lieu of the volatile organic compound control demonstration described in clause (i), a demonstration to the satisfaction of the Administrator that the applicable implementation plan provides for reductions of emissions of volatile organic compounds and nitrogen oxides (calculated according to the creditability provisions of subparagraphs (C) and (D) of subsection (b)(2)), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of emission reductions required under clause (i). The Administrator shall issue guidance concerning the conditions under which nitrogen oxide control may be substituted for volatile organic compound control or may be combined with volatile organic compound control to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of volatile organic compounds may be accepted as an adequate demonstration for purposes of this subsection.

(5) ENHANCED VEHICLE INSPECTION AND MAINTENANCE PROGRAM.—

(A) REQUIREMENT FOR SUBMISSION.—A State shall include in its applicable implementation plan a provision for an enhanced program to reduce hydrocarbon emissions and nitrogen oxide emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) EFFECTIVE DATE OF STATE PROGRAMS; GUIDANCE.—

(i) IN GENERAL.—The State program required under subparagraph (A) shall comply in all respects with guidance published in the Federal Register (and from time to time revised)

by the Administrator for enhanced vehicle inspection and maintenance programs.

(ii) CONTENTS.—The guidance shall include—

(I) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 221102 of this title; and

(II) program administration features necessary to reasonably ensure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

(iii) COMPLIANCE.—Compliance with the performance standard under clause (ii)(I) shall be determined using a method established by the Administrator.

(C) STATE PROGRAM.—

(i) IN GENERAL.—A State program under subparagraph (A) shall include, at a minimum, each of the following elements:

(I) Computerized emission analyzers, including on-road testing devices.

(II) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 221107(c) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(III) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subdivision 6).

(IV) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990, whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in ensuring that noncomplying vehicles are not operated on public roads).

(V) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program that exceed the requirements of this division, will result in emission reductions that equal or exceed the reductions that can be obtained through annual inspections.

(VI) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(VII) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

(ii) BIENNIAL REPORTS.—Each State shall biennially submit to the Administrator a report that assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(6) CLEAN-FUEL VEHICLE PROGRAMS.—

(A) IN GENERAL.—Except to the extent that substitute provisions are approved by the Administrator under subparagraph (B), a State applicable implementation plan shall include, for each area described under chapter 225 and for each area that opts into the clean fuel-vehicle program as provided in chapter 225, such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under chapter 225, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in chapter 225) economic from the standpoint of vehicle owners.

(B) SUBSTITUTE PROVISIONS.—

(i) IN GENERAL.—The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under chapter 225, any provision of a rel-

evant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under chapter 225, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the provision is to substitute.

(ii) REQUIREMENT FOR APPROVAL.—The Administrator may approve such a provision only if it consists exclusively of provisions other than those required under this division for the area.

(iii) DEADLINE.—Any State seeking approval of such a provision must have submitted the revision to the Administrator within 24 months of November 15, 1990.

(iv) RULEMAKING.—The Administrator shall publish the provision submitted by a State in the Federal Register on receipt. The notice shall constitute a notice of proposed rulemaking on whether to approve the provision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 to 557 of title 5.

(v) NO PROVISION UNDER SUBPARAGRAPH (A).—Where the Administrator approves such a provision for any area, the State need not submit the provision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the provision as a substitute.

(C) FAILURE TO SUBMIT PROGRAM.—If the Administrator determines under section 215111 of this title that a State has failed to submit any portion of the program required under subparagraph (A), in addition to any sanctions available under section 215111 of this title, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in chapter 225.

(7) TRANSPORTATION CONTROL.—

(A) IN GENERAL.—Every 3 years, a State shall submit a demonstration whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment.

(B) EXCEEDANCE.—Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program that includes measures described in section 211108(f) of this title that will reduce emissions to levels that are consistent with emission levels projected in the demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(C) DEVELOPMENT; SCHEDULES.—A revision under subparagraph (B)—

(i) shall be developed in accordance with guidance issued by the Administrator pursuant to section 211108(e) of this title and with the requirements of section 215104(b) of this title; and

(ii) shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(8) DE MINIMIS RULE.—The new source review provisions under this chapter shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the serious area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this division unless the increase in net emissions of volatile organic compounds from the stationary source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years that includes the calendar year in which the increase occurred.

(9) SPECIAL RULE FOR MODIFICATION OF SOURCES EMITTING LESS THAN 100 TONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any major stationary source of volatile organic compounds located in the serious area (other than a source that emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 211111(a)(2) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pol-

lutant emitting activity at the source, the change shall be considered to be a modification for purposes of sections 215102(c)(5) and 215103(a) of this title, but in applying section 215103(a)(1)(B) of this title in the case of any such modification, the best available control technology (as defined in section 213102 of this title) shall be substituted for the lowest achievable emission rate.

(B) ELECTION TO OFFSET.—A change described in subparagraph (A) shall not be considered to be a modification for the purposes described in subparagraph (A) if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

(C) ELECTION NOT MADE.—If the owner or operator does not make the election described in subparagraph (B), the change shall be considered a modification for the purposes described in subparagraph (A), but in applying section 215103(a)(1)(B) of this title in the case of any such modification, the best available control technology, as defined in section 213102 of this title, shall be substituted for the lowest achievable emission rate.

(D) POLICIES AND PROCEDURES.—The Administrator shall establish and publish policies and procedures for implementing this paragraph.

(10) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING 100 TONS OR MORE.—

(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of any major stationary source of volatile organic compounds located in the serious area that emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 211111(a)(2) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, the change shall be considered a modification for purposes of sections 215102(c)(5) and 215103(a) of this title.

(B) ELECTION TO OFFSET.—If the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least

1.3 to 1, the requirements of section 215103(a)(1)(B) of this title shall not apply.

(11) CONTINGENCY PROVISIONS.—In addition to the contingency provisions required under section 215102(c)(9) of this title, the plan revision shall provide for the implementation of specific measures to be undertaken if the serious area fails to meet any applicable milestone. The measures shall be included in the plan provision as contingency measures to take effect without further action by the State or the Administrator on a failure by the State to meet the applicable milestone.

(12) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying the emission offset requirements of this chapter, the ratio of total emission reductions of volatile organic compounds to total increase emissions of an air pollutant shall be at least 1.2 to 1.

(d) SEVERE AREAS.—

(1) IN GENERAL.—Each State in which all or part of a severe area is located shall, with respect to the severe area, include in its applicable implementation plan the provisions (including plan items) described under this subsection and subsection (c) (except that any reference to an attainment date in subsection (b) or (c), incorporated by reference in this subsection, shall refer to the attainment date for severe areas).

(2) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any severe area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 201101 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(3) VEHICLE MILES TRAVELED.—

(A) TRANSPORTATION CONTROL STRATEGIES AND TRANSPORTATION CONTROL MEASURES.—

(i) IN GENERAL.—A State applicable implementation plan shall include a provision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in the severe area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subchapter, to comply with subsections (b)(2) and (c)(4)(C)(i).

(ii) CONSIDERATIONS.—The State shall consider measures specified in section 211108(f) of this title and choose from among and implement those measures as necessary to dem-

onstrate attainment with the NAAQSes. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) PROGRAMS TO REDUCE WORK-RELATED VEHICLE TRIPS AND MILES TRAVELED BY EMPLOYEES.—

(i) IN GENERAL.—The State may include in its applicable implementation plan a provision requiring employers in the severe area to implement programs to reduce work-related vehicle trips and miles traveled by employees.

(ii) GUIDANCE; OCCUPANCY PER VEHICLE.—A provision described in clause (i) shall be developed in accordance with guidance issued by the Administrator pursuant to section 211108(f) of this title and may require that employers in the severe area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates that vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes.

(iii) ALTERNATIVE METHODS.—Any State required to submit a revision under section 182(d)(1)(B) of the Clean Air Act (42 U.S.C. 7511a(d)(1)(B)) (as in effect before December 23, 1995) containing provisions requiring employers to reduce work-related vehicle trips and miles traveled by employees may, in accordance with State law, remove those provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, 1 or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(4) OFFSET REQUIREMENT.—For purposes of satisfying the offset requirements pursuant to this chapter, the ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds shall be at least 1.3 to 1, except that if the State applicable implementation plan requires all existing major sources in the nonattainment area to use best available control technology (as

defined in section 213102 of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(5) ENFORCEMENT UNDER SECTION 215206.—The State shall submit a plan revision that includes the provisions required under section 215206 of this title.

(e) EXTREME AREAS.—

(1) IN GENERAL.—Each State in which all or part of an extreme area is located shall, with respect to the extreme area, include in its applicable implementation plan the provisions (including plan items) described under this subsection and subsection (d) (except that any reference to an attainment date in subsection (b), (c), or (d), incorporated by reference in this subsection, shall refer to the attainment date for extreme areas).

(2) INAPPLICABILITY OF CERTAIN PROVISIONS.—Subsection (b)(2)(B)(ii) and paragraphs (4)(C)(i)(I)(bb), (8), (9), and (10) of subsection (c) shall not apply in the case of an extreme area.

(3) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any extreme area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 201101 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(4) OFFSET REQUIREMENT.—For purposes of satisfying the offset requirements pursuant to this chapter, the ratio of total emission reductions of volatile organic compounds to total increased emissions of volatile organic compounds shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 213102 of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(5) MODIFICATIONS.—

(A) IN GENERAL.—Except as provided in subparagraph (B), any change (as described in section 211111(a)(2) of this title) at a major stationary source that results in any increase in emissions from any discrete operation, unit, or other pollutant-emitting activity at the source shall be considered a modification for purposes of sections 215102(e)(5) and 215103(a) of this title.

(B) ELECTION TO OFFSET.—For purposes of complying with the offset requirement pursuant to section 215103(a)(1)(A) of this title, any change described in subparagraph (A) shall not be considered to be a modification if the owner or operator of the source

elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1.

(C) NONAPPLICABILITY OF OFFSET PROVISIONS.—The offset requirements of this chapter shall not be applicable in extreme areas to a modification of an existing source if the modification consists of installation of equipment required to comply with the applicable implementation plan, a permit, or this division.

(6) USE OF CLEAN FUELS OR ADVANCED CONTROL TECHNOLOGY.—

(A) DEFINITION OF PRIMARY FUEL.—In this paragraph, the term ''primary fuel'' means the fuel that is used by an electric utility or industrial or commercial boiler 90 percent or more of the operating time.

(B) CERTAIN ELECTRIC UTILITIES AND INDUSTRIAL AND COMMERCIAL BOILERS.—For extreme areas, a State applicable implementation plan shall include a provision requiring that each new, modified, and existing electric utility and industrial and commercial boiler that emits more than 25 tons per year of nitrogen oxides—

(i) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low-polluting fuel); or

(ii) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of nitrogen oxides.

(C) APPLICABILITY.—This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 (15 U.S.C. 3361 et seq.)).

(7) TRAFFIC CONTROL MEASURES DURING HEAVY TRAFFIC HOURS.—For extreme areas, a State applicable implementation plan may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high-polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(8) NEW TECHNOLOGIES.—

(A) IN GENERAL.—The Administrator may, in accordance with section 211110 of this title, approve provisions of an implementation plan for an extreme area that anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

(i) such provisions are not necessary to achieve the incremental emission reductions required during the 1st 10 years after November 15, 1990; and

(ii) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth in subparagraph (B) if the anticipated technologies do not achieve planned reductions.

(B) SUBMISSION AND APPROVAL OR DISAPPROVAL OF CONTINGENCY MEASURES.—Contingency measures described in subparagraph (A) shall be submitted to the Administrator not later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 211110 of this title.

(C) ADEQUACY.—The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(2) or (c)(4) and attainment by the applicable dates.

(D) FAILURE TO ACHIEVE EMISSION REDUCTION.—If the Administrator determines that an extreme area has failed to achieve an emission reduction requirement set forth in subsection (b)(2) or (c)(4), and that the failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to ensure compliance with subsections (b)(2) and (c)(4).

(f) NITROGEN OXIDE REQUIREMENTS.—

(1) IN GENERAL.—

(A) APPLICABILITY OF PROVISIONS RELATING TO VOLATILE ORGANIC COMPOUNDS.—The plan provisions required under this subchapter for major stationary sources of volatile organic compounds shall apply to major stationary sources (as defined in section 201101 of this title and subsections (c), (d), and (e)) of nitrogen oxides.

(B) NONAPPLICABILITY OF SUBSECTION.—This subsection shall not apply in the case of nitrogen oxides for—

(i) sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of nitrogen oxides from the sources concerned; or

(ii)(I) nonattainment areas not within an ozone transport region under section 215205 of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of nitrogen oxides would not contribute to attainment of the NAAQS for ozone in the area; or

(II) nonattainment areas within an ozone transport region under section 215205 of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of nitrogen oxides would not produce net ozone air quality benefits in the ozone transport region.

(C) CONSIDERATIONS.—The Administrator shall, in the Administrator's determinations under subparagraph (B), consider the study required under section 215207 of this title.

(2) LIMITATION ON APPLICABILITY.—

(A) IN GENERAL.—If the Administrator determines that excess reductions in emissions of nitrogen oxides would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving the excess reductions.

(B) EXCESS EMISSION REDUCTIONS.—For purposes of this paragraph, excess reductions in emissions of nitrogen oxides are—

(i) emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such emission reductions; or

(ii)(I) for nonattainment areas not within an ozone transport region under section 215205 of this title, emission reductions that the Administrator determines would not contribute to attainment of the NAAQS for ozone in the area; or

(II) for nonattainment areas within an ozone transport region under section 215205 of this title, emission reductions that the Administrator determines would not produce net ozone air quality benefits in the ozone transport region.

(3) PETITION FOR DETERMINATION.—A person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 215205 of this title. The Administrator shall grant or deny such a petition within 6 months after its filing with the Administrator.

(g) APPLICABLE MILESTONES.—

(1) REDUCTIONS IN EMISSIONS.—At intervals of 3 years, a State shall determine whether each nonattainment area (other than a marginal area or moderate area) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of that interval pursuant to subsection (b)(2) and the corresponding requirements of subsections (c)(4)(C), (d), and (e).

(2) COMPLIANCE DEMONSTRATION.—For each nonattainment area described in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which an applicable milestone occurs in a case in which the standard has been attained), each State in which all or part of the area is located shall submit to the Administrator a demonstration that the applicable milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by regulation. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration that contains the information and analysis required by the Administrator.

(3) SERIOUS AREAS AND SEVERE AREAS.—

(A) STATE ELECTION.—If a State fails to submit a demonstration under paragraph (2) for any serious area or severe area within the required period or if the Administrator determines that the serious area or severe area has not met any applicable milestone, the State shall elect, within 90 days after the failure or determination—

(i) to have the area reclassified to the next higher classification;

(ii) to implement specific additional measures that are adequate, as determined by the Administrator, to meet the next applicable milestone as provided in the applicable contingency plan; or

(iii) to adopt an economic incentive program as described in paragraph (4).

(B) ADDITIONAL MEASURES.—If the State makes an election under subparagraph (A)(ii), the Administrator shall—

(i) within 90 days after the election, review the applicable contingency plan; and

(ii) if the Administrator finds the contingency plan inadequate, require further measures necessary to meet the applicable milestone.

(C) ACCEPTANCE OF ELECTION.—If the State makes an election, the election shall be deemed accepted by the Administrator as meeting the election requirement.

(D) FAILURE TO MAKE ELECTION.—If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the serious area or severe area shall be reclassified to the next higher classification by operation of law at the expiration of the 6-month period.

(E) PLAN REVISION.—Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the serious area or severe area that meets the requirements of this paragraph. The Administrator shall review the plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) ECONOMIC INCENTIVE PROGRAM.—

(A) IN GENERAL.—

(i) CONSISTENCY WITH REGULATIONS; SUFFICIENCY.—An economic incentive program under this paragraph shall be consistent with regulations published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next applicable milestone.

(ii) ELEMENTS.—The State program may include—

(I) a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State-established emission fees;

(II) a system of marketable permits;

(III) a system of State fees on sale or manufacture of products the use of which contributes to ozone formation;

(IV) incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the serious area or severe area, including any of the transportation control measures identified in section 211108(f) of this title; or

(V) any combination of the foregoing or other similar measures.

(B) REGULATIONS.—The Administrator shall publish regulations for the programs to be adopted pursuant to subparagraph (A). The regulations shall include model plan provisions that may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources.

(C) GUIDELINES.—The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this division. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) EXTREME AREAS.—If a State fails to submit a demonstration under paragraph (2) for any extreme area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after the failure or determination, submit a plan revision to implement an economic incentive program that meets the requirements of paragraph (4). The Administrator shall review the plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) RURAL TRANSPORT AREAS.—

(1) TREATMENT BY OPERATION OF LAW.—Notwithstanding any other provision of this section or section 215202 of this title, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if the State applicable implementation plan includes the provisions required under subsection (a).

(2) TREATMENT BY THE ADMINISTRATOR.—The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of volatile organic compounds emissions

(and, where the Administrator determines it to be relevant, nitrogen oxide emissions) within the area do not make a significant contribution to the ozone concentrations measured in the ozone nonattainment area or in other areas.

(i) RECLASSIFIED AREAS.—Each State containing an ozone nonattainment area reclassified under section 215202(b)(2) of this title shall meet such requirements of subsections (b) through (d) as may be applicable to the area as reclassified, according to the schedules prescribed in connection with those requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent that an adjustment is necessary or appropriate to ensure consistency among the required provisions.

(j) MULTI-STATE OZONE NONATTAINMENT AREAS.—

(1) DEFINITION OF MULTI-STATE OZONE NONATTAINMENT AREA.—In this subsection, the term ''multi-State ozone nonattainment area'' means a single ozone nonattainment area that is located in more than 1 State.

(2) COORDINATION AMONG STATES.—

(A) IN GENERAL.—Each State in which there is located a portion of a single ozone nonattainment area shall—

(i) take all reasonable steps to coordinate, substantively and procedurally, the provisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(ii) use photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) NO PLAN PROVISION APPROVAL ABSENT COMPLIANCE.—The Administrator may not approve any provision of a State implementation plan submitted under this subchapter for a State in which part of a multi-State ozone nonattainment area is located if the plan revision fails to comply with this paragraph.

(3) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the NAAQS for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such a demonstration but for the failure of 1 or more other States in which other portions of the multi-State ozone nonattainment area are located to commit to the implementation of all measures required under this section. If the Administrator makes such

a finding, section 215111 of this title shall not apply, by reason of the failure to make such a demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting the petition.

**§ 215204. Federal ozone measures**

(a) CONTROL TECHNIQUE GUIDELINES FOR VOLATILE ORGANIC COMPOUND SOURCES.—The Administrator shall issue control technique guidelines, in accordance with section 211108 of this title, for 11 categories of stationary sources of volatile organic compound emissions for which control technique guidelines had not been issued as of November 15, 1990, not including the categories described in paragraphs (3) and (4) of subsection (b). The Administrator may issue such additional control technique guidelines as the Administrator considers necessary.

(b) EXISTING AND NEW CONTROL TECHNIQUE GUIDELINES.—

(1) REVIEW AND UPDATING.—The Administrator shall periodically review and, if necessary, update control technique guidelines issued under section 108 of the Clean Air Act (42 U.S.C. 7408) before November 15, 1990.

(2) PRIORITY.—In issuing the control technique guidelines the Administrator shall give priority to categories that the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities that are permitted under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.). The Administrator shall periodically review and, if necessary, revise the control technique guidelines.

(3) AEROSPACE COATINGS AND SOLVENTS.—

(A) IN GENERAL.—The Administrator shall issue control technique guidelines in accordance with section 211108 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. The control technique guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of aerospace coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. The control technique guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of the control technique guidelines.

(B) CONSULTATION.—In developing control technique guidelines under this paragraph, the Administrator shall consult with the

Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for aerospace coatings.

(C) CONSIDERATIONS.—In evaluating volatile organic compound reduction strategies, the guidance shall take into account—

(i) the applicable requirements of section 211112 of this title; and

(ii) the need to protect stratospheric ozone.

(4) SHIPBUILDING AND SHIP REPAIR PAINTS, COATINGS, AND SOLVENTS.—

(A) IN GENERAL.—The Administrator shall issue control technique guidelines in accordance with section 211108 of this title to reduce the aggregate emissions of volatile organic compounds and PM–10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. The control technique guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM–10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. The control technique guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of the control technique guidelines.

(B) CONSULTATION.—In developing control technique guidelines under this paragraph, the Administrator shall consult with the appropriate Federal agencies.

(c) ALTERNATIVE CONTROL TECHNIQUES.—The Administrator shall issue technical documents that identify alternative controls for all categories of stationary sources of volatile organic compounds and nitrogen oxides that emit, or have the potential to emit, 25 or more tons per year of volatile organic compounds and nitrogen oxides. The Administrator shall revise and update the documents as the Administrator determines to be necessary.

(d) GUIDANCE FOR EVALUATING COST-EFFECTIVENESS.—The Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants that contribute to nonattainment of the NAAQSes for ozone.

(e) CONTROL OF EMISSIONS FROM CERTAIN SOURCES.—

(1) DEFINITIONS.—In this subsection:

(A) BEST AVAILABLE CONTROLS.—The term ''best available controls'' means the degree of emission reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems, or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

(B) CONSUMER OR COMMERCIAL PRODUCT.—

(i) IN GENERAL.—The term ''consumer or commercial product'' means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds.

(ii) EXCLUSIONS.—The term ''consumer or commercial product'' does not include—

(I) a fuel or fuel additive regulated under section 221111 of this title; or

(II) a motor vehicle, nonroad vehicle, or nonroad engine (as defined under section 221101 of this title).

(C) REGULATED ENTITY.—The term ''regulated entity'' means—

(i) a manufacturer, processor, wholesale distributor, or importer of consumer or commercial products for sale or distribution in interstate commerce; or

(ii) a manufacturer, processor, wholesale distributor, or importer that supplies entities described in clause (i) with consumer or commercial products for sale or distribution in interstate commerce.

(2) STUDY AND REPORT.—

(A) STUDY.—The Administrator shall conduct a study of and submit to Congress a report on the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) to—

(i) determine their potential to contribute to ozone levels that violate the NAAQS for ozone; and

(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof that shall be subject to control under this subsection.

(B) CONSIDERATION OF CERTAIN FACTORS.—In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

(i) The uses, benefits, and commercial demand of consumer and commercial products.

(ii) The health or safety functions (if any) served by consumer and commercial products.

(iii) Consumer and commercial products that emit highly reactive volatile organic compounds into the ambient air.

(iv) Consumer and commercial products that are subject to the most cost-effective controls.

(v) The availability of alternatives (if any) to consumer and commercial products that are of comparable costs, considering health, safety, and environmental impacts.

(3) REGULATIONS TO REQUIRE EMISSION REDUCTIONS.—

(A) IN GENERAL.—On submission of the report under paragraph (2), the Administrator shall list the categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the volatile organic compound emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQSes for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after November 15, 1990. The Administrator shall divide the list into 4 groups and promulgate regulations for all 4 groups.

(B) BEST AVAILABLE CONTROLS.—The regulations shall require best available controls.

(C) HEALTH USE PRODUCTS.—The regulations may exempt health use products for which the Administrator determines there is no suitable substitute.

(D) CONTROL OR PROHIBITION OF ACTIVITY.—To carry out this section, the Administrator may, by regulation, control or prohibit any activity (including the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product) that results in emission of volatile organic compounds into the ambient air.

(E) REGULATED ENTITIES.—Regulations under this subsection may be imposed only with respect to regulated entities.

(F) USE OF CONTROL TECHNIQUE GUIDELINES.—For any consumer or commercial product, the Administrator may issue control

technique guidelines under this division in lieu of regulations required under subparagraph (A) if the Administrator determines that control technique guidelines will be substantially as effective as regulations in reducing emissions of volatile organic compounds that contribute to ozone levels in areas that violate the NAAQS for ozone.

(4) SYSTEMS OF REGULATION.—The regulations under this subsection may include any system or systems of regulation as the Administrator considers appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of a consumer or commercial product.

(5) SPECIAL FUND.—Any amounts collected by the Administrator under the regulations shall be deposited in the Treasury in a special fund for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

(6) ENFORCEMENT.—Any regulation established under this subsection shall be treated, for purposes of enforcement of this division, as a standard under section 211111 of this title, and any violation of such a regulation shall be treated as a violation of a requirement of section 211111(j) of this title.

(7) STATE ADMINISTRATION.—Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator finds that the State procedure is adequate, the Administrator shall approve the procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulation under this subsection.

(8) SIZE, SHAPE, AND LABELING.—No regulation regarding the size, shape, or labeling of a consumer or commercial may be promulgated, unless the Administrator determines such a regulation to be useful in meeting any NAAQS.

(9) STATE CONSULTATION.—Any State that proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this chapter. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promul-

gated regarding consumer or commercial products and disseminate the information collected as requested by State or local subdivisions.

(f) TANK VESSEL STANDARDS.—

(1) IN GENERAL.—

(A) STANDARDS.—The Administrator, in consultation with the Secretary of the department in which the Coast Guard is operating, shall promulgate standards applicable to the emission of volatile organic compounds and any other air pollutant from loading and unloading of tank vessels (as defined in section 2101 of title 46) that the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. The standards shall require the application of reasonably available control technology, considering costs, any non-air-quality benefits, environmental impacts, energy requirements, and safety factors associated with alternative control techniques. To the extent practicable, the standards shall apply to loading and unloading facilities and not to tank vessels.

(B) EFFECTIVE DATE.—Any regulation promulgated under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the department in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that period, except that the effective date shall be not more than 2 years after promulgation of the regulations.

(2) REGULATIONS ON EQUIPMENT SAFETY.—The Secretary of the department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations that are to control emissions from the loading and unloading of tank vessels under section 3703 of title 46 and section 6 of the Ports and Waterways Safety Act (33 U.S.C. 1225). The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the department in which the Coast Guard is operating.

(3) AGENCY AUTHORITY.—

(A) EMISSION STANDARDS.—The Administrator shall ensure compliance with the tank vessel emission standards promulgated under paragraph (1)(A). The Secretary of the department in which the Coast Guard is operating shall ensure compliance with the tank vessel standards promulgated under paragraph (1)(A).

(B) SAFETY REGULATIONS.—The Secretary of the department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

(4) STATE OR LOCAL STANDARDS.—After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless the State or local standard is no less stringent than the standards promulgated under paragraph (1).

(5) ENFORCEMENT.—Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this division, as a standard under section 211111 of this title, and any violation of such a standard shall be treated as a violation of a requirement of section 211111(j) of this title.

(g) VEHICLES ENTERING OZONE NONATTAINMENT AREAS.—

(1) DEFINITION OF COVERED OZONE NONATTAINMENT AREA.—In this subsection, the term ''covered ozone nonattainment area'' means a serious area, as classified under section 181 of the Clean Air Act (42 U.S.C. 7511) as of October 27, 1998.

(2) AUTHORITY REGARDING OZONE INSPECTION AND MAINTENANCE TESTING.—

(A) IN GENERAL.—No noncommercial motor vehicle registered in a foreign country and operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a visa for the purposes of employment or educational study in the United States, may enter a covered ozone nonattainment area from a foreign country bordering the United States and contiguous to the nonattainment area more than twice in a single calendar-month period, if State law has requirements for the inspection and maintenance of noncommercial motor vehicles under the applicable implementation plan in the nonattainment area.

(B) APPLICABILITY.—Subparagraph (A) shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such inspection and maintenance requirements as are in effect and are applicable to motor vehicles of the same type and model year.

(3) SANCTIONS FOR VIOLATIONS.—The President may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than $200 for the 2d violation or attempted violation and $400 for the 3d and each subsequent violation or attempted violation.

(4) STATE ELECTION.—The prohibition set forth in paragraph (1) shall not apply in any State that elects to be exempt from the prohibition. Such an election shall take effect on the President's receipt of written notice from the Governor of the State notifying the President of the election.

(5) ALTERNATIVE APPROACH.—The prohibition set forth in paragraph (1) shall not apply in a State, and the President may implement an alternative approach, if—

(A) the Governor of the State submits to the President a written description of an alternative approach to facilitate the compliance, by some or all foreign-registered motor vehicles, with the motor vehicle inspection and maintenance requirements that are—

(i) related to emissions of air pollutants;

(ii) in effect under the applicable implementation plan in the covered ozone nonattainment area; and

(iii) applicable to motor vehicles of the same types and model years as the foreign-registered motor vehicles; and

(B) the President approves the alternative approach as facilitating compliance with the motor vehicle inspection and maintenance requirements described in subparagraph (A).

## § 215205. Control of interstate ozone air pollution

(a) OZONE TRANSPORT REGIONS.—

(1) IN GENERAL.—There is established a single interstate transport region for ozone (within the meaning of section 215108(a) of this title), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia.

(2) ADDITION AND REMOVAL OF STATES.—The Administrator, on the Administrator's own motion, on petition from the Governor of any State, or on the recommendation of the interstate transport commission established by paragraph (1) or the interstate transport commission established for any other interstate transport region for ozone, may—

(A) add any State or portion of a State to an interstate transport region established under paragraph (1) or other interstate transport region for ozone when the Administrator has reason to believe that the interstate transport of air pollutants from that State significantly contributes to a violation of the NAAQS for ozone in the interstate transport region; or

(B) remove any State or portion of a State from an interstate transport region when the Administrator has reason to believe that

the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the NAAQS for ozone in any area in the interstate transport region.

(3) PROCEDURE.—

(A) APPROVAL OR DISAPPROVAL.—The Administrator shall approve or disapprove a petition or recommendation under subparagraph (A) or (B) of paragraph (2) within 18 months after its receipt.

(B) PUBLIC PARTICIPATION.—The Administrator shall establish appropriate proceedings for public participation regarding motions, petitions, and recommendations under subparagraphs (A) and (B) of paragraph (2), including notice and comment.

(4) CONVENING OF COMMISSION.—The Administrator shall convene the commission required under section 215108(b) of this title as a result of the establishment of the interstate transport region.

(b) PLAN PROVISIONS FOR STATES IN INTERSTATE TRANSPORT REGIONS FOR OZONE.—

(1) IN GENERAL.—In accordance with section 211110 of this title, not later than 9 months after the inclusion of a State in an interstate transport region for ozone, each State included in the interstate transport region shall submit to the Administrator a State implementation plan provision that—

(A) requires that each area in the State that is a metropolitan statistical area or is part of a metropolitan statistical area with a population of 100,000 or more comply with section 215203(c)(4)(B) of this title; and

(B) requires implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control technique guideline.

(2) CONTROL MEASURES.—The Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 215203(b)(4) of this title, and those measures or vehicle refueling controls shall be implemented in accordance with this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect those measures within 1 year of completion of the study. For purposes of this section, any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements that would be applicable

to major stationary sources if the area were classified as a moderate area.

(c) ADDITIONAL CONTROL MEASURES.—

(1) DEFINITION OF RECEIPT DATE.—In this subsection, the term ''receipt date'' means the date on which the Administrator receives recommendations prepared by a commission pursuant to paragraph (2).

(2) RECOMMENDATIONS.—On petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the commission (or their designees), the commission may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of the ozone transport region if the commission determines that such measures are necessary to bring any area in the ozone transport region into attainment by the dates provided by this subchapter. The commission shall transmit the recommendations to the Administrator.

(3) NOTICE AND REVIEW.—When the Administrator receives recommendations prepared by a commission pursuant to paragraph (2), the Administrator shall—

(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in the ozone transport region into attainment by the dates provided by this subchapter and are otherwise consistent with this division.

(4) CONSULTATION; CONSIDERATIONS.—In undertaking the review required under paragraph (3)(B), the Administrator shall—

(A) consult with members of the commission of the affected States; and

(B) take into account the data, views, and comments received pursuant to paragraph (3)(A).

(5) APPROVAL AND DISAPPROVAL.—

(A) IN GENERAL.—Within 9 months after the receipt date, the Administrator shall—

(i) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations;

(ii) notify the commission in writing of the approval, disapproval, or partial disapproval; and

(iii) publish the determination in the Federal Register.

(B) DISAPPROVAL OR PARTIAL DISAPPROVAL.—If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

(i) why any disapproved additional control measures are not necessary to bring any area in the ozone transport region into attainment by the dates provided by this or are otherwise not consistent with this division; and

(ii) recommendations concerning equal or more effective actions that could be taken by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

(6) FINDING.—On approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State that is included in the ozone transport region and to which a requirement of the approved plan applies a finding under section 211110(i)(5) of this title that the implementation plan for that State is inadequate to meet the requirements of section 211110(a)(3)(D) of this title. The finding shall require each such State to revise its implementation plan to include the approved additional control measures within 1 year after the finding is issued.

(d) BEST AVAILABLE AIR QUALITY MONITORING AND MODELING.—For purposes of this section, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in 1 area to concentrations of ozone in another area that is a nonattainment area for ozone. The criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

**§ 215206. Enforcement for severe areas and extreme areas for failure to attain**

(a) GENERAL RULE.—Each implementation plan provision required under subsections (d) and (e) of section 215203 of this title shall provide that, if the severe area or extreme area to which the plan provision applies has failed to attain the primary NAAQS for ozone by the applicable attainment date, each major stationary source of volatile organic compounds located in the severe area or extreme area shall, except as otherwise provided under subsection (c), pay a fee to the State as a penalty for the failure, computed in accordance with subsection (b), for each calendar year beginning after the attainment date, until the severe area or extreme area is redesignated as an attainment area for ozone. Each such plan provision 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 volatile organic compound emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

(2) BASELINE AMOUNT.—

(A) IN GENERAL.—For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower, during the attainment year, of—

(i) the amount of actual volatile organic compound emissions (referred to in this paragraph as ''actuals''); or

(ii) the amount of volatile organic compound emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of volatile organic compound emissions allowed under the applicable implementation plan) (referred to in this paragraph as ''allowables'').

(B) PERIOD OF DETERMINATION.—Notwithstanding subparagraph (A), 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 1 calendar year. The guidance may provide that such an 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 as of 1991, in accordance with section 235102(b)(3)(B)(iv) of this title.

(c) EXCEPTION.—Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) with respect to emissions during any year that is treated as an extension year under section 215202(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 subdivision, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a). If the Administrator makes such a finding under section 215111(a)(1)(D) of this title, the Administrator may collect fees for periods before the determina-

tion, plus interest computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), to the extent that the Administrator finds that such fees have not been paid to the State. Clauses (ii) through (iii) of section 235102(b)(3)(C) of this title shall apply with respect to fees collected under this subsection.

(e) EXEMPTIONS FOR CERTAIN SMALL AREAS.—For a severe area or extreme area with a total population under 200,000 that fails to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this division shall apply if the severe area or extreme area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the severe area or extreme area is prevented because of ozone or ozone precursors transported from another area. The prohibition applies only in a case in which the severe area or extreme area has met all requirements and implemented all measures applicable to the severe area or extreme area under this division.

### § 215207. Nitrogen oxide and volatile organic compound study

(a) IN GENERAL.—The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control.

(b) MATTERS TO BE EXAMINED.—The study shall examine—

(1) the roles of nitrogen oxide and volatile organic compound emission reductions;

(2) the extent to which nitrogen oxide reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas;

(3) the sensitivity of ozone to the control of nitrogen oxides;

(4) the availability and extent of controls for nitrogen oxides;

(5) the role of biogenic volatile organic compound emissions; and

(6) the basic information required for air quality models.

(c) INFORMATION AND STUDIES; ADDITIONAL INFORMATION.—The Administrator shall utilize all available information and studies and develop additional information in conducting the study required by this section.

(d) REPORT.—The Administrator shall submit to Congress a report on the study.

## Subchapter III—Additional Provisions for Carbon Monoxide Nonattainment Areas

### § 215301. Definitions

In this subchapter:

(1) MODERATE AREA.—The term ''moderate area'' means an area that is classified as a moderate area under section 215302 of this title.

(2) SERIOUS AREA.—The term ''serious area'' means an area that is classified as a serious area under section 215302 of this title.

(3) TABLE 1.—The term ''table 1'' means table 1 in section 215302(a)(1) of this title.

**§ 215302. Classification and attainment dates**

(a) CLASSIFICATION BY OPERATION OF LAW AND ATTAINMENT DATES FOR NONATTAINMENT AREAS.—

(1) IN GENERAL.—Each area designated nonattainment for carbon monoxide pursuant to section 211107(d) of this title shall be classified at the time of designation under table 1, by operation of law, as a moderate area or serious area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary NAAQS attainment date for carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

TABLE 1

| Area classification | Design value | Primary standard attainment date |
|---|---|---|
| Moderate | 9.1–16.4 ppm | December 31, 1995 |
| Serious | 16.5 and above | December 31, 2000 |

(2) NOTICE.—At the time of publication of the notice required under section 211107 of this title, the Administrator shall publish a notice announcing the classification of each such carbon monoxide nonattainment area. Section 215102(a)(1)(B) of this title shall apply with respect to such a classification.

(3) ADJUSTMENT.—

(A) IN GENERAL.—If an area classified under paragraph (1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which the classification was based, the Administrator may, within 90 days after November 15, 1990, by the procedure required under paragraph (2), adjust the classification of the area.

(B) CONSIDERATIONS.—In making such an adjustment, the Administrator may consider—

(i) the number of exceedances of the primary NAAQS for carbon monoxide in the area;

(ii) the level of pollution transport between the area and other affected areas; and

(iii) the mix of sources and air pollutants in the area.

(4) EXTENSION.—

(A) IN GENERAL.—On application by any State, the Administrator may extend for 1 additional year (referred to in this paragraph as an ''extension year'') the date specified in table 1 of subsection (a) if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(ii) not more than 1 exceedance of the NAAQS level for carbon monoxide has occurred in the area in the year preceding the extension year.

(B) LIMITATION.—Not more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

(1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is designated attainment or unclassifiable for carbon monoxide under section 211107(d)(4) of this title and is subsequently redesignated to nonattainment for carbon monoxide under section 211107(d)(3) of this title shall, at the time of the redesignation, be classified by operation of law in accordance with table 1. Upon its classification, the area shall be subject to the same requirements under section 211110 of this title, subchapter I, and this subchapter that would have applied had the area been so classified at the time of the notice under subsection (a)(2), except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified.

(2) RECLASSIFICATION OF MODERATE AREAS ON FAILURE TO ATTAIN.—

(A) DETERMINATION.—Within 6 months after the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the NAAQS by that date.

(B) RECLASSIFICATION.—Any moderate area that the Administrator finds has not attained the NAAQS by that date shall be reclassified by operation of law in accordance with table 1 as a serious area.

(C) NOTICE.—The Administrator shall publish a notice in the Federal Register, not later than 6 months after the attainment date, identifying each area that the Administrator has determined, under subparagraph (A), as having failed to attain the NAAQS

and identifying the reclassification, if any, described under subparagraph (B).

**§ 215303. Plan submissions and requirements**

(a) MODERATE AREAS.—

(1) IN GENERAL.—Each State in which all or part of a moderate area is located shall, with respect to the moderate area (or portion thereof, to the extent specified in guidance of the Administrator issued before November 15, 1990), submit to the Administrator the State implementation plan provisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent that the State has made such submissions as of November 15, 1990.

(2) INVENTORY.—A State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 215102(c)(3) of this title, in accordance with guidance provided by the Administrator.

(3) VEHICLE MILES TRAVELED; SPECIAL RULE FOR DENVER.—

(A) VEHICLE MILES TRAVELED.—For areas with a design value above 12.7 parts per million at the time of classification, the plan provision shall contain a forecast of vehicle miles traveled in a nonattainment area for each year before the year in which the plan projects the NAAQS for carbon monoxide to be attained in the area. The forecast shall be based on guidance published by the Administrator, in consultation with the Secretary of Transportation. The plan provision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which the forecasts proved to be accurate. The annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

(B) SPECIAL RULE FOR DENVER.—In the case of Denver, the State shall submit a provision that includes the transportation control measures as required in section 215203(d)(3)(A) of this title, except that the provision shall be for the purpose of reducing carbon monoxide emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain—

(i) an explanation why such a measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions; or

(ii) reasons why such a reduction is not necessary to attain the primary NAAQS for carbon monoxide.

(C) ADJUSTMENT.—The Administrator may make the same adjustment for purposes of this paragraph as may be made under section 215302(a)(3) of this title.

(4) CONTINGENCY PROVISIONS.—

(A) IN GENERAL.—For areas with a design value above 12.7 parts per million at the time of classification, the plan provision shall provide for the implementation of specific measures to be undertaken if—

(i) any estimate of vehicle miles traveled in the area that is submitted in an annual report under paragraph (3) exceeds the number predicted in the most recent prior forecast; or

(ii) if the area fails to attain the primary NAAQS for carbon monoxide by the primary standard attainment date.

(B) INCLUSION IN PLAN PROVISION.—The measures shall be included in the plan provision as contingency measures to take effect without further action by the State or the Administrator if—

(i) the prior forecast has been exceeded by an updated forecast; or

(ii) the national standard is not attained by that deadline.

(C) ADJUSTMENT.—The Administrator may make the same adjustment for purposes of this paragraph as may be made under section 215302(a)(3) of this title.

(5) SAVINGS CLAUSE FOR VEHICLE INSPECTION AND MAINTENANCE PROVISIONS OF THE STATE IMPLEMENTATION PLAN.—Immediately after November 15, 1990, for any moderate area (or, within the Administrator's discretion, portion thereof) the plan for which is of the type described in section 215203(a)(3)(C) of this title, the State shall submit any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 215203(a)(3)(C) of this title.

(6) PERIODIC INVENTORY.—Not later than the end of each 3-year period after September 30, 1995, until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

(7) ENHANCED VEHICLE INSPECTION AND MAINTENANCE.—

(A) IN GENERAL.—In the case of moderate areas with a design value greater than 12.7 parts per million at the time of classification, the State shall submit a provision that includes provisions for an enhanced vehicle inspection and maintenance program as re-

quired in section 215203(c)(5) of this title, except that the vehicle inspection and maintenance program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

(B) ADJUSTMENT.—The Administrator may make the same adjustment for purposes of this paragraph as may be made under section 215302(a)(3) of this title.

(8) ATTAINMENT DEMONSTRATION AND SPECIFIC ANNUAL EMISSION REDUCTIONS.—

(A) IN GENERAL.—In the case of moderate areas with a design value greater than 12.7 parts per million at the time of classification, the State shall submit a provision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQSes by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

(B) ADJUSTMENT.—The Administrator may make the same adjustment for purposes of this paragraph as may be made under section 215302(a)(3) of this title.

(9) SCHEDULE.—The Administrator may require States to submit a schedule for submitting any of the provisions or other items required under this subsection.

(10) MODERATE AREAS WITH A DESIGN VALUE OF 12.7 PARTS PER MILLION OR LOWER.—In the case of a moderate area with a design value of 12.7 parts per million or lower at the time of classification, the requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the carbon monoxide standard by the applicable attainment date.

(b) SERIOUS AREAS.—

(1) IN GENERAL.—Each State in which all or part of a serious area is located shall, with respect to the serious area—

(A) make the submissions (other than those required under subsection (a)(2)) applicable under subsection (a) to moderate areas with a design value of 12.7 parts per million or greater at the time of classification; and

(B) submit the provision and other items described under this subsection.

(2) VEHICLE MILES TRAVELED.—

(A) IN GENERAL.—The State shall submit a provision that includes the transportation control measures as required in section 215203(d)(3) of this title, except that the provision shall be for

the purpose of reducing carbon monoxide emissions rather than volatile organic compound emissions.

(B) CLEAN FUEL FLEET PROGRAM.—In the case of a severe area (other than an area in New York State) that is a covered area (as defined in section 225106(a)(1)(B) of this title) for purposes of the clean fuel fleet program under chapter 225, if the State fails to include a measure described in subparagraph (A), the implementation plan shall contain—

(i) an explanation why such a measure was not adopted and what emission reduction measure was adopted to provide a comparable reduction in emissions; or

(ii) reasons why such a reduction is not necessary to attain the primary NAAQS for carbon monoxide.

(3) OXYGENATED GASOLINE.—

(A) IN GENERAL.—The State shall submit a provision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported, or introduced into commerce in the larger of—

(i) the Consolidated Metropolitan Statistical Area (as defined by the Office of Management and Budget) in which the area is located; or

(ii) if the area is not located in a Consolidated Metropolitan Statistical Area, the Metropolitan Statistical Area (as defined by the Office of Management and Budget) in which the area is located;

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such a level of oxygen as is necessary, in combination with other measures, to provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and maintenance of the NAAQS thereafter in the area. The provision shall include a program for implementation and enforcement of the requirement consistent with guidance issued by the Administrator.

(B) PROVISION NOT NECESSARY.—Notwithstanding subparagraph (A), the provision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the provision is not necessary to provide for attainment of the carbon monoxide NAAQS by the applicable attainment date and maintenance of the NAAQS thereafter in the area.

(c) AREAS WITH SIGNIFICANT STATIONARY SOURCE EMISSIONS OF CARBON MONOXIDE.—

(1) SERIOUS AREAS.—In the case of serious areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under regulations issued by the Administrator), the State shall submit a plan provision that provides that the term ''major stationary source'' includes (in addition to the sources described in section 201101 of this title) any stationary source that emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

(2) WAIVERS FOR CERTAIN AREAS.—The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Administrator determines by regulation that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

(3) GUIDELINES.—The Administrator shall issue guidelines for and regulations determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

(d) CARBON MONOXIDE MILESTONE.—

(1) DEFINITION OF MILESTONE.—In this subsection, the term ''milestone'' means a reduction in emissions of carbon monoxide equivalent to the total of the specific annual emission reductions required by December 31, 1995.

(2) MILESTONE DEMONSTRATION.—Each State in which all or part of a serious area is located shall submit to the Administrator a demonstration that the area has achieved the milestone.

(3) ADEQUACY OF DEMONSTRATION.—A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration that contains the information and analysis required by the Administrator.

(4) FAILURE TO SUBMIT DEMONSTRATION OR TO MEET MILESTONE.—If a State fails to submit a demonstration under paragraph (2) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 215203(g)(4) of this title. The revision shall be

sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

(e) MULTI-STATE CARBON MONOXIDE NONATTAINMENT AREAS.—

(1) DEFINITION OF MULTI-STATE CARBON MONOXIDE NONATTAINMENT AREA.—In this subsection, the term ''multi-State carbon monoxide nonattainment area'' means a single carbon monoxide nonattainment area that is located in more than 1 State.

(2) COORDINATION AMONG STATES.—

(A) IN GENERAL.—A State in which there is located a portion of a multi-State carbon monoxide nonattainment area shall take all reasonable steps to coordinate, substantively and procedurally, the provisions and implementation of State implementation plans applicable to the multi-State carbon monoxide nonattainment area.

(B) NO PLAN PROVISION APPROVAL ABSENT COMPLIANCE.—The Administrator shall not approve any provision of a State implementation plan submitted under this chapter for a State in which part of a volatile organic compound located if the plan provision for that State fails to comply with the requirements of this paragraph.

(3) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in which there is located a portion of a multi-State carbon monoxide nonattainment area fails to provide a demonstration of attainment of the NAAQS for carbon monoxide in that portion within the period required under this chapter, the State may petition the Administrator to make a finding that the State would have been able to make such a demonstration but for the failure of 1 or more other States in which other portions of the multi-State carbon monoxide nonattainment area are located to commit to the implementation of all measures required under this section. If the Administrator makes such a finding, in the portion of the multi-State carbon monoxide nonattainment area within the State submitting the petition, no sanction shall be imposed under section 215111 of this title or under any other provision of this division by reason of the failure to make such a demonstration.

(f) RECLASSIFIED AREAS.—Each State containing a carbon monoxide nonattainment area reclassified under section 215302(b)(2) of this title shall meet the requirements of subsection (b), as may be applicable to the area as reclassified, according to the schedules prescribed in connection with those requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

(g) FAILURE OF SERIOUS AREA TO ATTAIN STANDARD.—If the Administrator determines under section 215302(b)(2) of this title that the primary NAAQS for carbon monoxide has not been attained in a serious area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of the determination. The plan revision shall provide that a program of incentives and requirements as described in section 215203(g)(4) of this title shall be applicable in the area, and the program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the primary NAAQS for carbon monoxide.

# Subchapter IV—Additional Provisions for Particulate Matter Nonattainment Areas

## § 215401. Definitions

In this subchapter:

(1) MODERATE AREA.—The term ''moderate area'' means an area that is classified as a moderate PM–10 nonattainment area under section 215402(a) of this title.

(2) SERIOUS AREA.—The term ''serious area'' means an area that is reclassified as a serious PM–10 nonattainment area under section 215402(b) of this title.

## § 215402. Classifications and attainment dates

(a) INITIAL CLASSIFICATIONS.—

(1) IN GENERAL.—Every area designated nonattainment for PM–10 pursuant to section 211107(d) of this title shall be classified at the time of such designation, by operation of law, as a moderate PM–10 nonattainment area at the time of the designation.

(2) NOTICE.—At the time of publication of the notice under section 211107(d)(4) of this title for each PM–10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. Section 215102(a)(1)(B) of this title shall apply with respect to such a classification.

(b) RECLASSIFICATION AS A SERIOUS AREA.—

(1) RECLASSIFICATION BEFORE ATTAINMENT DATE.—The Administrator may reclassify as a serious PM–10 nonattainment area any area that the Administrator determines cannot practicably attain the NAAQS for PM–10 by the attainment date (as prescribed in subsection (c)) for moderate areas.

(2) RECLASSIFICATION ON FAILURE TO ATTAIN.—Within 6 months following the applicable attainment date for a PM–10 nonattainment

area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any moderate area is not in attainment after the applicable attainment date—

(A) the area shall be reclassified by operation of law as a serious area; and

(B) the Administrator shall publish a notice in the Federal Register not later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

(c) ATTAINMENT DATES.—Except as provided under subsection (d), the attainment dates for PM–10 nonattainment areas shall be as follows:

(1) MODERATE AREAS.—For a moderate area, the attainment date shall be as expeditiously as practicable but not later than the end of the 6th calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 211107(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) SERIOUS AREAS.—For a serious area, the attainment date shall be as expeditiously as practicable but not later than the end of the 10th calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 211107(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) EXTENSION OF ATTAINMENT DATE FOR MODERATE AREAS.—

(1) IN GENERAL.—On application by any State, the Administrator may extend for 1 additional year (referred to in this subsection as an ''extension year'') the date specified in subsection (c)(1) if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(B) not more than 1 exceedance of the 24-hour NAAQS level for PM–10 has occurred in the area in the year preceding the extension year, and the annual mean concentration of PM–10 in the area for the extension year is less than or equal to the standard level.

(2) LIMITATION.—Not more than 2 one-year extensions may be issued under this subsection for a single nonattainment area.

(e) EXTENSION OF ATTAINMENT DATE FOR SERIOUS AREAS.—

(1) IN GENERAL.—On application by any State, the Administrator may extend the attainment date for a serious area beyond the date specified under subsection (c) if—

(A) attainment by the date established under subsection (c) would be impracticable;

(B) the State has complied with all requirements and commitments pertaining to the serious area in the implementation plan; and

(C) the State demonstrates to the satisfaction of the Administrator that the plan for the serious area includes the most stringent measures that—

(i) are included in the implementation plan of any State or are achieved in practice in any State; and

(ii) can feasibly be implemented in the serious area.

(2) PLAN PROVISION.—At the time of an application under paragraph (1), the State shall submit an implementation plan provision that includes a demonstration of attainment by the most expeditious alternative date practicable.

(3) CONSIDERATIONS.—In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider—

(A) the nature and extent of nonattainment;

(B) the types and numbers of sources or other emitting activities in the serious area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries);

(C) the population exposed to concentrations in excess of the standard;

(D) the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area; and

(E) the technological and economic feasibility of various control measures.

(4) ATTAINMENT DEMONSTRATION.—The Administrator may not approve an extension until the State submits an attainment demonstration for the area.

(5) LIMITATION.—The Administrator may grant not more than 1 extension for a serious area, of not more than 5 years.

(f) WAIVERS FOR CERTAIN SERIOUS AREAS.—The Administrator may, on a case-by-case basis, waive any requirement applicable to any serious area under this subchapter where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the PM–10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator deter-

mines that nonanthropogenic sources of PM–10 contribute significantly to the violation of the PM–10 standard in the area.

**§ 215403. Plan provisions and schedules for plan submissions**

(a) MODERATE AREAS.—Each State in which all or part of a moderate area is located shall submit, 18 months after the designation as nonattainment, an implementation plan that includes each of the following:

(1) For the purpose of meeting the requirements of section 215102(c)(5) of this title, a permit program providing that permits meeting the requirements of section 215103 of this title are required for the construction and operation of new and modified major stationary sources of PM–10.

(2)(A) A demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or

(B) a demonstration that attainment by that date is impracticable.

(3) Provisions to ensure that reasonably available control measures for the control of PM–10 shall be implemented not later than 4 years after designation as a moderate area.

(b) SERIOUS AREAS.—

(1) PLAN PROVISIONS.—In addition to the provisions submitted to meet the requirements of subsection (a), each State in which all or part of a serious area is located shall submit an implementation plan for the serious area that includes each of the following:

(A)(i) A demonstration (including air quality modeling) that the plan provides for attainment of the NAAQS for PM–10 by the applicable attainment date; or

(ii) for any area for which the State is seeking, pursuant to section 215402(e) of this title, an extension of the attainment date beyond the date set forth in section 215402(e) of this title, a demonstration (including air quality modeling) that—

(I) attainment by that date would be impracticable; and

(II) the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to ensure that the best available control measures for the control of PM–10 shall be implemented not later than 4 years after the date on which the area is classified (or reclassified) as a serious area.

(2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the demonstration required for an area under paragraph (1)(A) not later than 4 years after reclassification of the area as a serious area, except that for areas reclassified under section 215402(b)(2) of this title, the

State shall submit the attainment demonstration within 18 months after reclassification as a serious area. A State shall submit the provisions described under paragraph (1)(B) not later than 18 months after reclassification of the area as a serious area.

(3) MAJOR SOURCES.—For any serious area, the terms ''major source'' and ''major stationary source'' include any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM–10 or PM–10 precursors.

(c) MILESTONES.—

(1) IN GENERAL.—Plan provisions demonstrating attainment submitted to the Administrator for approval under this subchapter shall contain quantitative milestones that are to be achieved every 3 years until the serious area is redesignated attainment and that demonstrate reasonable further progress (as defined in section 215101 of this title) toward attainment by the applicable date.

(2) DEMONSTRATION.—Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of the serious area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration that contains the information and analysis required by the Administrator.

(3) FAILURE TO SUBMIT DEMONSTRATION OR TO MEET MILESTONE.—If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any milestone, the Administrator shall require the State, within 9 months after the failure or determination, to submit a plan provision that ensures that the State will achieve the next milestone (or attain the NAAQS for PM–10, if there is no next milestone) by the applicable date.

(d) FAILURE TO ATTAIN.—In the case of a serious area in which the NAAQS for PM–10 is not attained by the applicable attainment date, the State in which the serious area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan provisions that provide for—

(1) attainment of the NAAQS for PM–10; and

(2) an annual reduction in PM–10 or PM–10 precursor emissions within the area, from the date of the submission until attainment, of not less than 5 percent of the amount of PM–10 or PM–10 precursor emissions as reported in the most recent inventory prepared for the serious area.

(e) PM–10 PRECURSORS.—

(1) IN GENERAL.—The control requirements applicable under plans in effect under this chapter for major stationary sources of PM–10 shall apply to major stationary sources of PM–10 precursors, except where the Administrator determines that major stationary sources of PM–10 precursors do not contribute significantly to PM–10 levels that exceed the NAAQS in the serious area.

(2) GUIDELINES.—The Administrator shall issue guidelines regarding the application of paragraph (1).

### § 215404. Issuance of RACM and BACM guidance

(a) IN GENERAL.—The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 211108(c) of this title, technical guidance on reasonably available control measures and best available control measures for—

(1) urban fugitive dust; and

(2) emissions from residential wood combustion (including curtailments and exemptions from curtailments) and prescribed silvicultural and agricultural burning.

(b) OTHER CATEGORIES OF SOURCES CONTRIBUTING TO NONATTAINMENT OF THE PM–10 STANDARD.—The Administrator shall—

(1) examine other categories of sources contributing to nonattainment of the PM–10 standard;

(2) determine whether additional guidance on reasonably available control measures and best available control measures is needed; and

(3) issue any such guidance.

(c) CONSIDERATIONS.—In issuing guidelines and making determinations under this section, the Administrator (in consultation with the States) shall take into account emission reductions achieved, or expected to be achieved, under subdivision 5 and other provisions of this division.

## Subchapter V—Additional Provisions for Areas Designated Nonattainment for Sulfur Dioxides, Nitrogen Oxide, or Lead

### § 215501. Plan submission deadlines

(a) SUBMISSION.—Any State containing an area designated or redesignated under section 211107(d) of this title as nonattainment with respect

to the primary NAAQSes for sulfur oxides, nitrogen dioxide, or lead subsequent to November 15, 1990, shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this chapter.

(b) STATES LACKING FULLY APPROVED STATE IMPLEMENTATION PLANS.—Any State containing an area designated nonattainment with respect to primary NAAQSes for sulfur oxides or nitrogen dioxide under section 211107(d)(1)(C)(i) of this title, but lacking a fully approved implementation plan complying with the requirements of the Clean Air Act (42 U.S.C. 7401 et seq.) as in effect on November 14, 1990, shall submit to the Administrator an implementation plan meeting the requirements of subchapter I (except as otherwise prescribed by section 215502 of this title).

### § 215502. Attainment dates

(a) PLANS UNDER SECTION 215501(a).—Implementation plans required under section 215501(a) of this title shall provide for attainment of the relevant primary standard as expeditiously as practicable but not later than 5 years after the date of the nonattainment designation.

(b) PLANS UNDER SECTION 215501(b).—Implementation plans required under section 215501(b) of this title shall provide for attainment of the relevant primary NAAQS within 5 years after November 15, 1990.

(c) INADEQUATE PLANS.—Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before November 15, 1990, but, subsequent to approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years after the date of the finding.

## Subchapter VI—Savings Provisions

### § 215601. General savings clause

Each regulation, standard, notice, order, and guidance promulgated or issued by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.) (as in effect before November 15, 1990) shall remain in effect according to its terms, except to the extent otherwise provided under this division, inconsistent with any provision of this division, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area that is a nonattainment area for any air pollutant may be modified in any manner unless the modification ensures equivalent or greater emission reductions of that air pollutant.

# Subdivision 3—Emission Standards for Moving Sources

# Chapter 221—Motor Vehicle Emission And Fuel Standards



## § 221101. Definitions

In this chapter:

(1) COMMERCE.—The term ''commerce'' means—

(A) commerce between any place in any State and any place outside the State; and

(B) commerce wholly within the District of Columbia.

(2) DEALER.—The term ''dealer'' means any person engaged in the sale or distribution of new motor vehicles or new motor vehicle engines to an ultimate purchaser.

(3) GROSS VEHICLE WEIGHT RATING.—The term ''gross vehicle weight rating'' has the meaning given the term in regulations promulgated by the Administrator and in effect as of November 15, 1990.

(4) GVWR.—The term ''GVWR'' means gross vehicle weight rating.

(5) HEAVY-DUTY VEHICLE.—

(A) IN GENERAL.—The term ''heavy-duty vehicle'' means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) that has a gross vehicle weight rating (as determined under regulations promulgated by the Administrator) in excess of 6,000 pounds.

(B) INCLUSIONS.—The term ''heavy-duty vehicle'' includes any vehicle described in subparagraph (A) that has special features enabling off-street or off-highway operation and use.

(6) LDT.—The term ''LDT'' means light-duty truck.

(7) LIGHT-DUTY TRUCK.—The term ''light-duty truck'' has the meaning given the term in regulations promulgated by the Administrator and in effect as of November 15, 1990.

(8) LIGHT-DUTY VEHICLE.—The term ''light-duty vehicle'' has the meaning given the term in regulations promulgated by the Administrator and in effect as of November 15, 1990.

(9) LOADED VEHICLE WEIGHT.—The term ''loaded vehicle weight'' has the meaning given the term in regulations promulgated by the Administrator and in effect as of November 15, 1990.

(10) LVW.—The term ''LVW'' means loaded vehicle weight.

(11) MANUFACTURER.—

(A) IN GENERAL.—The term ''manufacturer'', as used in sections 221102, 221103, 221106, 221107, and 221108 of this title, means—

(i) any person that is engaged in manufacturing, assembling, or importing for resale new motor vehicles, new motor vehicle engines, new nonroad vehicles, or new nonroad engines; or

(ii) any person that acts for and is under the control of a person described in clause (i) in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles, or new nonroad engines.

(B) EXCLUSIONS.—The term ''manufacturer'', as used in sections 221102, 221103, 221106, 221107, and 221108 of this title, does not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles, or new nonroad engines received by the dealer in commerce.

(C) MOTOR VEHICLE PARTS AND MOTOR VEHICLE ENGINE PARTS.—The term ''manufacturer'', as used in sections 221107 and 221108 of this title with reference to a manufacturer of a motor vehicle part or motor vehicle engine part, means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component, or element of design that is installed in or on a motor vehicle or motor vehicle engine.

(12) MODEL YEAR.—

(A) IN GENERAL.—Subject to subparagraph (B), the term ''model year'', with reference to any specific calendar year, means—

(i) a manufacturer's annual production period (as determined by the Administrator) that includes January 1 of that calendar year; or

(ii) with respect to a manufacturer that has no annual production period, the calendar year.

(B) DEFINITION BY THE ADMINISTRATOR.—For the purpose of ensuring that vehicles and engines manufactured before the beginning of a model year are not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by section 221102(b) of this title, the Administrator may prescribe regulations defining the term ''model year'' otherwise than as provided in subparagraph (A).

(13) MOTOR VEHICLE.—The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(14) NEW MOTOR VEHICLE.—

(A) IN GENERAL.—Except with respect to vehicles imported or offered for importation, the term ''new motor vehicle'' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser.

(B) VEHICLES IMPORTED OR OFFERED FOR IMPORTATION.—With respect to a vehicle imported or offered for importation, the term ''new motor vehicle'' means a motor vehicle manufactured after the effective date of a regulation issued under section 221102 of this title that is applicable to the vehicle (or that would be applicable to the vehicle had it been manufactured for importation into the United States).

(15) NEW MOTOR VEHICLE ENGINE.—

(A) IN GENERAL.—Except with respect to an engine imported or offered for importation, the term ''new motor vehicle engine'' means—

(i) an engine in a new motor vehicle; or

(ii) a motor vehicle engine the equitable or legal title to which has never been transferred to an ultimate purchaser.

(B) ENGINES IMPORTED OR OFFERED FOR IMPORTATION.—With respect to an engine imported or offered for importation, the term ''new motor vehicle engine'' means an engine manufactured after the effective date of a regulation issued under section 221102 of this title that is applicable to the engine (or that would be applicable to the engine had it been manufactured for importation into the United States).

(16) NMHC.—The term ''NMHC'' means nonmethane hydrocarbon.

(17) NONROAD ENGINE.—The term ''nonroad engine'' means an internal combustion engine (including the fuel system) that—

(A) is not used in a motor vehicle or a vehicle used solely for competition; or

(B) is not subject to standards promulgated under section 211111 or 221102 of this title.

(18) NONROAD VEHICLE.—The term ''nonroad vehicle'' means a vehicle that—

(A) is powered by a nonroad engine; and

(B) is not a motor vehicle or a vehicle used solely for competition.

(19) TEST WEIGHT.—The term ''test weight'', with reference to the test weight of a vehicle, means—

(A)(i) the vehicle curb weight of the vehicle; plus

(ii) the gross vehicle weight rating of the vehicle; divided by

(B) 2.

(20) TW.—The term ''TW'' means test weight.

(21) ULTIMATE PURCHASER.—The term ''ultimate purchaser'' means, with respect to any new motor vehicle or new motor vehicle engine, the 1st person that in good faith purchases the new motor vehicle or new engine for purposes other than resale.

(22) VEHICLE CURB WEIGHT.—The term ''vehicle curb weight'' has the meaning given the term in regulations promulgated by the Administrator and in effect as of November 15, 1990.

## § 221102. Emission standards for new motor vehicles or new motor vehicle engines

(a) IN GENERAL.—

(1) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall by regulation prescribe (and from time to time revise) standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines that, in the Administrator's judgment, cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

(B) APPLICABILITY FOR USEFUL LIFE.—The standards shall be applicable to such vehicles and engines for their useful life, whether the vehicles and engines are designed as complete systems or incorporate devices to prevent or control air pollution.

(C) REGULATIONS.—The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of this paragraph and section 221107 of this title. The regulations shall provide that except where a different useful life period is specified in this subdivision—

(i) in the case of light-duty vehicles and light-duty vehicle engines and light-duty trucks up to 3,750 pounds loaded vehicle weight and up to 6,000 pounds gross vehicle weight rating, useful life shall be a period of use of 5 years or 50,000 miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section where the useful life period is not otherwise specified for light-duty vehicles and light-duty vehicle engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 221107 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(ii) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), useful life shall be a period of use set forth in clause (i) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(iii) in the case of any motorcycle or motorcycle engine, useful life shall be a period of use determined by the Administrator.

(2) EFFECTIVE DATE.—Any regulation prescribed under paragraph (1) (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that period.

(3) HEAVY-DUTY VEHICLES AND ENGINES.—

(A) IN GENERAL.—

(i) GREATEST DEGREE OF EMISSION REDUCTION.—Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) applicable to emissions of hydrocarbons, carbon monoxide, nitrogen oxides, and particulate matter from classes or categories of heavy-duty vehicles or engines shall contain standards that reflect the greatest degree of emission reduction achievable through the application of technology that the Administrator determines will be available for the model year to which the standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of the technology.

(ii) CLASSES AND CATEGORIES.—In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base the classes

or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) REVISED STANDARDS FOR HEAVY-DUTY VEHICLES.—

(i) IN GENERAL.—On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source-related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) revising any standard promulgated under, or before the date of enactment of, Public Law 101–549 (104 Stat. 2399) (commonly known as the Clean Air Act Amendments of 1990) (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) NITROGEN OXIDES.—The regulations under paragraph (1) applicable to emissions of nitrogen oxides from gasoline-fueled heavy-duty vehicles and diesel-fueled heavy-duty vehicles shall contain standards that provide that such emissions may not exceed 4.0 grams per brake horsepower hour.

(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of not less than 3 model years beginning not earlier than the model year commencing 4 years after the revised standard is promulgated.

(D) REBUILDING PRACTICES.—

(i) IN GENERAL.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), that in the Administrator's judgment, cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, taking costs into account.

(ii) EFFECTIVE DATE.—Any regulation shall take effect after a period that the Administrator finds necessary to permit the development and application of the requisite control

measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) MOTORCYCLES.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 221106(f) of this title) unless the Administrator promulgates a regulation reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under this subsection applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating the standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4) NO CAUSATION OF CONTRIBUTION TO UNREASONABLE RISK TO PUBLIC HEALTH OR SAFETY.—

(A) IN GENERAL.—No emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subdivision if the device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) CONSIDERATIONS.—In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors—

(i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants;

(ii) available methods for reducing or eliminating any risk to public health, welfare, or safety that may be associated with the use of the device, system, or element of design;

(iii) the availability of other devices, systems, or elements of design that may be used to conform to requirements prescribed under this subdivision without causing or contributing to the unreasonable risk; and

(iv) all relevant information developed pursuant to section 214 of the Clean Air Act (42 U.S.C. 7548) (as in effect before the repeal of that section).

(5) FILL PIPE STANDARDS.—

(A) DEFINITION OF FILL PIPE.—In this paragraph, the term ''fill pipe'' includes a fuel tank fill pipe, fill neck, fill inlet, and closure.

(B) IN GENERAL.—If the Administrator promulgates final regulations that define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles to ensure effective connection between the fill pipe and any vapor recovery system that the Administrator determines may be required to comply with the vapor recovery regulations.

(C) CONSIDERATIONS.—In promulgating standards under subparagraph (B), the Administrator shall take into consideration—

(i) limits on fill pipe diameter;

(ii) minimum design criteria for nozzle retainer lips;

(iii) limits on the location of the unleaded fuel restrictors;

(iv) a minimum access zone surrounding a fill pipe;

(v) a minimum pipe or nozzle insertion angle; and

(vi) such other factors as the Administrator considers pertinent.

(D) EFFECTIVE DATE.—Regulations prescribing standards under subparagraph (B) shall not become effective until the introduction of the model year for which it would be feasible to implement the standards, taking into consideration the restraints of an adequate leadtime for design and production.

(E) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall—

(i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives; or

(ii) permit the Administrator to require a specific location, configuration, modeling, or styling of a motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(6) ONBOARD VAPOR RECOVERY.—

(A) IN GENERAL.—After consultation with the Secretary of Transportation regarding the safety of vehicle-based (''onboard'') systems for the control of vehicle refueling emissions, the Administrator shall promulgate standards under this section requiring that

new light-duty vehicles manufactured beginning in the 4th model year after the model year in which the standards are promulgated and thereafter shall be equipped with onboard vapor recovery systems.

(B) IMPLEMENTATION SCHEDULE.—Beginning with the 4th model year after the model year in which the standards are promulgated, the standards required under this paragraph shall apply to the following percentages of each manufacturer's fleet of new light-duty vehicles:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

| Model year commencing after standards promulgated | Percentage* |
|---|---|
| 4th | 40 |
| 5th | 80 |
| After 5th | 100 |

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

(C) MINIMUM EVAPORATIVE EMISSION CAPTURE EFFICIENCY.—The standards required under this paragraph shall require that onboard vapor recovery systems provide a minimum evaporative emission capture efficiency of 95 percent.

(D) OTHER REQUIREMENTS.—The requirements of section 215203(b)(4) of this title for areas classified under section 215202 of this title as a moderate area for ozone shall not apply after promulgation of standards under this paragraph, and the Administrator may, by regulation, revise or waive the application of the requirements of section 215203(b)(4) of this title for areas classified under section 215202 of this title as a serious area, severe area, or extreme area for ozone, as appropriate, after such time as the Administrator determines that onboard emission control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) CARBON MONOXIDE, HYDROCARBONS, AND NITROGEN OXIDES.—

(1) IN GENERAL.—

(A) CARBON MONOXIDE AND HYDROCARBONS.—

(i) HYDROCARBONS.—The regulations under subsection (a) applicable to emissions of hydrocarbons from light-duty vehicles and engines shall contain standards that require a reduction of at least 90 percent from emissions of hydrocarbons allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(ii) CARBON MONOXIDE.—Unless waived as provided in paragraph (2), the regulations under subsection (a) applicable

to emissions of carbon monoxide from light-duty vehicles and engines shall contain standards that require a reduction of at least 90 percent from emissions of carbon monoxide allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) NITROGEN OXIDES.—The regulations under subsection (a) applicable to emissions of nitrogen oxides from light-duty vehicles and engines shall contain standards that provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile.

(C) REVISION OF STANDARDS.—The Administrator may promulgate regulations under subsection (a)(1) revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subdivision may provide for a phase-in of the standard.

(2) MEASUREMENT TECHNIQUES.—With any emission standard promulgated under paragraph (1), the Administrator shall promulgate measurement techniques on which the emission standard is based.

(3) WAIVER.—

(A) IN GENERAL.—On the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under paragraph (1)(B) to not exceed 1.5 grams of nitrogen oxides per vehicle mile for any class or category of light-duty vehicles or engines manufactured by the manufacturer during any period of up to 4 model years if the manufacturer demonstrates that—

(i) the waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in that class or category of vehicles or engines; and

(ii) that technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year.

(B) DETERMINATIONS.—A waiver under subparagraph (A) may be granted only if the Administrator determines that—

(i) the waiver would not endanger public health;

(ii) there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section on expiration of the waiver; and

(iii) the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act (42 U.S.C. 6201 et seq.) on the expiration of the waiver.

(C) LIMITATION.—No waiver under this paragraph granted to any manufacturer shall apply to more than the greater of—

(i) 5 percent of the manufacturer's production; or

(ii) 50,000 vehicles or engines.

(c) NEW POWER SOURCES OR PROPULSION SYSTEMS.—If a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 221106(a) of this title, the Administrator may postpone certification until the Administrator has prescribed standards for any air pollutants emitted by the vehicle or engine that in the Administrator's judgment cause or contribute to air pollution that may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a).

(d) HIGH ALTITUDE REGULATIONS.—

(1) IN GENERAL.—Any high altitude regulation with respect to motor vehicles or engines shall not require a percentage of reduction in emissions that is greater than the required percentage of reduction in emissions from motor vehicles and engines set forth in subsection (b). The percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles and engines manufactured during model year 1970.

(2) DOCKET.—Section 203102(d) of this title shall apply to any high altitude regulation under paragraph (1).

(3) CONSIDERATIONS.—Before promulgating any regulation under paragraph (1), the Administrator shall consider and make a finding with respect to—

(A) the economic impact on consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact that was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which the regulation will apply.

(4) INAPPLICABILITY OF EARLIER REGULATION.—The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of later model year motor vehicles.

(e) BUSES.—The regulations under subsection (a) applicable to buses other than those subject to standards under section 221117 of this title shall contain a standard that provides that emissions of particulate matter from such buses may not exceed 0.10 grams per brake horsepower hour.

(f) LIGHT-DUTY TRUCKS UP TO 6,000 POUNDS GROSS VEHICLE WEIGHT RATING AND LIGHT-DUTY VEHICLES; STANDARDS.—

(1) NONMETHANE HYDROCARBONS, CARBON MONOXIDE, AND NITROGEN OXIDE.—The regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons, carbon monoxide, and nitrogen oxides from light-duty trucks of up to 6,000 pounds gross vehicle weight rating and light-duty vehicles shall contain standards that provide that emissions from 100 percent of each manufacturer's sales volume of light-duty trucks of up to 6,000 pounds gross vehicle weight rating and light-duty vehicles shall comply with the levels specified in table G.

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND $NO_x$ FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

| Vehicle type | Column A (5 yrs/50,000 mi) | | | Column B (10 yrs/100,000 mi) | | |
|---|---|---|---|---|---|---|
| | NMHC | CO | $NO_x$ | NMHC | CO | $NO_x$ |
| LDTs (0–3,750 lbs. LVW) and light-duty vehicles | 0.25 | 3.4 | 0.4* | 0.31 | 4.2 | 0.6* |
| LDTs (3,751–5,750 lbs. LVW) | 0.32 | 4.4 | 0.7** | 0.40 | 5.5 | 0.97 |

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

*In the case of diesel-fueled LDTs (0–3,750 LVW) and light-duty vehicles, before model year 2004, in lieu of the 0.4 and 0.6 gpm standards for nitrogen oxides, the applicable standards for nitrogen oxides shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.

**This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

(2) PM STANDARD.—The regulations under subsection (a) applicable to emissions of particulate matter from light-duty vehicles and light-duty trucks of up to 6,000 pounds gross vehicle weight rating shall contain standards that provide that such emissions from 100 percent of each manufacturer's sales volume of light-duty vehicles and light-

duty trucks of up to 6,000 pounds gross vehicle weight rating shall not exceed the levels specified in the table below.

PM STANDARD FOR LDTS OF UP TO 6,000 LBS. GVWR

| Useful life period | Standard |
|---|---|
| 5/50,000 | 0.08 gpm |
| 10/100,000 | 0.10 gpm |

The applicable useful life, for purposes of certification under section 221106 of this title and for purposes of in-use compliance under section 221107 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 221106 of this title and for purposes of in-use compliance under section 221107 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

(g) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 Pounds Gross Vehicle Weight Rating.—The regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons, carbon monoxide, nitrogen oxides, and particulate matter from light-duty trucks of more than 6,000 pounds gross vehicle weight rating shall contain standards that provide that emissions from 100 percent of each manufacturer's sales volume of light-duty trucks of more than 6,000 pounds gross vehicle weight rating shall comply with the levels specified in table H.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE-FUELED AND DIESEL-FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

| LDT Test weight | Column A (5 yrs/50,000 mi) | | | Column B (11 yrs/120,000 mi) | | | |
|---|---|---|---|---|---|---|---|
| | NMHC | CO | $NO_x$ | NMHC | CO | $NO_x$ | PM |
| 3,751–5,750 lbs. TW | 0.32 | 4.4 | 0.7* | 0.46 | 6.4 | 0.98 | 0.10 |
| Over 5,750 lbs. TW | 0.39 | 5.0 | 1.1* | 0.56 | 7.3 | 1.53 | 0.12 |

Standards are expressed in grams per mile (GPM).

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.

*Not applicable to diesel-fueled LDTs.

(h) PHASE II STUDY FOR CERTAIN LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS.—

(1) IN GENERAL.—The Administrator shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subdivision. The study shall consider whether to establish the standards and useful life period for gasoline-fueled and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3,750 pounds or less specified in the following table:

TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE-FUELED AND DIESEL-FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

| Pollutant | Emission level* |
|---|---|
| NMHC | 0.125 gpm |
| $NO_x$ | 0.2 gpm |
| CO | 1.7 gpm |

*Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (a) and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

(2) OTHER STANDARDS AND USEFUL LIFE PERIODS.—The study under paragraph (1) shall also consider other standards and useful life periods that are more stringent or less stringent than those set forth in table 3 (but more stringent than those described in subsections (f) and (g)).

(3) EXAMINATION OF NEED FOR FURTHER REDUCTIONS.—

(A) IN GENERAL.—As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the NAAQSes, taking into consideration the waiver provisions of section 221109 of this title. As part of the study, the Administrator shall examine—

(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3,750 pounds or less, for meeting more stringent emission standards than those provided in subsections (f) and (g) for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3,750 pounds or less, taking into consideration alternative means of attaining or maintaining the primary NAAQSes pursuant to State implementation plans and other requirements of this division, including their feasibility and cost effectiveness.

(B) REPORT.—The Administrator shall submit a report to Congress containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of the report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of public comments in the report to Congress.

(4) DETERMINATION.—

(A) IN GENERAL.—Based on the study under paragraph (1), the Administrator shall determine, by regulation, whether—

(i) there is a need for further reductions in emissions as provided in paragraph (3)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (3)(A)(i), in the case of light-duty vehicles and light-duty

trucks with a loaded vehicle weight of 3,750 pounds or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (3)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (3)(A)(ii).

(B) NO MORE STRINGENT STANDARDS.—

(i) IN GENERAL.—If the Administrator determines under subparagraph (A) that—

(I) there is no need for further reductions in emissions as provided in paragraph (3)(A);

(II) the technology for meeting more stringent emission standards will not be available as provided in paragraph (3)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3,750 pounds or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (3)(A)(i); or

(III) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (3)(A)(ii);

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (f) and (g).

(ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3,750 pounds or less at any other time thereafter in accordance with subsection (a).

(C) MORE STRINGENT STANDARDS.—If the Administrator determines under subparagraph (A) that—

(i) there is a need for further reductions in emissions as provided in paragraph (3)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (3)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight of 3,750 pounds or less,

for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (3)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (3)(A)(ii);

the Administrator shall promulgate the standards (and useful life periods) set forth in table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) that are more stringent than those described in subsections (f) and (g).

(D) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in table 3 shall be promulgated in the rulemaking required under this paragraph.

(E) NONDISCRETIONARY DUTY.—The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 203104(b)(2) of this title.

(F) APPLICABILITY OF EMISSION STANDARDS IN TABLE 3.—The regulations under subsection (a) applicable to emissions of nonmethane hydrocarbons, nitrogen oxides, and carbon monoxide from motor vehicles and motor vehicle engines in the classes specified in table 3 in paragraph (1) shall contain standards that provide that emissions may not exceed the pending emission levels specified in table 3 in paragraph (1) unless—

(i) the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B);

(ii) the Administrator determines to postpone the effective date of standards described in table 3 in paragraph (1); or

(iii) the Administrator determines to establish alternative standards as provided in subparagraph (C).

(i) COLD CARBON MONOXIDE STANDARD.—

(1) IN GENERAL.—

(A) REGULATIONS.—The Administrator shall promulgate regulations under subsection (a) applicable to emissions of carbon monoxide from light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B) STANDARDS.—The regulations shall contain standards that provide that emissions of carbon monoxide from 100 percent of each manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed—

(i) in the case of light-duty vehicles, 10.0 grams per mile; and

(ii) in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles.

(2) USEFUL LIFE STANDARDS.—In the case of the standards under paragraph (1), for purposes of certification under section 221106 of this title and in-use compliance under section 221107 of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend the useful life period (for purposes of section 221106 or 221107 of this title, or both) if the Administrator determines that it is feasible for vehicles and engines subject to the standards to meet the standards for a longer useful life. If the Administrator extends the useful life period, the Administrator may make an appropriate adjustment of applicable standards for the extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (a)(1)(C).

(3) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may promulgate regulations under subsection (a)(1) applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

(j) CONTROL OF EVAPORATIVE EMISSIONS.—

(1) IN GENERAL.—The Administrator shall promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—

(A) during operation; and

(B) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator).

(2) EFFECTIVE DATE; EMISSION REDUCTION.—The regulations—

(A) shall take effect as expeditiously as possible; and

(B) shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility and to cost, energy, and safety factors associated with the application of the appropriate technology.

(k) MOBILE SOURCE-RELATED AIR TOXICS.—

(1) STUDY.—The Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants that are unregulated under this division and associated with motor vehicles

and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on the categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

(2) STANDARDS.—

(A) IN GENERAL.—Based on the study under paragraph (1), the Administrator shall promulgate (and from time to time revise) regulations under subsection (a)(1) or section 221111(d)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels.

(B) CONTENTS.—The regulations shall contain standards for fuels, vehicles, or both, that the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology that will be available, taking into consideration—

(i) the standards established under subsection (a);

(ii) the availability and costs of the technology;

(iii) noise, energy, and safety factors; and

(iv) lead time.

(C) NO INCONSISTENCY.—The regulations shall not be inconsistent with standards under subsection (a).

(D) BENZENE AND FORMALDEHYDE.—The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

(l) EMISSION CONTROL DIAGNOSTICS.—

(1) REGULATIONS.—The Administrator shall promulgate regulations under subsection (a) requiring manufacturers to install on all new light-duty vehicles and light-duty trucks diagnostics systems capable of—

(A) accurately identifying, for the vehicle's useful life, as established under this section, emission-related systems deterioration or malfunction (including, at a minimum, the catalytic converter and oxygen sensor) that could cause or result in failure of a vehicle to comply with emission standards established under this section;

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair;

(C) storing and retrieving fault codes specified by the Administrator; and

(D) providing access to stored information in a manner specified by the Administrator.

(2) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may promulgate regulations requiring manufacturers to install onboard diagnostic systems described in paragraph (1) on heavy-duty vehicles and engines.

(3) STATE INSPECTION.—

(A) IN GENERAL.—The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to provide in the plans for—

(i) inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1)); and

(ii) maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

(B) NO INCONSISTENCY.—The regulations shall not be inconsistent with the provisions for warranties promulgated under subsections (b) and (c) of section 221107 of this title.

(4) SPECIFIC REQUIREMENTS.—In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require any access code or any device that is available only from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) INFORMATION AVAILABILITY.—

(A) IN GENERAL.—The Administrator, by regulation, shall require (subject to the provisions of section 221108(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons—

(i) all information needed to make use of the emission control diagnostics system prescribed under this subsection; and

(ii) other information including instructions for making emission related diagnosis and repairs.

(B) NO WITHHOLDING OF INFORMATION.—No information described in subparagraph (A) may be withheld under section 221108(c) of this title if the information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(C) AVAILABILITY TO THE ADMINISTRATOR.—The information shall be available to the Administrator, subject to section 221108(c) of this title, in carrying out the Administrator's responsibilities under this section.

**§ 221103. Prohibited acts**

(a) ENUMERATED PROHIBITIONS.—

(1) IN GENERAL.—The following acts and the causing thereof are prohibited:

(A)(i) In the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, offering for sale, introduction or delivery for introduction into commerce; or

(ii) in the case of any person, except as provided by regulation of the Administrator, the importation into the United States;

of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this chapter that are applicable to the motor vehicle or engine, unless the vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this chapter or chapter 225 in the case of clean-fuel vehicles (except as provided in subsection (b)).

(B)(i) For any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 221108 of this title.

(ii) For any person to fail or refuse to permit entry, testing, or inspection authorized under section 221106(c) or 221108 of this title.

(iii) For any person to fail or refuse to perform tests, or have tests performed, as required under section 221108 of this title.

(iv) For any manufacturer to fail to make information available as provided by regulation under section 221102(l)(5) of this title.

(C)(i) For any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or

motor vehicle engine in compliance with regulations under this subdivision prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser.

(ii) For any person to manufacture or sell, offer to sell, or install any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subdivision, and where the person knows or should know that the part or component is being offered for sale or installed for such use or put to such use.

(D) For any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 221102 of this title or chapter 225—

(i) to sell or lease any such vehicle or engine unless the manufacturer has complied with—

(I) the requirements of subsections (b) and (c) of section 221107 of this title with respect to the vehicle or engine, and unless a label or tag is affixed to the vehicle or engine in accordance with section 221107(d)(4)(C) of this title; or

(II) the corresponding requirements of chapter 225 in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of chapter 225;

(ii) to fail or refuse to comply with the requirements of subsection (d) or (f) of section 221107 of this title, or the corresponding requirements of chapter 225 in the case of clean fuel vehicles;

(iii) except as provided in section 221107(d)(4) of this title and the corresponding requirements of chapter 225 in the case of clean fuel vehicles, to provide directly or indirectly in any communication to an ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this division is conditioned on use of any part, component, or system manufactured by the manufacturer or any person acting for the manufacturer or under the manufacturer's control, or conditioned on service performed by any such person; or

(iv) to fail or refuse to comply with the terms and conditions of the warranty under subsection (b) or (c) of section 221107 of this title or the corresponding requirements of chapter 225 in the case of clean fuel vehicles with respect to any vehicle.

(E) For any person to violate section 221116 or 221117 of this title or chapter 225 (including any regulation under section 221116 or 221117 of this title or chapter 225).

(2) HIGH ALTITUDE PERFORMANCE ADJUSTMENTS.—

(A) DEFINITION OF MANUFACTURER PART.—In this paragraph, the term ''manufacturer part'' means, with respect to a motor vehicle engine, a part produced or sold by the manufacturer of the motor vehicle or motor vehicle engine.

(B) ACTION WITH RESPECT TO ELEMENT OF DESIGN.—No action with respect to any element of design described in paragraph (1)(C) (including any adjustment or alteration of any such element) shall be treated as a prohibited act under paragraph (1)(C) if the action is in accordance with section 221114 of this title.

(C) EFFECT OF PARAGRAPH (1)(C).—Nothing in paragraph (1)(C) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine.

(D) ACTION WITH RESPECT TO DEVICE OR ELEMENT OF DESIGN.—No action with respect to any device or element of design described in paragraph (1)(C) shall be treated as a prohibited act under paragraph (1)(C) if—

(i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced on completion of the procedure; and

(ii) the action thereafter results in the proper functioning of the device or element.

(E) CONVERSION FOR USE OF CLEAN ALTERNATIVE FUEL.—No action with respect to any device or element of design described in paragraph (1)(C) shall be treated as a prohibited act under paragraph (1)(C) if—

(i) the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in section 225101 of this title);

(ii) the vehicle complies with the applicable standard under section 221102 of this title when operating on such fuel; and

(iii) in the case of a clean alternative fuel vehicle (as defined by regulation by the Administrator)—

(I) the device or element is replaced on completion of the conversion procedure; and

(II) that action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) EXEMPTIONS; REFUSAL TO ADMIT VEHICLE OR ENGINE INTO UNITED STATES; VEHICLES OR ENGINES INTENDED FOR EXPORT.—

(1) EXEMPTIONS.—The Administrator may exempt any new motor vehicle or new motor vehicle engine from subsection (a) on such terms and conditions as the Administrator may find necessary—

(A) for the purpose of research, investigations, studies, demonstrations, or training; or

(B) for reasons of national security.

(2) REFUSAL TO ADMIT VEHICLE OR ENGINE INTO UNITED STATES.—A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof on such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to ensure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this chapter. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition of the motor vehicle or engine in accordance with the customs laws unless the motor vehicle or engine is exported, under regulations prescribed by the Secretary, within 90 days after the date of notice of that refusal or such additional time as may be permitted pursuant to the regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale to an ultimate consumer of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this chapter.

(3) VEHICLES OR ENGINES INTENDED FOR EXPORT.—A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to subsection (a), except that if the

country that is to receive the vehicle or engine has emission standards that differ from the standards prescribed under section 221102 of this title, the vehicle or engine shall comply with the standards of that country.

**§ 221104. Injunction proceedings**

(a) JURISDICTION.—The United States district courts shall have jurisdiction to restrain violations of section 221103(a) of this title.

(b) ACTIONS BROUGHT BY OR IN NAME OF UNITED STATES.—An action to restrain a violation of section 221103(a) of this title shall be brought by and in the name of the United States.

(c) SUBPOENAS.—In an action under subsection (b), a subpoena for a witness who is required to attend a United States district court in any judicial district may run into any other judicial district.

**§ 221105. Civil penalties**

(a) VIOLATIONS.—

(1) SUBPARAGRAPH (A), (D), OR (E) OF SECTION 221103(a)(1).—Any person that violates subparagraph (A), (D), or (E) of section 221103(a)(1) of this title shall be subject to a civil penalty of not more than $25,000.

(2) SECTION 221103(a)(1)(B).—Any person that violates section 221103(a)(1)(B) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(3) SECTION 221103(a)(1)(C).—

(A) CLAUSE (i).—

(i) MANUFACTURER OR DEALER.—Any manufacturer or dealer that violates section 221103(a)(1)(C)(i) of this title shall be subject to a civil penalty of not more than $25,000.

(ii) PERSON OTHER THAN MANUFACTURER OR DEALER.—Any person other than a manufacturer or dealer that violates section 221103(a)(1)(C)(i) of this title shall be subject to a civil penalty of not more than $2,500.

(B) CLAUSE (ii).—Any person that violates section 221103(a)(1)(C)(ii) of this title shall be subject to a civil penalty of not more than $2,500.

(4) SEPARATE OFFENSES.—

(A) MOTOR VEHICLES AND MOTOR VEHICLE ENGINES.—Any such violation of subparagraph (A), (C)(i), or (D) of section 221103(a)(1) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.

(B) PARTS AND COMPONENTS.—Any such violation of section 221103(a)(1)(C)(ii) of this title shall constitute a separate offense with respect to each part or component.

(b) CIVIL ACTIONS.—

(1) IN GENERAL.—The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) or section 221111(s) or 221113(e) of this title.

(2) PLACE FOR ACTION.—Any action under this subsection may be brought in the United States district court for the district in which the violation is alleged to have occurred or in which the defendant resides or has its principal place of business, and the court shall have jurisdiction to assess a civil penalty.

(3) CONSIDERATIONS.—In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account—

(A) the gravity of the violation;

(B) the economic benefit or savings (if any) resulting from the violation;

(C) the size of the violator's business;

(D) the violator's history of compliance with this subdivision;

(E) action taken to remedy the violation;

(F) the effect of the penalty on the violator's ability to continue in business; and

(G) such other matters as justice may require.

(4) SUBPOENAS.—In any action under this subsection, a subpoena for a witness who is required to attend a district court in any judicial district may run into any other judicial district.

(c) ADMINISTRATIVE ASSESSMENT OF CERTAIN PENALTIES.—

(1) ADMINISTRATIVE PENALTY AUTHORITY.—

(A) IN GENERAL.—In lieu of commencing a civil action under subsection (b), the Administrator may assess any civil penalty prescribed in subsection (a) or section 221111(s) or 221113(e) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(B) PROCEDURE.—Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity

for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue the order and provide the person an opportunity to request a hearing on the order, within 30 days of the date the notice is received by the person.

(C) COMPROMISE OR REMISSION.—The Administrator may compromise, or remit, with or without conditions, any administrative penalty that may be imposed under this section.

(2) CONSIDERATIONS.—In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the factors listed in subsection (b)(3).

(3) EFFECT OF ADMINISTRATOR'S ACTION.—

(A) ENFORCEMENT AUTHORITY.—Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this division, except that any violation—

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection; or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection;

shall not be the subject of civil penalty action under subsection (b).

(B) OBLIGATION TO COMPLY.—No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this division.

(4) FINALITY OF ORDER.—An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) JUDICIAL REVIEW.—

(A) IN GENERAL.—Any person against which a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which the person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date on which a civil penalty order is issued. The

person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General.

(B) RECORD.—The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days.

(C) SCOPE OF REVIEW.—The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion.

(D) CIVIL PENALTIES.—In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) COLLECTION.—

(A) IN GENERAL.—If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(i) after the order making the assessment has become final; or

(ii) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator;

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the date of the final order or the date of the final judgment, as the case may be).

(B) SCOPE OF REVIEW.—In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

(C) ENFORCEMENT EXPENSES; NONPAYMENT PENALTY.—

(i) IN GENERAL.—Any person that fails to pay on a timely basis the amount of an assessment of a civil penalty as described in subparagraph (A) shall be required to pay, in addition to that amount and interest—

(I) the enforcement expenses of the United States, including attorney's fees and costs for collection proceedings; and

(II) a quarterly nonpayment penalty for each quarter during which the failure to pay persists.

(ii) AMOUNT.—The nonpayment penalty for a quarter shall be in an amount equal to 10 percent of the aggregate amount of the person's penalties and nonpayment penalties that are unpaid as of the beginning of the quarter.

**§ 221106. Motor vehicle and motor vehicle engine compliance testing and certification**

(a) TESTING AND ISSUANCE OF CERTIFICATE OF CONFORMITY.—

(1) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES SUBMITTED BY A MANUFACTURER.—

(A) IN GENERAL.—The Administrator shall test, or require to be tested in such manner as the Administrator considers appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether the vehicle or engine conforms with the regulations prescribed under section 221102 of this title. If the vehicle or engine conforms to the regulations, the Administrator shall issue a certificate of conformity on such terms, and for such period (not in excess of 1 year), as the Administrator may prescribe.

(B) PROJECTED SALES NOT EXCEEDING 300.—In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 221102 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during that model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator considers appropriate to ensure that each vehicle or engine will comply during its useful life (as determined under section 221102(a)(1)(C) of this title) with the regulations prescribed under section 221102 of this title.

(2) EMISSION CONTROL SYSTEMS SUBMITTED BY ANY PERSON.—The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to the Administrator by any person to determine whether the system enables the vehicle or engine to conform to the standards required to be prescribed under sec-

tion 221102(b) of this title. If the Administrator finds on the basis of such tests that the vehicle or engine conforms to the standards, the Administrator shall issue a verification of compliance with emission standards for the system when incorporated in vehicles of a class of which the tested vehicle is representative. The Administrator shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of the tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulation.

(3) CONFORMITY TO REQUIREMENTS.—

(A) IN GENERAL.—A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, a vehicle or engine conforms to applicable requirements of section 221102(a)(4) of this title.

(B) TESTS.—The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as are necessary to carry out subparagraph (A). Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if the pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4) LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS.—The regulations promulgated under this subsection shall include test procedures capable of determining whether light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 221107(c) of this title under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

(b) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES BEING MANUFACTURED.—

(1) IN GENERAL.—To determine whether new motor vehicles or new motor vehicle engines conform to the regulations with respect to which a certificate of conformity is issued, the Administrator may test the new motor vehicles and new motor vehicle engines. The tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer of the new motor vehicles or new motor vehicle engines.

(2) NONCONFORMITY.—

(A) IN GENERAL.—

(i) DETERMINATION ON TEST OF SAMPLE OF NEW MOTOR VEHICLES OR NEW MOTOR VEHICLE ENGINES.—If, based on tests conducted under paragraph (1) on a sample of new motor vehicles or new motor vehicle engines covered by a certificate of conformity, the Administrator determines that all or part of the new motor vehicles or new motor vehicle engines do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 221102(a)(4) of this title, the Administrator may suspend or revoke the certificate in whole or in part, and shall so notify the manufacturer. The suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before that date if still in the possession of the manufacturer), and shall apply until such time as the Administrator finds that new motor vehicles and new motor vehicle engines manufactured by the manufacturer conform to the regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a new motor vehicle or new motor vehicle engine conforms to the regulations and requirements, the Administrator shall issue a certificate of conformity applicable to the new motor vehicle or new motor vehicle engine.

(ii) DETERMINATION ON TEST OF ANY NEW MOTOR VEHICLE OR NEW MOTOR VEHICLE ENGINE.—If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that the vehicle or engine does not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 221102(a)(4) of this title, the Administrator

may suspend or revoke the certificate insofar as it applies to the vehicle or engine until such time as the Administrator finds that the vehicle or engine actually conforms with those regulations and requirements, and the Administrator shall so notify the manufacturer.

(B) HEARING.—At the request of any manufacturer the Administrator shall grant the manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such a hearing.

(C) JUDICIAL REVIEW.—

(i) IN GENERAL.—In any case of actual controversy as to the validity of any determination under subparagraph (B), the manufacturer may at any time prior to the 60th day after the determination is made file a petition with the United States court of appeals for the circuit in which the manufacturer resides or has its principal place of business for a judicial review of the determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by the Administrator for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based the Administrator's determination, as provided in section 2112 of title 28.

(ii) ADDITIONAL EVIDENCE.—If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the proceeding before the Administrator, the court may order the additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and on such terms and conditions as the court considers proper. The Administrator may modify the Administrator's findings as to the facts, or make new findings, by reason of the additional evidence so taken, and the Administrator shall file the modified or new findings, and the Administrator's recommendation, if any, for the modification or setting aside of the Administrator's original determination, with the return of the additional evidence.

(iii) JURISDICTION; RELIEF.—On the filing of the petition under clause (i), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in that chapter.

(c) INSPECTION.—

(1) IN GENERAL.—For purposes of enforcement of this section, officers or employees duly designated by the Administrator, on presenting appropriate credentials to the manufacturer or person in charge, may—

(A) enter, at reasonable times, any plant or other establishment of a manufacturer, for the purpose of conducting tests of vehicles or engines in the possession of the manufacturer; or

(B) inspect, at reasonable times, records, processes, controls, and facilities used by a manufacturer in conducting tests under regulations of the Administrator.

(2) PROMPTNESS.—An inspection under paragraph (1) shall be commenced and completed with reasonable promptness.

(d) METHODS AND PROCEDURES FOR MAKING TESTS.—The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) PUBLICATION OF TEST RESULTS.—At the beginning of each model year, the Administrator shall make available to the public the results of the Administrator's tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a). The results shall be described in such a nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 221101 of this title.

(f) HIGH ALTITUDE REGULATIONS.—All light-duty vehicles and engines and all light-duty trucks shall comply with the requirements of section 221102 of this title regardless of the altitude at which they are sold.

(g) NONCONFORMANCE PENALTY.—

(1) IN GENERAL.—In the case of any class or category of heavy-duty vehicles or engines or motorcycles to which a standard promulgated under section 221102(a) of this title applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) and shall not be suspended or revoked under subsection (b)(2) for such vehicles or engines or motorcycles manufactured by a manufacturer notwithstanding the failure of the vehicles or engines or motorcycles to meet that standard if the manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing.

(2) EXCESSIVE DEGREE OF FAILURE.—No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 221102(a) of this title with respect to that class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. The regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines that are not in compliance with the regulations with respect to which a certificate of conformity is issued.

(3) AMOUNT OF NONCONFORMANCE PENALTY.—The regulations promulgated under paragraph (1) shall provide for nonconformance penalties in amounts determined under a formula established by the Administrator. The penalties under the formula—

(A) may vary from pollutant to pollutant;

(B) may vary by class or category or vehicle or engine;

(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 221102 of this title;

(D) shall be increased periodically to create incentives for the development of production vehicles or engines that achieve the required degree of emission reduction; and

(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

(4) WARRANTY; ACTIONS.—In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 221107(c)(2)(B) of this title and any action under section 221107(d) of this title shall be required to be effective only for the emission levels for which the Administrator determines that the certificate was issued and not for the emission levels required under the applicable standard.

(5) AUTHORITIES.—The authorities of section 221108(a) of this title shall apply, subject to the conditions of section 221108(b) of this title, for purposes of this subsection.

(h) TESTING UNDER CIRCUMSTANCES THAT REFLECT ACTUAL CURRENT DRIVING CONDITIONS.—The regulations under subsections (a) and (b) regarding the testing of motor vehicles and motor vehicle engines shall ensure that vehicles are tested under circumstances that reflect the actual

current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.

**§ 221107. Compliance by vehicles and engines in actual use**

(a) DEFINITIONS.—In this section:

(1) ONBOARD EMISSION DIAGNOSTIC DEVICE.—

(A) IN GENERAL.—The term ''onboard emission diagnostic device'' means any device installed for the purpose of storing or processing emission-related diagnostic information.

(B) EXCLUSIONS.—The term ''onboard emission diagnostic device'' does not include any part or other system that a device described in subparagraph (A) monitors except for a specified major emission control component.

(2) SPECIFIED MAJOR EMISSION CONTROL COMPONENT.—

(A) IN GENERAL.—The term ''specified major emission control component'' means a catalytic converter, an electronic emission control unit, and an onboard emissions diagnostic device.

(B) OTHER DEVICES.—The Administrator may designate any other pollution control device or component as a specified major emission control component if—

(i) the device or component was not in general use on vehicles and engines manufactured prior to model year 1990; and

(ii) the Administrator determines that the retail cost (exclusive of installation costs) of the device or component exceeds $200 (in 1989 dollars), adjusted for inflation or deflation as calculated by the Administrator at the time of the determination.

(3) WARRANTY PERIOD.—

(A) NEW LIGHT-DUTY TRUCKS AND NEW LIGHT-DUTY VEHICLES AND ENGINES MANUFACTURED IN MODEL YEAR 1995 AND THEREAFTER.—

(i) IN GENERAL.—The term ''warranty period'', with respect to a new light-duty truck or new light-duty vehicle or engine manufactured in model year 1995 or thereafter, means the 1st 2 years or 24,000 miles of use (whichever first occurs), except as provided in subparagraph (B).

(ii) OTHER VEHICLES AND ENGINES.—The term ''warranty period'', with respect to a vehicle or engine other than a vehicle or engine described in clause (i), means a period established by the Administrator by regulation.

(B) SPECIFIED MAJOR EMISSION CONTROL COMPONENTS.—The term ''warranty period'', with respect to a specified major emission

control component of a new light-duty truck or new light-duty vehicle or engine manufactured in model year 1995 or thereafter, means the 1st 8 years or 80,000 miles of use (whichever first occurs).

(b) IN GENERAL.—

(1) NEW MOTOR VEHICLE AND NEW MOTOR VEHICLE ENGINE WARRANTY.—The manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that the vehicle or engine is—

(A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 221102 of this title; and

(B) free from defects in materials and workmanship that cause such a vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 221102(a)(1)(C) of this title).

(2) MOTOR VEHICLE PART OR MOTOR VEHICLE ENGINE PART CERTIFICATION.—In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of the part may certify that use of the part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 221102 of this title. Such a certification shall be made only under such regulations as the Administrator may promulgate to carry out subsection (c).

(3) PAYMENT OF REPLACEMENT COSTS OF PARTS, DEVICES, OR COMPONENTS DESIGNED FOR EMISSION CONTROL.—

(A) DEFINITION OF PART, DEVICE, OR COMPONENT OF A LIGHT-DUTY VEHICLE THAT IS DESIGNED FOR EMISSION CONTROL.—In this paragraph:

(i) IN GENERAL.—The term ''part, device, or component of a light-duty vehicle that is designed for emission control'' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions.

(ii) EXCLUSIONS.—The term ''part, device, or component of a light-duty vehicle that is designed for emission control'' does not include a vehicle component that was in general use prior to model year 1968 and the primary function of which is not related to emission control.

(B) PAYMENT BY MANUFACTURER.—The cost of any part, device, or component of a light-duty vehicle that is designed for emission control and that, under the instructions issued pursuant

to subsection (d)(4), is scheduled for replacement during the useful life of a vehicle to maintain compliance with regulations under section 221102 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of the vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer, and the replacement shall be provided without cost to an ultimate purchaser, subsequent purchaser, or dealer.

(c) TESTING METHODS AND PROCEDURES.—

(1) DETERMINATION.—The Administrator shall take the actions described in paragraph (2) if the Administrator determines that—

(A) there are available testing methods and procedures to ascertain whether, when in actual use throughout the warranty period, each vehicle and engine to which regulations under section 221102 of this title apply complies with the emission standards of those regulations;

(B) those methods and procedures are in accordance with good engineering practices; and

(C) those methods and procedures are reasonably capable of being correlated with tests conducted under section 221106(a)(1) of this title.

(2) ACTIONS.—If the Administrator makes the determination described in paragraph (1)—

(A) the Administrator shall establish the methods and procedures described in paragraph (1) by regulation; and

(B) at such time as the Administrator determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1)(A), the Administrator shall prescribe regulations that require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 221102 of this title applies and that is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this subparagraph.

(3) WARRANTY.—A warranty under the regulations prescribed under paragraph (2)(B)—

(A) shall run to the ultimate purchaser and each subsequent purchaser; and

(B) shall provide that if—

(i) the vehicle or engine is maintained and operated in accordance with instructions under subsection (d)(4);

(ii) the vehicle or engine fails to conform at any time during the warranty period to the regulations prescribed under section 221102 of this title; and

(iii) the nonconformity results in the ultimate purchaser (or any subsequent purchaser) of the vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use the vehicle or engine) under Federal or State law;

the manufacturer shall remedy the nonconformity under the warranty, with the cost to be borne by the manufacturer.

(4) NO BASIS FOR INVALIDITY.—A warranty under the regulations prescribed under paragraph (2)(B) shall not be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if the part was certified as provided under subsection (b)(2).

(5) INSTRUCTIONS.—Clause (i) of paragraph (3)(B) shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (d)(4).

(d) NONCONFORMING VEHICLES; PLAN FOR REMEDYING NONCONFORMITY; INSTRUCTIONS FOR MAINTENANCE AND USE; LABEL OR TAG.—

(1) APPLICABILITY.—This subsection is effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970.

(2) NOTICE TO MANUFACTURER; PLAN REQUIREMENT.—

(A) IN GENERAL.—If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 221102 of this title, when in actual use throughout their useful life (as determined under section 221102(a)(1)(C) of this title), the Administrator shall—

(i) immediately notify the manufacturer of the vehicles or engines of the nonconformity; and

(ii) require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given.

(B) PLAN PROVISIONS.—The plan shall provide that the nonconformity of any such vehicles or engines that are properly used and maintained will be remedied at the expense of the manufacturer.

(C) HEARING.—If the manufacturer disagrees with a determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing.

(D) ORDER.—Unless, as a result of a hearing, the Administrator withdraws the determination of nonconformity, the Administrator shall, within 60 days after the completion of the hearing, order the manufacturer to provide prompt notification of the nonconformity in accordance with paragraph (3).

(3) NOTIFICATION OF DEALERS, ULTIMATE PURCHASERS, AND SUBSEQUENT PURCHASERS.—Any notification required by paragraph (2) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulation require.

(4) INSTRUCTIONS.—

(A) IN GENERAL.—A manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser, and the instructions shall correspond to regulations that the Administrator shall promulgate. The manufacturer shall provide in boldface type on the 1st page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part that has been certified as provided in subsection (b)(2).

(B) NO CONDITIONS.—

(i) IN GENERAL.—The instruction under subparagraph (A) shall not include—

(I) any condition on the ultimate purchaser's using, in connection with the vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) that is identified by brand, trade, or corporate name; or

(II) any condition directly or indirectly distinguishing between—

(aa) service performed by the franchised dealers of the manufacturer or any other service establish-

ments with which the manufacturer has a commercial relationship; and

(bb) service performed by independent automotive repair facilities with which the manufacturer has no commercial relationship.

(ii) WAIVER.—The prohibition of this subparagraph may be waived by the Administrator if—

(I) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service identified by brand, trade, or corporate name is used in connection with the vehicle or engine; and

(II) the Administrator finds that such a waiver is in the public interest.

(C) LABEL OR TAG.—The manufacturer shall indicate by means of a label or tag permanently affixed to the vehicle or engine that the vehicle or engine is covered by a certificate of conformity issued for the purpose of ensuring achievement of emission standards prescribed under section 221102 of this title. The label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(5) IN-USE STANDARDS.—

(A) LIGHT-DUTY TRUCKS OF UP TO 6,000 POUNDS.—For purposes of applying this subsection, in the case of 100 percent of each manufacturer's sales volume of light-duty trucks of up to 6,000 pounds gross vehicle weight rating and light-duty vehicles, the standards for nonmethane hydrocarbons, carbon monoxide, and nitrogen oxides shall be as provided in table G in section 221102(f)(1) of this title, except that in applying the standards set forth in table G for purposes of determining compliance with this subsection, the applicable useful life shall be—

(i) 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles;

except that no testing shall be done beyond 7 years or 75,000 miles (or the equivalent), whichever first occurs.

(B) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—For purposes of applying this subsection, in the case of 100 percent of each manufacturer's sales volume of light-duty trucks of more than 6,000 pounds gross vehicle weight rating, the standards for nonmethane hydrocarbons, carbon monoxide, and nitrogen oxides shall be as provided in table H in section 221102(g) of this title, except that in applying the standards set forth in table H for purposes of determining compliance with this subsection, the applicable useful life shall be—

(i) 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles;

except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent), whichever first occurs.

(6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—

(A) DIESEL-FUELED LIGHT-DUTY TRUCKS OF UP TO 6,000 POUNDS.—In the case of diesel-fueled light-duty trucks up to 6,000 pounds gross vehicle weight rating and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 221102(f) of this title for nitrogen oxides shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent), whichever first occurs.

(B) DIESEL-FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—In the case of diesel-fueled light-duty trucks of 6,000 pounds gross vehicle weight rating or more, the useful life for purposes of determining in-use compliance with the standards under section 221102(g) of this title for nitrogen oxides shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(e) DEALER COSTS BORNE BY MANUFACTURER.—Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (b), (c), or (d) shall be borne by the manufacturer. The transfer of any such

cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(f) COST STATEMENT.—If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, the manufacturer shall set forth in the statement the cost or value attributed to those devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and the Secretary's representatives, shall have the same access for this purpose to the records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 209105 of this title.

(g) INSPECTION AFTER SALE TO ULTIMATE PURCHASER.—Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (d)(2), after its sale to an ultimate purchaser, shall be made only if the owner of the vehicle or engine voluntarily permits such an inspection to be made, except as may be provided by any State or local inspection program.

(h) REPLACEMENT AND MAINTENANCE COSTS BORNE BY OWNER.—For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of the vehicle or engine to replace and to maintain, at the owner's expense at any service establishment or facility of the owner's choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of subsection (b)(3)(A)), unless the part, item, or device is covered by any warranty not mandated by this division.

(i) REMEDIATION OF NONCONFORMITY; TESTING.—

(1) REMEDIATION OF NONCONFORMITY.—If at any time during the period for which the warranty applies under subsection (c), a motor vehicle fails to conform to the applicable regulations under section 221102 of this title as determined under subsection (c), the nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to the warranty as provided in subparagraph (B) of subsection (c)(3) (without regard to clause (iii) of that subparagraph).

(2) TESTING.—Nothing in section 221109(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of the vehicle to an ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

(j) EFFECT OF DIVISION.—Nothing in this division shall be construed to provide that any part other than a part described in subsection (a)(1) shall be required to be warranted under this division for the period of 8 years or 80,000 miles described in subsection (a)(3)(B).

**§ 221108. Information collection**

(a) MANUFACTURER'S RESPONSIBILITY.—Every manufacturer of new motor vehicles or new motor vehicle engines, every manufacturer of new motor vehicle or engine parts or components, and every other person subject to the requirements of this chapter or chapter 225 shall—

(1) establish and maintain records, perform tests where such testing is not otherwise reasonably available under this chapter and chapter 225 (including fees for testing), make reports, and provide information that the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this chapter and chapter 225 (including regulations thereunder, or to otherwise carry out this chapter and chapter 225; and

(2) on request of an officer or employee duly designated by the Administrator, permit the officer or employee at reasonable times to have access to and copy such records.

(b) ENFORCEMENT AUTHORITY.—For the purposes of enforcement of this section, officers or employees duly designated by the Administrator on presenting appropriate credentials may—

(1) enter, at reasonable times, any establishment of a manufacturer, or of any person that a manufacturer engages to perform any activity required by subsection (a), for the purposes of inspecting or observing any activity conducted pursuant to subsection (a); and

(2) inspect records, processes, controls, and facilities used in performing any activity required by subsection (a), by the manufacturer or by any person that the manufacturer engages to perform any such activity.

(c) AVAILABILITY TO PUBLIC; TRADE SECRETS.—Any records, reports, or information obtained under this chapter or chapter 225 shall be available to the public, except that on a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular portion thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the Administrator shall consider the record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18. Any authorized representative of the Administrator shall be considered an employee of the United States for purposes of section 1905 of title 18.

(d) EFFECT OF SECTION.—Nothing in this section prohibits the Administrator or authorized representative of the Administrator from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States concerned with carrying out this divi-

sion or when relevant in any proceeding under this division. Nothing in this section authorizes the withholding of information by the Administrator or any officer or employee under the Administrator's control from the duly authorized committees of Congress.

**§ 221109. State standards**

(a) PROHIBITIONS.—

(1) STANDARDS.—No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this chapter.

(2) APPROVAL.—No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as a condition precedent to the initial retail sale, titling (if any), or registration of the motor vehicle, motor vehicle engine, or equipment.

(b) WAIVER.—

(1) IN GENERAL.—The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State that adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards.

(2) LIMITATION.—No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious;

(B) the State does not need such State standards to meet compelling and extraordinary conditions; or

(C) the State standards and accompanying enforcement procedures are not consistent with section 221102(a) of this title.

(3) PROTECTIVENESS.—If each State standard is at least as stringent as the comparable applicable Federal standard, the State standard shall be deemed to be at least as protective of health and welfare as the Federal standards for purposes of paragraphs (1) and (2).

(4) TREATMENT AS COMPLIANCE WITH FEDERAL STANDARDS.—In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with the State standards shall be treated as compliance with applicable Federal standards for purposes of this subdivision.

(c) CERTIFICATION OF VEHICLE PARTS OR ENGINE PARTS.—

(1) IN GENERAL.—Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 221107(b)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval that relates to motor vehicle emissions and is applicable to the same aspect of that part.

(2) APPLICABILITY.—Paragraph (1) shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b).

(d) CONTROL, REGULATION, OR RESTRICTIONS ON REGISTERED OR LICENSED MOTOR VEHICLES.—Nothing in this chapter precludes or denies to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) NONROAD ENGINES OR VEHICLES.—

(1) PROHIBITION OF CERTAIN STATE STANDARDS.—

(A) IN GENERAL.—No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this division:

(i) New engines that—

(I) are used in construction equipment or vehicles or used in farm equipment or vehicles; and

(II) are smaller than 175 horsepower.

(ii) New locomotives or new engines used in locomotives.

(B) NO WAIVER.—Subsection (b) shall not apply for purposes of this paragraph.

(2) OTHER NONROAD ENGINES OR VEHICLES.—

(A) CALIFORNIA.—In the case of any nonroad vehicles or engines other than those described to in clause (i) or (ii) of paragraph (1)(A), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

(i) the determination of California is arbitrary and capricious;

(ii) California does not need such California standards to meet compelling and extraordinary conditions; or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) OTHER STATES.—Any State other than California that has plan provisions approved under chapter 215 may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those described in clause (i) or (ii) of paragraph (1)(A)) and take such other actions as are described in subparagraph (A) of this paragraph respecting such vehicles or engines if—

(i) the standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A); and

(ii) California and that State adopt the standards at least 2 years before commencement of the period for which the standards take effect.

(3) REGULATIONS.—The Administrator shall issue regulations to implement this subsection.

**§ 221110. State grants**

(a) IN GENERAL.—The Administrator may make grants to appropriate State agencies in an amount up to ⅔ of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs.

(b) LIMITATIONS.—No grant under subsection (a) shall be made—

(1) for any part of any State vehicle inspection program that does not directly relate to the cost of the air pollution control aspects of such a program;

(2) unless the Secretary of Transportation has certified to the Administrator that the program is consistent with any highway safety program developed pursuant to section 402 of title 23; and

(3) unless the program includes provisions designed to ensure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

(c) REIMBURSEMENT.—Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.

**§ 221111. Regulation of fuels**

(a) DEFINITIONS.—In this section:

(1) MANUFACTURE.—The term ''manufacture'' includes importation.

(2) MANUFACTURER.—The term ''manufacturer'' includes an importer.

(b) AUTHORITY OF ADMINISTRATOR TO REGULATE.—The Administrator may by regulation designate any fuel or fuel additive (including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles) and, after such date or dates as the Administrator may prescribe, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce that fuel or additive unless the Administrator has registered the fuel or additive in accordance with subsection (c).

(c) REGISTRATION REQUIREMENT.—

(1) NOTIFICATION TO THE ADMINISTRATOR.—For the purpose of registration of fuels and fuel additives, the Administrator shall—

(A) require the manufacturer of any fuel to notify the Administrator of—

(i) the commercial identifying name and manufacturer of any additive contained in the fuel;

(ii) the range of concentration of any additive in the fuel; and

(iii) the purpose-in-use of any such additive; and

(B) require the manufacturer of any additive to notify the Administrator as to the chemical composition of the additive.

(2) TESTS; FURNISHING OF INFORMATION.—

(A) IN GENERAL.—For the purpose of registration of fuels and fuel additives, the Administrator shall, on a regular basis, require the manufacturer of any fuel or fuel additive—

(i) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(ii) to furnish—

(I) the description of any analytical technique that can be used to detect and measure any additive in the fuel;

(II) the recommended range of concentration of the additive;

(III) the recommended purpose-in-use of the additive; and

(IV) such other information as is reasonable and necessary to determine—

(aa) the emissions resulting from the use of the fuel or additive contained in the fuel;

(bb) the effect of the fuel or additive on the emission control performance of any vehicle, vehicle engine, nonroad engine, or nonroad vehicle; or

(cc) the extent to which such emissions affect the public health or welfare.

(B) TEST PROCEDURES AND PROTOCOLS; NO CONFIDENTIALITY.—Tests under subparagraph (A)(i) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) REGISTRATION.—On compliance with this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register the fuel or fuel additive.

(d) CONTROL OR PROHIBITION OF FUELS AND FUEL ADDITIVES.—

(1) IN GENERAL.—The Administrator may, from time to time on the basis of information obtained under subsection (c) or other information available to the Administrator, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle if—

(A) in the judgment of the Administrator, any fuel or fuel additive or any emission product of the fuel or fuel additive causes, or contributes to, air pollution or water pollution (including any degradation in the quality of groundwater) that may reasonably be anticipated to endanger the public health or welfare; or

(B) emission products of the fuel or fuel additive will impair to a significant degree the performance of any emission control device or system that is in general use, or that the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such a regulation to be promulgated.

(2) REQUIREMENTS FOR CONTROL OR PROHIBITION.—

(A) CAUSATION OF OR CONTRIBUTION TO AIR POLLUTION.—No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator under paragraph (1)(A) except after consideration of all relevant medical and scientific evidence available to the Administrator, including consideration of other technologically or economically feasible means of achieving emission standards under section 221102 of this title.

(B) IMPAIRMENT OF PERFORMANCE OF EMISSION CONTROL DEVICE OR SYSTEM.—

(i) IN GENERAL.—No fuel or fuel additive may be controlled or prohibited by the Administrator under paragraph (1)(B) except after consideration of available scientific and economic data, including a cost benefit analysis comparing—

(I) emission control devices or systems that are or will be in general use and require the proposed control or prohibition; with

(II) emission control devices or systems that are or will be in general use and do not require the proposed control or prohibition.

(ii) HEARING; FINDINGS.—On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives that is submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter that the Administrator is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) OTHER FUELS AND FUEL ADDITIVES.—No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless the Administrator finds, and publishes the finding, that in the Administrator's judgment, such a prohibition will not cause the use of any other fuel or fuel additive that will produce emissions that will endanger the public health or welfare to the same degree as or a greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3) EVIDENCE AND DATA.—

(A) IN GENERAL.—For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information that has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) SUBPOENAS.—In obtaining information under subparagraph (A), section 203102(a) of this title shall be applicable.

(4) LIMITATION ON STATE CONTROL OR PROHIBITION.—

(A) IN GENERAL.—Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any char-

acteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published the finding in the Federal Register; or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to the characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) STATES WITH WAIVERS.—Any State for which application of section 221109(a) of this title has at any time been waived under section 221109 of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) IMPLEMENTATION PLANS.—

(i) IN GENERAL.—A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for the State under section 211110 of this title so provides. The Administrator may approve such a provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if the Administrator finds that the State control or prohibition is necessary to achieve the primary or secondary NAAQS that the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(ii) TEMPORARY WAIVER.—The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to this subsection or subsection (h), (i), (m), or (n) or prescribed in an applicable implementation plan under section 211110 of this title approved by the Adminis-

trator under clause (i) if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation that prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) the extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to the State or region; and

(III) it is in the public interest to grant the waiver, such as when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation that cannot otherwise be compensated for.

(iii) ADDITIONAL REQUIREMENTS.—If the Administrator makes the determinations described in clause (ii), a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system (as defined by the Administrator through rulemaking); and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

(iv) REGULATIONS.—The Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v) EFFECT OF SUBPARAGRAPH.—Nothing in this subparagraph shall—

(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section (including a regulation promulgated pursuant to this section); or

(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(vi) LIMITATION.—

(I) IN GENERAL.—The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in the plan or revision if the effect of the approval would be to increase the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

(II) LIST OF APPROVED FUELS.—The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the States and Petroleum Administration for Defense Districts in which the fuels are used, in the Federal Register for public review and comment.

(III) REMOVAL FROM LIST.—The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

(IV) NEW FUELS.—

(aa) IN GENERAL.—Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if the new fuel—

(AA) completely replaces a fuel on the list published under subclause (II); or

(BB) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

(bb) LOWER NUMBER OF FUELS ON LIST.—If the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, the control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

(V) FURTHER LIMITATION.—The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least 1 State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid vapor pressure of 7.0 per square inch. In no event shall such approval by the Administrator cause an increase in

the total number of fuels on the list published under subclause (II).

(VI) EFFECT OF CLAUSE.—Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (c).

(e) TESTING OF FUELS AND FUEL ADDITIVES.—

(1) REGULATIONS.—After notice and opportunity for a public hearing, the Administrator shall promulgate regulations that implement the authority under clauses (i) and (ii) of subsection (c)(2)(A) with respect to each fuel or fuel additive that is registered on the date of promulgation of the regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

(2) PROVISION OF INFORMATION.—Regulations under subsection (c) to carry out this subsection shall require that the requisite information be provided to the Administrator by each manufacturer—

(A) prior to registration, in the case of any fuel or fuel additive that is not registered on the date of promulgation of such regulations; or

(B) not later than 3 years after the date of promulgation of such regulations, in the case of any fuel or fuel additive that is registered on that date.

(3) EXEMPTIONS; COST SHARING.—In promulgating the regulations, the Administrator may—

(A) exempt any small business (as defined in the regulations) from, or defer or modify the requirements of, the regulations with respect to any small business;

(B) provide for cost sharing with respect to the testing of any fuel or fuel additive that is manufactured or processed by 2 or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

(C) exempt any person from the regulations with respect to a particular fuel or fuel additive on a finding that any additional testing of that fuel or fuel additive would be duplicative of adequate existing testing.

(f) NEW FUELS AND FUEL ADDITIVES.—

(1) FUELS AND FUEL ADDITIVES.—

(A) FUELS AND FUEL ADDITIVES FOR GENERAL USE IN LIGHT-DUTY MOTOR VEHICLES MANUFACTURED AFTER MODEL YEAR 1974.—It shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the

concentration in use of, any fuel or fuel additive for general use in light-duty motor vehicles manufactured after model year 1974 that is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 221106 of this title.

(B) FUELS AND FUEL ADDITIVES FOR USE BY ANY PERSON IN MOTOR VEHICLES MANUFACTURED AFTER MODEL YEAR 1974.—It shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 that is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 221106 of this title.

(2) GASOLINE CONTAINING MANGANESE.—It shall be unlawful for any manufacturer of any fuel to introduce into commerce any gasoline that contains a concentration of manganese in excess of .0625 grams per gallon of fuel, except as otherwise provided pursuant to a waiver under paragraph (3).

(3) WAIVER.—The Administrator, on application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or the limitation specified in paragraph (2) if the Administrator determines that the applicant has established that the fuel or fuel additive or a specified concentration thereof, and the emission products of the fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine in which the device or system is used) to achieve compliance by the motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine with the emission standards with respect to which it has been certified pursuant to sections 221106 and 221113(a) of this title. The Administrator shall take final action to grant or deny an application under this paragraph, after public notice and comment, within 270 days after receipt of the application.

(4) NO STAY.—No action of the Administrator under this section may be stayed by any court pending judicial review of the action.

(g) MISFUELING.—

(1) LEADED GASOLINE.—No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle—

(A) that is labeled ''unleaded gasoline only'';

(B) that is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline;

(C) that is a 1990 or later model year motor vehicle; or

(D) that the person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

(2) DIESEL FUEL CONTAINING SULFUR.—No person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel that the person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or that fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as the Administrator may prescribe under subsection (i)(2).

(h) REID VAPOR PRESSURE REQUIREMENTS.—

(1) PROHIBITION.—The Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid vapor pressure in excess of 9.0 pounds per square inch. The regulations shall establish more stringent Reid vapor pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of the standards, the need of an area for emission control, and economic factors.

(2) ATTAINMENT AREAS.—

(A) IN GENERAL.—The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid vapor pressure of 9.0 pounds per square inch or lower in any area designated under section 211107 of this title as an attainment area.

(B) FORMER OZONE NONATTAINMENT AREAS REDESIGNATED AS AN ATTAINMENT AREA.—Notwithstanding subparagraph (A), the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch in any area, formerly an ozone nonattainment area, that has been redesignated as an attainment area.

(3) ENFORCEMENT.—The regulations under this subsection shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

(4) ETHANOL WAIVER.—

(A) IN GENERAL.—Subject to subparagraph (B), for fuel blends containing gasoline and 10 percent denatured anhydrous ethanol,

the Reid vapor pressure limitation under this subsection shall be 1 pound per square inch greater than the applicable Reid vapor pressure limitations established under paragraph (1).

(B) DISTRIBUTORS, BLENDERS, MARKETERS, RESELLERS, CARRIERS, RETAILERS, AND WHOLESALE PURCHASER-CONSUMERS DEEMED TO BE IN FULL COMPLIANCE.—A distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with this subsection (including the regulations promulgated thereunder) if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that—

(i) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;

(ii) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(5); and

(iii) no additional alcohol or other additive has been added to increase the Reid vapor pressure of the ethanol portion of the blend.

(5) EXCLUSION FROM ETHANOL WAIVER.—

(A) PROMULGATION OF REGULATIONS.—On notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

(B) DEADLINE FOR PROMULGATION.—The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

(C) EFFECTIVE DATE.—

(i) IN GENERAL.—With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

(I) the 1st day of the 1st high ozone season for the area that begins after the date of receipt of the notification; or

(II) 1 year after the date of receipt of the notification.

(ii) EXTENSION OF EFFECTIVE DATE BASED ON DETERMINATION OF INSUFFICIENT SUPPLY.—

(I) IN GENERAL.—If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

(bb) may renew the extension under item (aa) for 2 additional periods, neither of which shall exceed 1 year.

(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(6) AREAS COVERED.—This subsection shall apply only to the 48 contiguous States and the District of Columbia.

(i) SULFUR CONTENT REQUIREMENTS FOR DIESEL FUEL.—

(1) PROHIBITION.—No person shall manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel that contains a concentration of sulfur in excess of 0.05 percent (by weight) or that fails to meet a cetane index minimum of 40.

(2) REGULATIONS.—The Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye the diesel fuel in a particular manner to distinguish the non-motor vehicle diesel fuel from motor vehicle diesel fuel. The Administrator may establish an equivalent alternative aromatic level to the cetane index specification in paragraph (1).

(3) SULFUR CONTENT AND CETANE INDEX MINIMUM.—The sulfur content and cetane index minimum of fuel required to be used in the certification of heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).

(4) EXEMPTION.—Alaska and Hawaii may be exempted from the requirements of this subsection in the same manner as is provided in section 209115 of this title. The Administrator shall take final action on any petition filed under section 209115 of this title or this paragraph for an exemption from the requirements of this subsection within 12 months after the date of the petition.

(j) LEAD SUBSTITUTE GASOLINE ADDITIVES.—

(1) REGISTRATION.—Any person proposing to register any gasoline additive under subsection (b) or to use any previously registered additive as a lead substitute may also elect to register the additive as a lead substitute gasoline additive for reducing valve seat wear by providing the Administrator with such relevant information regarding product identity and composition as the Administrator considers necessary for carrying out the responsibilities of paragraph (2) (in addition to other information that may be required under subsection (c)).

(2) TESTING.—

(A) TEST PROCEDURE.—In addition to the other testing which may be required under subsection (c), in the case of the lead substitute gasoline additives described in paragraph (1), the Administrator shall develop and publish a test procedure to determine an additive's effectiveness in reducing valve seat wear and an additive's tendencies to produce engine deposits and other adverse side effects. The test procedure shall be developed in cooperation with the Secretary of Agriculture and with the input of additive manufacturers, engine and engine components manufacturers, and other interested persons.

(B) TESTING.—The Administrator shall enter into arrangements with an independent laboratory to conduct tests of each additive using the test procedures developed and published pursuant to subparagraph (A). The Administrator shall publish the results of the tests by company and additive name in the Federal Register with, for comparison purposes, the results of applying the same test procedures to gasoline containing 0.1 gram of lead per gallon in lieu of the lead substitute gasoline additive. The Administrator shall not rank or otherwise rate the lead substitute additives. Additives shall be tested within 6 months after the lead substitute additives are identified to the Administrator.

(3) USER FEE.—The Administrator may impose a user fee to recover the costs of testing of any fuel additive under this subsection. The fee shall be paid by the person proposing to register the fuel additive. The fee shall not exceed $20,000 for a single fuel additive.

(4) SPECIAL FUND FOR LICENSING AND OTHER SERVICES.—Any fees collected under this subsection shall be deposited in the Treasury in a special fund for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, to carry out EPA's activities for which the fees were collected.

(k) REFORMULATED GASOLINE FOR CONVENTIONAL VEHICLES.—

(1) DEFINITIONS.—In this subsection:

(A) BASELINE GASOLINE.—

(i) SUMMERTIME.—The term ''baseline gasoline'', with respect to gasoline sold during the high ozone period (as defined by the Administrator), means a gasoline that meets the following specifications:

BASELINE GASOLINE FUEL PROPERTIES

| | |
|---|---|
| API Gravity | 57.4 |
| Sulfur, ppm | 339 ?? |
| Benzene, % | 1.53 |
| RVP, psi | 8.7 |
| Octane, R+M/2 | 87.3 |
| IBP, F | 91 ?? |
| 10%, F | 128 ?? |
| 50%, F | 218 ?? |
| 90%, F | 330 ?? |
| End Point, F | 415 ?? |
| Aromatics, % | 32.0 |
| Olefins, % | 9.2 |
| Saturates, % | 58.8 |

(ii) WINTERTIME.—The Administrator shall establish the specifications of baseline gasoline for gasoline sold at times other than the high ozone period (as defined by the Administrator). Those specifications shall be the specifications of 1990 industry average gasoline sold during that period.

(B) BASELINE VEHICLES.—The term ''baseline vehicles'' means representative model year 1990 vehicles.

(C) CONVENTIONAL GASOLINE.—The term ''conventional gasoline'' means any gasoline that does not meet specifications set by a certification under this subsection.

(D) COVERED AREA.—The term ''covered area'' means—

(i) 1 of the 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 to 1989; and

(ii) effective 1 year after the reclassification of any ozone nonattainment area as a severe ozone nonattainment area under section 215202(b) of this title, the severe area.

(E) REFORMULATED GASOLINE.—The term ''reformulated gasoline'' means any gasoline that is certified by the Administrator under this section as complying with this subsection.

(F) TOXIC AIR POLLUTANTS.—The term ''toxic air pollutants'' means the aggregate emissions of the following:

Benzene.

1,3 Butadiene.

Polycyclic organic matter (POM).

Acetaldehyde.

Formaldehyde.

(2) EPA REGULATIONS.—

(A) IN GENERAL.—The Administrator shall promulgate regulations establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. The regulations shall require the greatest reduction in emissions of ozone-forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration—

(i) the cost of achieving the emission reductions; and

(ii) any air-quality related and non-air-quality related health and environmental impacts and energy requirements.

(B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS REDUCTIONS FROM REFORMULATED GASOLINE.—The Administrator shall promulgate regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on August 8, 2005), and as authorized under section 221102(k) of this title.

(3) GENERAL REQUIREMENTS.—

(A) IN GENERAL.—The regulations under paragraph (2) shall require that reformulated gasoline comply with paragraph (4) and with each of the requirements stated in this paragraph (subject to paragraph (8)).

(B) NITROGEN OXIDE EMISSIONS.—

(i) IN GENERAL.—The emissions of nitrogen oxides from baseline vehicles when using the reformulated gasoline shall be not greater than the level of such emissions from such vehicles when using baseline gasoline.

(ii) TECHNICAL INFEASIBILITY.—If the Administrator determines that compliance with the limitation on emissions of

nitrogen oxides under clause (i) is technically infeasible, considering the other requirements applicable under this subsection to reformulated gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph or any requirements applicable under paragraph (4)(B).

(C) BENZENE CONTENT.—The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

(D) HEAVY METALS.—

(i) IN GENERAL.—The reformulated gasoline shall have no heavy metals, including lead or manganese.

(ii) WAIVER.—The Administrator may waive the prohibition contained in clause (i) for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the reformulated gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(4) MORE STRINGENT OF FORMULA OR PERFORMANCE STANDARDS.—

(A) IN GENERAL.—The regulations under paragraph (2) shall require compliance with the more stringent of the requirements set forth in subparagraph (B) or the requirements of subparagraph (C). For purposes of determining the more stringent provision, subclauses (I) and (II) of subparagraph (C)(i) shall be considered independently.

(B) FORMULA.—

(i) BENZENE.—The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

(ii) AROMATICS.—The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

(iii) LEAD.—The reformulated gasoline shall have no lead content.

(iv) DETERGENTS.—The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

(C) PERFORMANCE STANDARD.—

(i) IN GENERAL.—

(I) VOLATILE ORGANIC COMPOUND EMISSIONS.—

(aa) IN GENERAL.—During the high ozone season (as defined by the Administrator), the aggregate

emissions of ozone-forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 25 percent below the aggregate emissions of ozone-forming volatile organic compounds from baseline vehicles when using baseline gasoline.

(bb) ADJUSTMENT.—The Administrator may adjust the 25 percent requirement under item (aa) to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving the reductions in emissions of volatile organic compounds. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of volatile organic compounds from baseline vehicles when using baseline gasoline.

(cc) MASS BASIS.—The reductions required under this subclause shall be on a mass basis.

(II) TOXIC AIR POLLUTANTS.—

(aa) IN GENERAL.—During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 25 percent below the aggregate emissions of toxic air pollutants from baseline vehicles when using baseline gasoline.

(bb) ADJUSTMENT.—The Administrator may adjust the 25 percent requirement under item (aa) to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving the reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of toxic air pollutants from baseline vehicles when using baseline gasoline.

(cc) MASS BASIS.—The reductions required under this subclause shall be on a mass basis.

(ii) TREATMENT OF REDUCTION GREATER THAN A SPECIFIC PERCENTAGE REDUCTION.—Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying that percentage reduction requirement.

(5) CERTIFICATION PROCEDURES.—

(A) REGULATIONS.—The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under the regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation or slate of fuel formulations. The procedures shall require that the Administrator shall approve or deny a petition within 180 days after receipt. If the Administrator fails to act within the 180-day period, the fuel shall be deemed to be certified until the Administrator completes action on the petition.

(B) CERTIFICATION; EQUIVALENCY.—The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if the fuel or fuels—

(i) comply with the requirements of paragraph (3); and

(ii) achieve equivalent or greater reductions in emissions of ozone-forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (4).

(C) DETERMINATION OF EMISSIONS LEVEL.—The Administrator shall determine the level of emissions of ozone-forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, the Administrator shall, by regulation, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

(6) PROHIBITIONS.—

(A) SALE OR DISPENSING.—Each of the following shall be a violation of this subsection:

(i) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

(ii) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area without—

(I) segregating the conventional gasoline from reformulated gasoline; and

(II) clearly marking the conventional gasoline as ''conventional gasoline, not for sale to ultimate consumer in a covered area''.

(B) LABELING, REPRESENTING, OR WHOLESALING CONVENTIONAL GASOLINE AS REFORMULATED GASOLINE.—Any refiner, blender, importer or marketer that purchases properly segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales conventional gasoline as reformulated gasoline shall be in violation of this subsection.

(C) SAMPLING, TESTING, AND RECORDKEEPING REQUIREMENTS.—The Administrator may impose sampling, testing, and recordkeeping requirements on any refiner, blender, importer, or marketer to prevent violations of this section.

(7) OPT-IN AREAS.—

(A) CLASSIFIED AREAS.—

(i) IN GENERAL.—On the application of the Governor of a State, the Administrator shall apply the prohibitions set forth in paragraph (6) in any area in the State classified under subchapter II of chapter 215 as a marginal area, moderate area, serious area, or severe area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for the prohibitions as the Administrator considers appropriate not later than 1 year after the application is received. The Administrator shall publish the application in the Federal Register on receipt.

(ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO PRODUCE REFORMULATED GASOLINE.—

(I) IN GENERAL.—If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator, by regulation—

(aa) shall extend the effective date of the prohibitions in marginal areas, moderate areas, serious areas, or severe areas described in clause (i) for 1 additional year, and

(bb) may renew such an extension for 2 additional one-year periods.

(II) PRIORITY.— The Administrator shall issue extensions under subclause (I) for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

(iii) ACTION ON PETITION.—The Administrator shall act on any petition submitted under this subparagraph within 6 months after receipt of the petition.

(B) OZONE TRANSPORT REGION.—

(i) APPLICATION OF PROHIBITION.—

(I) IN GENERAL.—On application of the Governor of a State in the ozone transport region established by section 215205(a) of this title, the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibitions specified in paragraph (6) to any area in the State (other than an area classified as a marginal ozone nonattainment area, moderate ozone nonattainment area, serious ozone nonattainment area, or severe ozone nonattainment area under subchapter II of chapter 215) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

(II) PUBLICATION OF APPLICATION.—As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

(ii) PERIOD OF APPLICABILITY.—Under clause (i), the prohibitions specified in paragraph (6) shall apply in a State—

(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

(iii) EXTENSION OF COMMENCEMENT DATE BASED ON INSUFFICIENT CAPACITY.—

(I) IN GENERAL.—If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

(II) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(8) CREDITS.—

(A) IN GENERAL.—The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person that refines, blends, or imports and certifies a gasoline or slate of gasoline that—

(i) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (4); or

(ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (3).

(B) USE.—The regulations described in subparagraph (A) shall provide that a person that is granted credits may use the credits, or transfer all or a portion of the credits to another person for use within the same nonattainment area, for the purpose of complying with this subsection.

(C) ENFORCEMENT.—The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of credits. The regulations shall prohibit the granting or transfer of credits for use with respect to any gasoline in a nonattainment area, to the extent that the use of the credits would result in—

(i) an average gasoline aromatic hydrocarbon content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits; or

(ii) an average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

(9) ANTIDUMPING REGULATIONS.—

(A) IN GENERAL.—The Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by the refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (2)) does not result in average per gallon emissions (measured on a mass basis) of—

(i) volatile organic compounds;

(ii) nitrogen oxides;

(iii) carbon monoxide; and

(iv) toxic air pollutants;

in excess of emissions of those pollutants attributable to gasoline sold or introduced into commerce in calendar year 1990 by that refiner, blender, or importer.

(B) ADJUSTMENTS.—In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to ensure that no credit is provided for improvement in motor vehicle emission control in motor vehicles sold after calendar year 1990.

(C) COMPLIANCE DETERMINED FOR EACH POLLUTANT INDEPENDENTLY.—In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A), the Administrator shall consider an increase in each air pollutant described in clauses (i) through (iv) of subparagraph (A) as a separate violation of the prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of nitrogen oxides resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

(D) COMPLIANCE PERIOD.—The Administrator shall promulgate an appropriate compliance period or appropriate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

(E) BASELINE FOR DETERMINING COMPLIANCE.—If the Administrator determines that no adequate and reliable data exist regarding the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for that refiner, blender, or importer, baseline gasoline shall be substituted for 1990 gasoline in determining compliance with subparagraph (A).

(10) EMISSIONS FROM ENTIRE VEHICLE.—In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

(l) DETERGENTS.—No person may sell or dispense to an ultimate consumer in the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons that sell or dispense to ultimate consumers in the United States, any gasoline that does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. The Administrator shall promulgate a regulation establishing specifications for such additives.

(m) OXYGENATED FUELS.—

(1) PLAN REVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS.—

(A) STATES IN WHICH THERE IS LOCATED ALL OR PART OF AN AREA THAT IS DESIGNATED AS A NONATTAINMENT AREA FOR CARBON MONOXIDE AND THAT HAS A CARBON MONOXIDE DESIGN VALUE OF 9.5 OR MORE PARTS PER MILLION.—The applicable implementation plan of a State in which there is located all or part of an area that is designated under subdivision 2 as a nonattainment area for carbon monoxide and that has a carbon monoxide design value of 9.5 or more parts per million based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to November 15, 1990, shall contain for that area the provisions specified under this subsection regarding oxygenated gasoline.

(B) STATES IN WHICH THERE IS LOCATED ANY AREA THAT, FOR ANY 2-YEAR PERIOD AFTER 1989, HAS A CARBON MONOXIDE DESIGN VALUE OF 9.5 OR MORE PARTS PER MILLION.—Each State in which there is located any area that, for any 2-year period after 1989, has a carbon monoxide design value of 9.5 or more parts per million shall, within 18 months after that 2-year period, submit a plan provision that contains the provisions specified under this subsection regarding oxygenated gasoline.

(2) OXYGENATED GASOLINE IN CARBON MONOXIDE NONATTAINMENT AREAS.—

(A) IN GENERAL.—Each plan provision under this subsection shall contain provisions to require that any gasoline sold or dispensed to an ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by fuel refin-

ers or marketers to persons that sell or dispense to ultimate consumers, in the larger of—

(i) the Consolidated Metropolitan Statistical Area in which the area is located; or

(ii) if the area is not located in a Consolidated Metropolitan Statistical Area, the Metropolitan Statistical Area in which the area is located;

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide, to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator).

(B) PORTION OF YEAR.—

(i) IN GENERAL.—The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months.

(ii) REDUCTION.—At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in clause (i) if the State can demonstrate that because of meteorological conditions, a reduced period will ensure that there will be no exceedances of the carbon monoxide standard outside the reduced period.

(C) EFFECTIVE DATE.—A plan provision under this subsection shall provide that the requirement shall take effect not later than November 1 of the 3d year after the last year of the applicable 2-year period described in paragraph (1) (or at such other date during the 3d year as the Administrator establishes under subparagraphs (A) and (B)).

(D) IMPLEMENTATION AND ENFORCEMENT.—A plan provision under this subsection shall include a program for implementation and enforcement of the requirement consistent with guidance issued by the Administrator.

(3) WAIVERS.—

(A) PREVENTION OF OR INTERFERENCE WITH ATTAINMENT FOR AIR POLLUTANT OTHER THAN CARBON MONOXIDE.—The Administrator shall waive, in whole or in part, the requirements of paragraph (2) on a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a primary

NAAQS (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

(B) NO SIGNIFICANT CONTRIBUTION TO CARBON MONOXIDE LEVELS.—The Administrator shall, on demonstration by the State satisfactory to the Administrator, waive the requirements of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

(C) INADEQUATE SUPPLY OR CAPACITY.—

(i) DEFINITION OF DISTRIBUTION CAPACITY.—In this subparagraph, the term ''distribution capacity'' includes capacity for transportation, storage, and blending.

(ii) PETITION.—Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet those requirements. The Administrator shall act on such a petition within 6 months after receipt of the petition.

(iii) DETERMINATION OF INADEQUACY.—If the Administrator determines, in response to a petition under clause (ii), that there is an inadequate supply or capacity described in clause (ii), the Administrator shall delay the effective date of paragraph (2) for 1 year. On petition, the Administrator may extend the effective date for 1 additional year. No partial delay or lesser waiver may be granted under this clause.

(iv) CONSIDERATIONS.—In granting waivers under this subparagraph, the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such a manner as will ensure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline that meets the requirements of paragraph (2).

(4) FUEL DISPENSING SYSTEMS.—Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

(5) GUIDELINES FOR CREDIT.—The Administrator shall promulgate guidelines allowing the use, during the portion of the year specified in

paragraph (2), of marketable oxygen credits from gasolines with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than is required. No credits may be transferred between nonattainment areas.

(6) ATTAINMENT AREAS.—Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area that is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area that is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent that the program is necessary to maintain the standard thereafter in the area.

(7) FAILURE TO ATTAIN CARBON MONOXIDE STANDARD.—If the Administrator determines under section 215302(b)(2) of this title that the primary NAAQS for carbon monoxide has not been attained in a serious area by the applicable attainment date, the State shall submit a plan provision for the area within 9 months after the date of the determination. The plan revision shall provide that the minimum oxygen content of gasoline described in paragraph (2) shall be 3.1 percent by weight unless the requirement is waived in accordance with this subsection.

(n) PROHIBITION OF LEADED GASOLINE FOR HIGHWAY USE.—It shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 221101 of this title) any gasoline that contains lead or lead additives.

(o) RENEWABLE FUEL PROGRAM.—

(1) DEFINITIONS.—In this subsection:

(A) ADDITIONAL RENEWABLE FUEL.—The term ''additional renewable fuel'' means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel in home heating oil or jet fuel.

(B) ADVANCED BIOFUEL.—

(i) IN GENERAL.—The term ''advanced biofuel'' means renewable fuel, other than ethanol derived from corn starch, that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

(ii) INCLUSIONS.—The types of fuels eligible for consideration as ''advanced biofuel'' may include any of the following:

(I) Ethanol derived from cellulose, hemicellulose, or lignin.

(II) Ethanol derived from sugar or starch (other than corn starch).

(III) Ethanol derived from waste material, including crop residue, other vegetative waste material, animal waste, food waste, and yard waste.

(IV) Biomass-based diesel.

(V) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass.

(VI) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass.

(VII) Other fuel derived from cellulosic biomass.

(C) BASELINE LIFECYCLE GREENHOUSE GAS EMISSIONS.—The term ''baseline lifecycle greenhouse gas emissions'' means the average lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005.

(D) BIOMASS-BASED DIESEL.—

(i) IN GENERAL.—The term ''biomass-based diesel'' means renewable fuel that is biodiesel as defined in section 312(f) of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions.

(ii) RENEWABLE FUEL DERIVED FROM COPROCESSING BIOMASS WITH A PETROLEUM FEEDSTOCK.—Notwithstanding clause (i), renewable fuel derived from coprocessing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of subparagraph (B) but is not biomass-based diesel.

(E) CELLULOSIC BIOFUEL.—The term ''cellulosic biofuel'' means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

(F) CONVENTIONAL BIOFUEL.—The term ''conventional biofuel'' means renewable fuel that is ethanol derived from corn starch.

(G) GREENHOUSE GAS.—

(i) IN GENERAL.—The term ''greenhouse gas'' means carbon dioxide, hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulfur hexafluoride.

(ii) INCLUSION OF OTHER ANTHROPOGENICALLY-EMITTED GASES.—The term ''greenhouse gas'' includes any other anthropogenically-emitted gas that is determined by the Administrator, after notice and comment, to contribute to global warming.

(H) LIFECYCLE GREENHOUSE GAS EMISSIONS.—The term ''lifecycle greenhouse gas emissions'' means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

(I) RENEWABLE BIOMASS.—The term ''renewable biomass'' means—

(i) planted crops and crop residue harvested from agricultural land cleared or cultivated at any time before December 19, 2007, that is—

(I) actively managed or fallow; and

(II) nonforested;

(ii) planted trees and tree residue from actively managed tree plantations on non-Federal land cleared at any time before December 19, 2007, including land belonging to an Indian tribe or an Indian individual, that is held in trust by the United States or subject to a restriction against alienation imposed by the United States;

(iii) animal waste material and animal byproducts;

(iv) slash and precommercial thinnings that are from non-Federal forestland, including forestland belonging to an Indian tribe or an Indian individual that is held in trust by the

United States or is subject to a restriction against alienation imposed by the United States, but not including—

(I) a forest or forestland that is an ecological community with a global or State ranking of critically imperiled, imperiled, or rare pursuant to a State natural heritage program;

(II) an old growth forest; or

(III) a late successional forest;

(v) biomass obtained from the immediate vicinity of buildings and other areas regularly occupied by people, or of public infrastructure, at risk from wildfire;

(vi) algae; and

(vii) separated yard waste or food waste, including recycled cooking grease and trap grease.

(J) RENEWABLE FUEL.—The term ''renewable fuel'' means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel in a transportation fuel.

(K) SMALL REFINERY.—The term ''small refinery'' means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(L) TRANSPORTATION FUEL.—The term ''transportation fuel'' means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for oceangoing vessels).

(2) RENEWABLE FUEL PROGRAM.—

(A) REGULATIONS.—

(i) IN GENERAL.—

(I) GASOLINE.—The Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the contiguous States, on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B).

(II) TRANSPORTATION FUEL.—The regulations shall ensure that transportation fuel sold or introduced into commerce in the contiguous States, on an annual average basis—

(aa) contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel,

and biomass-based diesel, determined in accordance with subparagraph (B); and

(bb) in the case of any such renewable fuel produced from new facilities that commence construction after December 19, 2007, achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared with baseline lifecycle greenhouse gas emissions.

(ii) NONCONTIGUOUS STATE OPT-IN.—

(I) IN GENERAL.—On the petition of a noncontiguous State or territory, the Administrator may allow the renewable fuel program established under this subsection to apply in the noncontiguous State or territory at the same time or any time after the Administrator promulgates regulations under clause (i).

(II) OTHER ACTIONS.—In carrying out this clause, the Administrator may—

(aa) promulgate or revise regulations under this paragraph;

(bb) establish applicable percentages under paragraph (3);

(cc) provide for the generation of credits under paragraph (5); and

(dd) take such other actions as are necessary to allow for the application of the renewable fuels program in a noncontiguous State or territory.

(iii) PROVISIONS OF REGULATIONS.—Regardless of the date of promulgation, the regulations promulgated under clause (i)—

(I) shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

(II) shall not—

(aa) restrict geographic areas in which renewable fuel may be used; or

(bb) impose any per-gallon obligation for the use of renewable fuel.

(B) APPLICABLE VOLUME.—

(i) SPECIFIED CALENDAR YEARS.—

(I) RENEWABLE FUEL.—For the purpose of subparagraph (A), the applicable volume of renewable fuel for calendar years 2009 to 2022 specified in the following table shall be determined in accordance with the following table:

| Calendar year: | Applicable volume of renewable fuel (in billions of gallons): |
|---|---|
| 2009 | 11.10 |
| 2010 | 12.95 |
| 2011 | 13.95 |
| 2012 | 15.20 |
| 2013 | 16.55 |
| 2014 | 18.15 |
| 2015 | 20.50 |
| 2016 | 22.25 |
| 2017 | 24.00 |
| 2018 | 26.00 |
| 2019 | 28.00 |
| 2020 | 30.00 |
| 2021 | 33.00 |
| 2022 | 36.00. |

(II) ADVANCED BIOFUEL.—For the purpose of subparagraph (A), of the volume of renewable fuel required under subclause (I), the applicable volume of advanced biofuel for calendar years 2009 to 2022 shall be determined in accordance with the following table:

| Calendar year: | Applicable volume of advanced biofuel (in billions of gallons): |
|---|---|
| 2009 | 0.60 |
| 2010 | 0.95 |
| 2011 | 1.35 |
| 2012 | 2.00 |
| 2013 | 2.75 |
| 2014 | 3.75 |
| 2015 | 5.50 |
| 2016 | 7.25 |
| 2017 | 9.00 |
| 2018 | 11.00 |
| 2019 | 13.00 |
| 2020 | 15.00 |
| 2021 | 18.00 |
| 2022 | 21.00. |

(III) CELLULOSIC BIOFUEL.—For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of cellulosic biofuel for calendar years 2010 to 2022 shall be determined in accordance with the following table:

| Calendar year: | Applicable volume of cellulosic biofuel (in billions of gallons): |
|---|---|
| 2010 | 0.10 |
| 2011 | 0.25 |
| 2012 | 0.50 |

| Calendar year: | Applicable volume of cellulosic biofuel (in billions of gallons): |
|---|---|
| 2013 | 1.00 |
| 2014 | 1.75 |
| 2015 | 3.00 |
| 2016 | 4.25 |
| 2017 | 5.50 |
| 2018 | 7.00 |
| 2019 | 8.50 |
| 2020 | 10.50 |
| 2021 | 13.50 |
| 2022 | 16.00. |

(IV) BIOMASS-BASED DIESEL.—For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of biomass-based diesel for calendar years 2009 to 2012 shall be determined in accordance with the following table:

| Calendar year: | Applicable volume of biomass-based diesel (in billions of gallons): |
|---|---|
| 2009 | 0.50 |
| 2010 | 0.65 |
| 2011 | 0.80 |
| 2012 | 1.00. |

(ii) OTHER CALENDAR YEARS.—

(I) IN GENERAL.—For the purposes of subparagraph (A), the applicable volumes of each fuel specified in the tables in clause (i) for calendar years after the calendar years specified in the tables shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the implementation of the program during calendar years specified in the tables, and an analysis of—

(aa) the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetland, ecosystems, wildlife habitat, water quality, and water supply;

(bb) the impact of renewable fuels on the energy security of the United States;

(cc) the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

(dd) the impact of renewable fuels on the infrastructure of the United States, including deliver-

ability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;

(ee) the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and

(ff) the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

(II) REGULATIONS.—The Administrator shall promulgate regulations establishing the applicable volumes under subclause (I) not later than 14 months before the 1st year for which the applicable volume applies.

(iii) APPLICABLE VOLUME OF ADVANCED BIOFUEL.—For the purpose of making the determinations under clause (ii), for each calendar year, the applicable volume of advanced biofuel shall be at least the same percentage of the applicable volume of renewable fuel as for calendar year 2022.

(iv) APPLICABLE VOLUME OF CELLULOSIC BIOFUEL.—For the purpose of making the determinations under clause (ii), for each calendar year, the applicable volume of cellulosic biofuel established by the Administrator shall be based on the assumption that the Administrator will not need to issue a waiver for those years under paragraph (7)(D).

(v) MINIMUM APPLICABLE VOLUME OF BIOMASS-BASED DIESEL.—For the purpose of making the determinations under clause (ii), the applicable volume of biomass-based diesel shall be not less than the applicable volume listed in clause (i)(IV) for calendar year 2012.

(3) APPLICABLE PERCENTAGES.—

(A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE SALES.—Not later than October 31 of each of calendar years 2009 to 2021, the Administrator of the Energy Information Administration shall provide to the Administrator an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce.

(B) DETERMINATION OF APPLICABLE PERCENTAGES.—

(i) IN GENERAL.—Not later than November 30 of each of calendar years 2009 to 2021, based on the estimate provided

under subparagraph (A), the Administrator shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

(ii) REQUIRED ELEMENTS.—The renewable fuel obligation determined for a calendar year under clause (i) shall—

(I) be applicable to refineries, blenders, and importers, as appropriate;

(II) be expressed in terms of a volume percentage of transportation fuel sold or introduced into commerce; and

(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

(C) ADJUSTMENTS.—In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (8).

(4) MODIFICATION OF GREENHOUSE GAS REDUCTION PERCENTAGES.—

(A) IN GENERAL.—The Administrator may, in the regulations under paragraph (2)(A)(i)(II), adjust the 20 percent, 50 percent, and 60 percent reductions in lifecycle greenhouse gas emissions specified in paragraphs (2)(A)(i) (relating to renewable fuel), (1)(D) (relating to biomass-based diesel), (1)(B)(i) (relating to advanced biofuel), and (1)(E) (relating to cellulosic biofuel) to a lower percentage. For the 50 and 60 percent reductions, the Administrator may make such an adjustment only if the Administrator determines that generally such a reduction is not commercially feasible for fuels made using a variety of feedstocks, technologies, and processes to meet the applicable reduction.

(B) AMOUNT OF ADJUSTMENT.—In promulgating regulations under this paragraph, the Administrator shall not—

(i) reduce to below 40 percent the specified 50 percent reduction in greenhouse gas emissions from advanced biofuel and in biomass-based diesel;

(ii) reduce to below 10 percent the specified 20 percent reduction in greenhouse gas emissions from renewable fuel; or

(iii) reduce to below 50 percent the specified 60 percent reduction in greenhouse gas emissions from cellulosic biofuel.

(C) ADJUSTED REDUCTION LEVELS.—An adjustment under this paragraph to a percentage less than the specified 20 percent greenhouse gas reduction for renewable fuel shall be the minimum possible adjustment, and the adjusted greenhouse gas reduction shall be established by the Administrator at the maximum achievable level, taking cost into consideration, for natural gas fired corn-based ethanol plants, allowing for the use of a variety of technologies and processes. An adjustment in the 50 or 60 percent greenhouse gas levels shall be the minimum possible adjustment for the fuel or fuels concerned, and the adjusted greenhouse gas reduction shall be established at the maximum achievable level, taking cost into consideration, allowing for the use of a variety of feedstocks, technologies, and processes.

(D) 5-YEAR REVIEW.—When the Administrator makes any adjustment under this paragraph, not later than 5 years thereafter the Administrator shall review and revise (based on the same criteria and standards as are required for the initial adjustment) the regulations establishing the adjusted level.

(E) SUBSEQUENT ADJUSTMENTS.—After the Administrator promulgates a regulation under paragraph (2)(A)(i)(II) with respect to the method of determining lifecycle greenhouse gas emissions, except as provided in subparagraph (D), the Administrator shall not adjust the percentage greenhouse gas reduction levels unless the Administrator determines that there has been a significant change in the analytical methodology used for determining the lifecycle greenhouse gas emissions. If the Administrator makes such a determination, the Administrator may adjust the 20, 50, or 60 percent reduction levels through rulemaking using the criteria and standards set forth in this paragraph.

(F) LIMIT ON UPWARD ADJUSTMENTS.—If, under subparagraph (D) or (E), the Administrator revises a percentage level adjusted as provided in subparagraphs (A), (B), and (C) to a higher percentage, the higher percentage shall not exceed the applicable percent specified in paragraph (2)(A)(i), (1)(D), (1)(B)(i), or (1)(E).

(G) APPLICABILITY OF ADJUSTMENTS.—If the Administrator adjusts or revises a percentage level described in this paragraph or makes a change in the analytical methodology used for determining the lifecycle greenhouse gas emissions, the adjustment, revision, or change (or any combination thereof) shall apply only to

renewable fuel from new facilities that commence construction after the effective date of the adjustment, revision, or change.

(5) CREDIT PROGRAM.—

(A) IN GENERAL.—The regulations promulgated under paragraph (2)(A) shall provide—

(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

(ii) for the generation of an appropriate amount of credits for biodiesel; and

(iii) for the generation of credits by small refineries in accordance with paragraph (8)(C).

(B) USE OF CREDITS.—A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(C) DURATION OF CREDITS.—A credit generated under this paragraph shall be valid to show compliance for the 12 months as of the date of generation.

(D) INABILITY TO GENERATE OR PURCHASE SUFFICIENT CREDITS.—The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

(E) CREDITS FOR ADDITIONAL RENEWABLE FUEL.—The Administrator may issue regulations providing for—

(i) the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and

(ii) the use of such credits by the generator, or the transfer of all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

(A) STUDY.—For each of calendar years 2006 to 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

(B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations specified in subparagraph (C), the Administrator of EPA shall promulgate regulations to ensure that 25 percent or more of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

(C) DETERMINATIONS.—The determinations referred to in subparagraph (B) are that—

(i) less than 25 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year;

(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

(iii) promulgating regulations or other requirements to impose a 25 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of NAAQSes or significantly increase the price of motor fuels to the consumer.

(D) PERIODS.—The 2 periods referred to in this paragraph are—

(i) April to September; and

(ii) January to March and October to December.

(E) EXCLUSION.—Renewable fuel blended or consumed in calendar year 2006 in a State that has received a waiver under section 221109(b) of this title shall not be included in the study under subparagraph (A).

(F) STATE EXEMPTION FROM SEASONALITY REQUIREMENTS.—Notwithstanding any other provision of law, the seasonality requirement relating to renewable fuel use established by this paragraph shall not apply to any State that has received a waiver under section 221109(b) of this title or any State dependent on refineries in that State for gasoline supplies.

(7) WAIVERS.—

(A) IN GENERAL.—On petition by 1 or more States, by any person subject to the requirements of this subsection, or by the Administrator on the Administrator's own motion, the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part by reducing the national quantity of renewable fuel required under paragraph (2) based on a determination by the Administrator, after public notice and opportunity for comment, that—

(i) implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

(ii) there is an inadequate domestic supply.

(B) PETITIONS FOR WAIVERS.—The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

(C) TERMINATION OF WAIVERS.—A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

(D) CELLULOSIC BIOFUEL.—

(i) PROJECTED VOLUME LESS THAN THE MINIMUM APPLICABLE VOLUME.—

(I) REDUCTION OF APPLICABLE VOLUME.—For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A), not later than November 30 of the preceding calendar year, the Administrator shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year.

(II) RENEWABLE FUEL AND ADVANCED BIOFUELS.—For any calendar year for which the Administrator makes a reduction under subclause (I), the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(ii) CREDITS.—

(I) IN GENERAL.— When the Administrator reduces the minimum cellulosic biofuel volume under this subparagraph, the Administrator shall make available for sale cellulosic biofuel credits at the higher of $0.25 per gallon or the amount by which $3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States.

(II) ADJUSTMENT FOR INFLATION.—The Administrator shall adjust the amounts in subclause (I) for inflation for years after 2008.

(iii) REGULATIONS.—

(I) IN GENERAL.—The Administrator shall promulgate regulations to govern the issuance of credits under this subparagraph.

(II) PRICE OF CREDITS.—The regulations shall set forth the method for determining the exact price of credits in the event of a waiver. The price of such credits shall not be changed more frequently than once each quarter.

(III) MARKET LIQUIDITY AND TRANSPARENCY; CERTAINTY; LIMITATION OF MISUSE; OTHER PURPOSES.— The regulations shall include—

(aa) such provisions, including limiting the uses and useful life of credits, as the Administrator considers appropriate to—

(AA) assist market liquidity and transparency;

(BB) provide appropriate certainty for regulated entities and renewable fuel producers; and

(CC) limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels; and

(bb) provisions for such other purposes as the Administrator determines will help achieve the goals of this subsection.

(IV) NUMBER OF CREDITS.—The regulations shall limit the number of cellulosic biofuel credits for any calendar year to the minimum applicable volume (as re-

duced under this subparagraph) of cellulosic biofuel for that year.

(E) BIOMASS-BASED DIESEL.—

(i) MARKET EVALUATION.—The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall periodically evaluate the impact of the biomass-based diesel requirements established under this paragraph on the price of diesel fuel.

(ii) WAIVER.—

(I) REDUCTION OF REQUIRED QUANTITY.—If the Administrator determines that there is a significant renewable feedstock disruption or other market circumstances that would make the price of biomass-based diesel fuel increase significantly, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall issue an order to reduce, for up to a 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed 15 percent of the applicable annual requirement for biomass-based diesel.

(II) RENEWABLE FUEL AND ADVANCED BIOFUELS.—For any calendar year for which the Administrator makes a reduction under subclause (I), the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(iii) EXTENSIONS.—If the Administrator determines that the feedstock disruption or circumstances described in clause (ii) is continuing beyond the 60-day period described in clause (ii) or this clause, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, may issue an order to reduce, for up to an additional 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed an additional 15 percent of the applicable annual requirement for biomass-based diesel.

(F) MODIFICATION OF APPLICABLE VOLUMES.—

(i) IN GENERAL.—For any of the tables in paragraph (2)(B), if the Administrator waives—

(I) at least 20 percent of the applicable volume requirement set forth in any such table for 2 consecutive years; or

(II) at least 50 percent of such volume requirement for a single year;

the Administrator shall promulgate a regulation (within 1 year after issuing the waiver) that modifies the applicable volumes set forth in the table for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016.

(ii) PROCESSES, CRITERIA, AND STANDARDS.—In promulgating a regulation under clause (i), the Administrator shall comply with the processes, criteria, and standards set forth in paragraph (2)(B)(ii).

(8) SMALL REFINERIES.—

(A) TEMPORARY EXEMPTION.—

(i) IN GENERAL.—The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011.

(ii) EXTENSION OF EXEMPTION.—

(I) STUDY BY SECRETARY OF ENERGY.—Not later than December 31, 2008, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

(II) EXTENSION OF EXEMPTION.—In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

(B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC HARDSHIP.—

(i) EXTENSION OF EXEMPTION.—A small refinery may at any time petition the Administrator for an extension of the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) EVALUATION OF PETITIONS.—In evaluating a petition under clause (i), the Administrator, in consultation with the

Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) DEADLINE FOR ACTION ON PETITIONS.—The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

(C) CREDIT PROGRAM.—If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

(D) OPT-IN FOR SMALL REFINERIES.—A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

(9) ETHANOL MARKET CONCENTRATION ANALYSIS.—

(A) ANALYSIS.—

(i) IN GENERAL.—The Federal Trade Commission shall annually perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anti-competitive behavior.

(ii) SCORING.—For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

(B) REPORT.—The Federal Trade Commission shall annually submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

(10) PERIODIC REVIEWS.—To allow for the appropriate adjustment of the requirements described in subparagraph (B) of paragraph (2), the Administrator shall conduct periodic reviews of—

(A) existing technologies;

(B) the feasibility of achieving compliance with the requirements; and

(C) the impacts of the requirements described in subsection (a)(2) on each individual and entity described in paragraph (2).

(11) EFFECT ON OTHER PROVISIONS.—

(A) IN GENERAL.—Nothing in this subsection (including regulations under this subsection) shall affect or be construed to—

(i) affect the regulatory status of carbon dioxide or any other greenhouse gas; or

(ii) expand or limit regulatory authority regarding carbon dioxide or any other greenhouse gas for purposes of other provisions of this chapter.

(B) NO EFFECT ON IMPLEMENTATION OR ENFORCEMENT.—Subparagraph (A) shall not affect implementation and enforcement of this subsection.

(12) ENVIRONMENTAL AND RESOURCE CONSERVATION IMPACTS.—

(A) IN GENERAL.—Every 3 years the Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall assess and submit to Congress a report on the impacts to date and likely future impacts of the requirements of this subsection on—

(i) environmental issues, including air quality, effects on hypoxia, pesticides, sediment, nutrient and pathogen levels in bodies of water, acreage and function of bodies of water, and soil environmental quality;

(ii) resource conservation issues, including soil conservation, water availability, and ecosystem health and biodiversity, including impacts on forests, grassland, and wetland; and

(iii) the growth and use of cultivated invasive or noxious plants and their impacts on the environment and agriculture.

(B) VIEWS OF OTHERS.—Before preparing a report under subparagraph (A), the Administrator may seek the views of the National Academy of Sciences or another appropriate independent research institute.

(C) CONTENTS.—A report under subparagraph (A) shall—

(i) disclose the annual volume of imported renewable fuels and feedstocks for renewable fuels;

(ii) describe the environmental impacts outside the United States of producing renewable fuels and feedstocks for renewable fuels; and

(iii) include recommendations for actions to address any adverse impacts found.

(p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS MODEL.—

(1) ANTIBACKSLIDING ANALYSIS.—

(A) DRAFT ANALYSIS.—Not later than 4 years after August 8, 2005, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Energy Policy Act of 2005 (119 Stat. 594).

(B) FINAL ANALYSIS.—After providing a reasonable opportunity for comment but not later than 5 years after August 8, 2005, the Administrator shall publish the analysis in final form.

(2) EMISSIONS MODEL.—For the purposes of this section, not later than 4 years after August 8, 2005, the Administrator shall develop and finalize an emissions model that reflects, to the maximum extent practicable, the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2007.

(q) CONVERSION ASSISTANCE FOR CELLULOSIC BIOMASS, WASTE-DERIVED ETHANOL, AND APPROVED RENEWABLE FUELS.—

(1) DEFINITIONS.—In this subsection:

(A) APPROVED RENEWABLE FUEL.—The term ''approved renewable fuel'' means a fuel or component of fuel that has been approved by the Secretary of Energy and is made from renewable biomass.

(B) OLD GROWTH TIMBER.—The term ''old-growth timber'' means timber of a forest from the late successional stage of forest development.

(C) RENEWABLE BIOMASS.—The term ''renewable biomass'' means any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, animal wastes, wood and wood residues, paper and paper residues, and other vegetative waste materials.

(2) IN GENERAL.—The Secretary of Energy may provide grants to merchant producers of cellulosic biomass ethanol, waste-derived ethanol, and approved renewable fuels in the United States to assist the producers in building eligible production facilities described in paragraph (3) for the production of ethanol or approved renewable fuels.

(3) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic or renewable biomass or waste-derived feedstocks derived from agricultural residues, wood residues, municipal solid waste, or agricultural byproducts.

(4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection—

(A) $100,000,000 for fiscal year 2006;

(B) $250,000,000 for fiscal year 2007; and

(C) $400,000,000 for fiscal year 2008.

(r) BLENDING OF COMPLIANT REFORMULATED GASOLINES.—

(1) IN GENERAL.—Notwithstanding subsections (h) and (k) and subject to the limitations in paragraph (2), it shall not be a violation of this chapter for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline if—

(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) prior to being blended;

(B) the retailer notifies the Administrator prior to the blending, and identifies the exact location of the retail station and the specific tank in which the blending will take place;

(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection the certifications accounting for all gasoline at the retail outlet; and

(D) the retailer does not, between June 1 and September 15 of any year, blend a batch of volatile organic compound-controlled gasoline (summer gasoline) with a batch of non-volatile organic compound-controlled gasoline (winter gasoline) (as those terms are defined under subsections (h) and (k)).

(2) LIMITATIONS.—

(A) FREQUENCY LIMITATION.—A retailer shall be permitted to blend batches of compliant reformulated gasoline under this subsection during a maximum of 2 blending periods between May 1 and September 15 of any year.

(B) DURATION OF BLENDING PERIOD.—Each blending period authorized under subparagraph (A) shall extend for a period of not more than 10 consecutive calendar days.

(3) SURVEYS.—A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a volatile organic compound survey mandated by part 80 of title 40, Code of Federal Regulations.

(4) STATE IMPLEMENTATION PLANS.—A State shall be held harmless and shall not be required to revise its State implementation plan under section 211110 of this title to account for the emissions from blended gasoline authorized under paragraph (1).

(5) PRESERVATION OF STATE LAW.—Nothing in this subsection shall—

(A) preempt existing State laws (including regulations) regulating the blending of compliant gasolines; or

(B) preclude a State from adopting such restrictions in the future.

(6) REGULATIONS.—The Administrator shall promulgate, after notice and comment, regulations implementing this subsection.

(7) APPLICABILITY.—This subsection shall apply to blended batches of reformulated gasoline regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator.

(8) LIABILITY.—No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (s) solely arising from the blending of compliant reformulated gasolines by the retailers.

(9) FORMULATION OF GASOLINE.—This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.

(s) STANDARD SPECIFICATIONS FOR BIODIESEL.—

(1) DEFINITION OF BIODIESEL.—In this subsection, the term ''biodiesel'' has the meaning given the term in section 312(f) of Energy Policy Act of 1992 (42 U.S.C. 13220(f)).

(2) ANNUAL INSPECTION AND ENFORCEMENT PROGRAM.—

(A) IN GENERAL.—The Administrator shall establish an annual inspection and enforcement program to ensure that diesel fuel containing biodiesel sold or distributed in commerce meets the standards established under regulations under this section, including testing and certification for compliance with applicable standards of the American Society for Testing and Materials.

(B) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out the inspection and enforcement program under this paragraph $3,000,000 for each of fiscal years 2008 to 2010.

(t) PREVENTION OF AIR QUALITY DETERIORATION.—

(1) STUDY.—

(A) IN GENERAL.—The Administrator shall complete a study to determine whether the renewable fuel volumes required by this section will adversely affect air quality as a result of changes in motor vehicle and motor vehicle engine emissions of air pollutants regulated under this division.

(B) CONSIDERATIONS.—The study shall include consideration of—

(i) various blend levels, types of renewable fuels, and available vehicle technologies; and

(ii) appropriate national, regional, and local air quality control measures.

(2) REGULATIONS.—Not later than 3 years after December 18, 2007, the Administrator shall—

(A) promulgate regulations to implement appropriate measures to mitigate, to the greatest extent achievable, considering the results of the study under paragraph (1), any adverse impacts on air quality as the result of the renewable volumes required by this section; or

(B) make a determination that no such measures are necessary.

(u) PENALTIES AND INJUNCTIONS.—

(1) CIVIL PENALTIES.—Any person that violates subsection (b), (f), (g), (k), (l), (m), or (n) or the regulations prescribed under subsection (d), (h), (i), (k), (l), (m), (n), or (o) or that fails to furnish any information or conduct any tests required by the Administrator under subsection (c) shall be liable to the United States for a civil penalty of not more than $25,000 for each day of the violation or failure and the amount of economic benefit or savings resulting from the violation or failure. Any violation with respect to a regulation prescribed under subsection (d), (k), (l), (m), or (o) that establishes a regulatory standard based on a multiday averaging period shall constitute a separate day of violation for each day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 221105 of this title.

(2) INJUNCTIVE AUTHORITY.—

(A) JURISDICTION.—The district courts of the United States shall have jurisdiction to restrain violations of subsection (b), (f), (g), (k), (l), (m), (n) or (o) and of regulations prescribed under subsections (d), (h), (i), (k), (l), (m), (n), or (o), to award other appropriate relief, and to compel the furnishing of information and

the conduct of tests required by the Administrator under subsection (c).

(B) ACTIONS BROUGHT BY AND IN NAME OF UNITED STATES.—An action to restrain a violation or compel action described in subparagraph (A) shall be brought by and in the name of the United States.

(C) SUBPOENAS.—In any such action, a subpoena for a witnesses who is required to attend a district court in any judicial district may run into any other judicial district.

**§ 221112. Renewable fuel**

(a) DEFINITIONS.—In this section:

(1) MUNICIPAL SOLID WASTE.—The term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 1004 of the Solid Waste Disposal Act (42 U.S.C. 6903).

(2) RFG STATE.—The term ''RFG State'' means a State in which is located 1 or more covered areas (as defined in section 221111(k)(1) of this title).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Energy.

(b) CELLULOSIC BIOMASS ETHANOL AND MUNICIPAL SOLID WASTE LOAN GUARANTEE PROGRAM.—

(1) IN GENERAL.—Funds may be provided for the cost (as defined in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of loan guarantees issued under section 1516 of the Energy Policy Act of 2005 (42 U.S.C. 16503) to carry out commercial demonstration projects for cellulosic biomass and sucrose-derived ethanol.

(2) DEMONSTRATION PROJECTS.—

(A) IN GENERAL.—The Secretary shall issue loan guarantees under this section to carry out not more than 4 projects to commercially demonstrate the feasibility and viability of producing cellulosic biomass ethanol or sucrose-derived ethanol, including at least 1 project that uses cereal straw as a feedstock and 1 project that uses municipal solid waste as a feedstock.

(B) DESIGN CAPACITY.—Each project shall have a design capacity to produce at least 30,000,000 gallons of cellulosic biomass ethanol each year.

(3) APPLICANT ASSURANCES.—An applicant for a loan guarantee under this section shall provide assurances, satisfactory to the Secretary, that—

(A) the project design has been validated through the operation of a continuous process facility with a cumulative output of at least 50,000 gallons of ethanol;

(B) the project has been subject to a full technical review;

(C) the project is covered by adequate project performance guarantees;

(D) the project, with the loan guarantee, is economically viable; and

(E) there is a reasonable assurance of repayment of the guaranteed loan.

(4) LIMITATIONS.—

(A) MAXIMUM GUARANTEE.—Except as provided in subparagraph (B), a loan guarantee under this section may be issued for up to 80 percent of the estimated cost of a project, but may not exceed $250,000,000 for a project.

(B) ADDITIONAL GUARANTEES.—

(i) IN GENERAL.—The Secretary may issue additional loan guarantees for a project to cover up to 80 percent of the excess of actual project cost over estimated project cost but not to exceed 15 percent of the amount of the original guarantee.

(ii) PRINCIPAL AND INTEREST.—Subject to subparagraph (A), the Secretary shall guarantee 100 percent of the principal and interest of a loan made under subparagraph (A).

(5) EQUITY CONTRIBUTIONS.—To be eligible for a loan guarantee under this section, an applicant for the loan guarantee shall have binding commitments from equity investors to provide an initial equity contribution of at least 20 percent of the total project cost.

(6) INSUFFICIENT AMOUNTS.—If the amount made available to carry out this section is insufficient to allow the Secretary to make loan guarantees for 3 projects described in this subsection, the Secretary shall issue loan guarantees for 1 or more qualifying projects under this section in the order in which the applications for the projects are received by the Secretary.

(7) APPROVAL.—An application for a loan guarantee under this section shall be approved or disapproved by the Secretary not later than 90 days after the application is received by the Secretary.

(c) RENEWABLE FUEL PRODUCTION RESEARCH AND DEVELOPMENT GRANTS.—

(1) IN GENERAL.—The Administrator shall provide grants for the research into, and development and implementation of, renewable fuel

production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

(2) ELIGIBILITY.—

(A) IN GENERAL.—The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

(B) APPLICATION.—To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

(3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2006 to 2010.

**§ 221113. Nonroad engines and nonroad vehicles**

(a) EMISSION STANDARDS.—

(1) STUDY.—The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution that may reasonably be anticipated to endanger public health or welfare.

(2) DETERMINATION.—After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based on the results of the study, whether emissions of carbon monoxide, nitrogen oxides, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area that has failed to attain the NAAQSes for ozone or carbon monoxide. That determination shall be included in the regulations under paragraph (3).

(3) REGULATIONS.—

(A) IN GENERAL.—If the Administrator makes an affirmative determination under paragraph (2), the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from the classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) that in the Administrator's

judgment, cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

(B) GREATEST DEGREE OF EMISSION REDUCTION ACHIEVABLE.—The standards shall achieve the greatest degree of emission reduction achievable through the application of technology that the Administrator determines will be available for the engines or vehicles to which the standards apply, giving appropriate consideration to—

(i) the cost of applying the technology within the period of time available to manufacturers; and

(ii) noise, energy, and safety factors associated with the application of the technology.

(C) CONSIDERATIONS.—Before determining what degree of reduction will be available, the Administrator shall consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 221102 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time.

(D) USEFUL LIFE.—The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) OTHER AIR POLLUTANTS.—

(A) IN GENERAL.—If the Administrator determines that any emissions not described in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate such regulations as the Administrator considers appropriate containing standards applicable to emissions from the classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) that, in the Administrator's judgment, cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare, taking into account costs, noise, safety, and energy factors associated with the application of technology that the Administrator determines will be available for the engines and vehicles to which the standards apply.

(B) USEFUL LIFE.—The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) NEW LOCOMOTIVES AND NEW ENGINES USED IN LOCOMOTIVES.—

(A) IN GENERAL.—The Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives.

(B) GREATEST DEGREE OF EMISSION REDUCTION ACHIEVABLE.—The standards shall achieve the greatest degree of emission reduction achievable through the application of technology that the Administrator determines will be available for the locomotives or engines to which the standards apply, giving appropriate consideration to—

(i) the cost of applying the technology within the period of time available to manufacturers; and

(ii) noise, energy, and safety factors associated with the application of the technology.

(b) EFFECTIVE DATE.—Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that period and energy and safety.

(c) SAFE CONTROLS.—

(1) IN GENERAL.—Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in a new nonroad engine or new nonroad vehicle described in this section for purposes of complying with the standards if the device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(2) CONSIDERATIONS.—In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 221102(a)(4)(B) of this title.

(d) STATIONARY INTERNAL COMBUSTION ENGINES.—Nothing in this subdivision relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(e) ENFORCEMENT.—The standards under this section—

(1) shall be subject to sections 221106, 221107, 221108, and 221109 of this title with such modifications of the applicable regulations implementing those sections as the Administrator considers appropriate; and

(2) shall be enforced in the same manner as standards prescribed under section 221102 of this title.

(f) REVISION OR PROMULGATION OF REGULATIONS.—The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

**§ 221114. High altitude performance adjustments**

(a) INSTRUCTION OF THE MANUFACTURER.—

(1) TREATMENT AS NOT IN VIOLATION.—Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subdivision (including any alteration or adjustment of such an element) shall be treated as not in violation of section 221103(a) of this title if the action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) and approved by the Administrator.

(2) DISAPPROVAL OF INSTRUCTIONS.—If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not ensure emission control performance with respect to each standard under section 221102 of this title at least equivalent to that which would result if no such adjustments or modifications were made, the Administrator shall disapprove the instructions. Such a finding shall be based on minimum engineering evaluations consistent with good engineering practice.

(b) REGULATIONS.—

(1) SUBMISSION OF INSTRUCTIONS TO THE ADMINISTRATOR.—Instructions respecting each class or category of vehicles or engines to which this subdivision applies providing for such vehicle and engine adjustments and modifications as may be necessary to ensure emission control performance at different altitudes shall be submitted by the manufacturer to the Administrator pursuant to regulations promulgated by the Administrator.

(2) VIOLATION.—Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by the manufacturer of section 221103(a)(1)(C) of this title for purposes of the penalties under section 221105 of this title.

(3) ADJUSTMENTS.—The instructions shall provide, in addition to other adjustments, for adjustments for vehicles moving from high altitude areas to low altitude areas after the initial registration of the vehicles.

(c) MANUFACTURER PARTS.—No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 221103(a)(2) of this title) unless the manufac-

turer demonstrates to the satisfaction of the Administrator that the use of manufacturer parts is necessary to ensure emission control performance.

(d) STATE INSPECTION AND MAINTENANCE PROGRAMS.—The authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator promulgated before August 7, 1977) in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any NAAQS for auto-related pollutants has not been attained.

(e) HIGH ALTITUDE TESTING.—

(1) DEFINITION OF HIGH ALTITUDE CONDITIONS.—In this subsection, the term ''high altitude conditions'' has the meaning given the term ''high altitude'' in regulations of the Administrator in effect as of November 15, 1990.

(2) TESTING CENTER.—The Administrator shall establish at least 1 testing center (in addition to the testing centers existing on November 15, 1990) located at a site that represents high altitude conditions, to ascertain in a reasonable manner whether, when in actual use throughout their useful life (as determined under section 221102(a)(1)(C) of this title), each class or category of vehicle and engines to which regulations under section 221102 of this title apply conforms to the emission standards established by those regulations.

(3) RESEARCH AND TECHNOLOGY ASSESSMENT CENTER.—

(A) IN GENERAL.—The Administrator, in cooperation with the Secretary of Energy, the Administrator of the Federal Transit Administration, and such other agencies as the Administrator considers appropriate, shall establish a research and technology assessment center to provide for the development and evaluation of less-polluting heavy-duty engines and fuels for use in buses, heavy-duty trucks, nonroad engines, and nonroad vehicles

(B) LOCATION.—The research and technology assessment center shall be located at a high altitude site that represents high altitude conditions.

(C) PREFERENCE.—In establishing and funding the research and technology assessment center, the Administrator shall give preference to proposals that provide for local cost-sharing of facilities and recovery of costs of operation through utilization of the center for the purposes of this section.

(4) RESEARCH SUBJECTS.—

(A) DESIGNATION.—The Administrator shall designate at least 1 center at high altitude conditions to provide research on—

(i) after-market emission components;

(ii) dual-fueled vehicles and conversion kits;

(iii) the effects of tampering on emissions equipment;

(iv) testing of alternate fuels and conversion kits; and

(v) the development of curricula, training courses, and materials to maximize the effectiveness of inspection and maintenance programs as they relate to promoting effective control of vehicle emissions at high altitude elevations.

(B) PREFERENCE.—Preference shall be given to existing vehicle emission testing and research centers that—

(i) have established reputations for vehicle emission research and development and training; and

(ii) possess in-house Federal test procedure capacity.

**§ 221115. Motor vehicle compliance program fees**

(a) FEE COLLECTION.—Consistent with section 9701 of title 31, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) new vehicle or engine certification under section 221106(a) of this title or chapter 225;

(2) new vehicle or engine compliance monitoring and testing under section 221106(b) of this title or chapter 225; and

(3) in-use vehicle or engine compliance monitoring and testing under section 221107(d) of this title or chapter 225.

(b) FEE SCHEDULE.—The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate, equitable, and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty engine and vehicle manufacturers, the fees shall not exceed a reasonable amount to recover an appropriate portion of the reasonable costs.

(c) SPECIAL TREASURY FUND.—Any fees collected under this section shall be deposited in the Treasury in a special fund for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out EPA's activities for which the fees were collected.

(d) LIMITATION ON FUND USE.—Amounts in the special fund described in subsection (c) shall not be used until after the 1st fiscal year commencing after the 1st July 1 when fees are paid into the fund.

(e) TESTING AUTHORITY.—Nothing in this section shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in this chapter.

**§ 221116. Prohibition of production of engines requiring leaded gasoline**

The Administrator shall promulgate regulations applicable to motor vehicle engines and nonroad engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.

**§ 221117. Urban bus standards**

(a) DEFINITIONS.—In this section:

(1) LOW-POLLUTING FUEL.—

(A) IN GENERAL.—The term ''low-polluting fuel'' means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel.

(B) DETERMINATION.—In determining whether a fuel is comparably low-polluting, the Administrator shall consider—

(i) the level of emissions of air pollutants from vehicles using the fuel; and

(ii) the contribution of such emissions to ambient levels of air pollutants.

(2) METHANOL.—The term ''methanol'' includes any fuel that contains at least 85 percent methanol unless the Administrator increases that percentage as the Administrator considers appropriate to protect public health and welfare.

(3) URBAN BUS.—The term ''urban bus'' has the meaning given the term under regulations of the Administrator promulgated under section 221102(a) of this title.

(b) STANDARDS.—The Administrator shall promulgate regulations under section 221102(a) of this title applicable to urban buses. The standards shall be based on the best technology that can reasonably be anticipated to be available at the time at which the measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. The regulations shall require that urban buses comply with subsection (c) (and subsection (d), if applicable) and the standards applicable under section 221102(a) of this title for heavy-duty vehicles of the same type and model year.

(c) PM STANDARD.—

(1) 50 PERCENT REDUCTION.—The standards under section 221102(a) of this title applicable to urban buses shall require that emissions of particulate matter from urban buses shall not exceed 50 percent of the emissions of particulate matter allowed under the emission standard applicable under section 202(a) of the Clean Air Act (42 U.S.C. 7521(a)) as of November 15, 1990, for particulate matter in

the case of heavy-duty diesel vehicles and engines manufactured in model year 1994.

(2) REVISED REDUCTION.—The Administrator shall increase the level of emissions of particulate matter allowed under the standard described in paragraph (1) if the Administrator determines that the 50 percent reduction described in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase the level of emissions above 70 percent of the emissions of particulate matter allowed under the emission standard applicable under section 202(a) of the Clean Air Act (42 U.S.C. 7521(a)) as of November 15, 1990, for particulate matter in the case of heavy-duty diesel vehicles and engines manufactured in model year 1994.

(3) DETERMINATION AS PART OF RULEMAKING.—As part of the rulemaking under subsection (b), the Administrator shall make a determination whether the 50 percent reduction described in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

(d) LOW-POLLUTING FUEL REQUIREMENT.—

(1) ANNUAL TESTING.—The Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter standard applicable pursuant to subsection (c) to determine whether urban buses comply with the standard in use over their full useful life.

(2) PROMULGATION OF ADDITIONAL LOW-POLLUTING FUEL REQUIREMENT.—

(A) IN GENERAL.—If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter standard applicable pursuant to subsection (c) do not comply with the standard in use over their full useful life, the Administrator shall revise the standards applicable to urban buses to require (in addition to compliance with the particulate matter standard applicable pursuant to subsection (c)) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

(B) PHASE-IN SCHEDULE.—The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the 1st 5 model years commencing 3 years after the determination under subparagraph (A). Under the schedule 100 percent of new urban buses placed into service in the 5th model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

(C) AREAS WITH A 1980 POPULATION OF LESS THAN 750,000.—The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000 if the Administrator determines that a significant benefit to public health could be expected to result from such an extension.

(e) RETROFIT REQUIREMENTS.—

(1) IN GENERAL.—The Administrator shall promulgate regulations under section 221102(a) of this title requiring that buses described in paragraph (2) comply with an emission standard or emission control technology requirement established by the Administrator in the regulations.

(2) BUSES.—Buses referred to in paragraph (1) are urban buses that—

(A) are operating in areas described in subparagraph (A) of subsection (d)(2) (or subparagraph (C) of subsection (d)(2) if the Administrator has taken action under that subparagraph);

(B) were not subject to standards in effect under the regulations under subsection (b); and

(C) have their engines replaced or rebuilt after January 1, 1995;

(3) BEST TECHNOLOGY AND PRACTICES.—The emission standard or emission control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

(f) PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT.—The Administrator shall establish, in accordance with section 221106(h) of this title, procedures for the administration and enforcement of standards for urban buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including certification testing) shall reflect actual operating conditions.

# Chapter 223—Aircraft Emission Standards



## § 223101. Definitions

Terms used in this chapter (other than the term Administrator) have the meanings given the terms in section 40102(a) of title 49.

## § 223102. Establishment of standards

(a) STUDY; PROPOSED STANDARDS; HEARINGS; ISSUANCE OF REGULATIONS.—The Administrator shall conduct a study and investigation of emissions of air pollutants from aircraft to determine—

(1) the extent to which such emissions affect air quality in air quality control regions throughout the United States; and

(2) the technological feasibility of controlling such emissions.

(b) EMISSION STANDARDS.—The Administrator shall from time to time issue proposed emission standards applicable to the emission of any air pollutant from any class of aircraft engines that, in the Administrator's judgment, causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare.

(c) CONSULTATION.—The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(d) LIMITATION.—The Administrator shall not change the aircraft engine emission standards if the change would significantly increase noise and adversely affect safety.

(e) HEARINGS.—The Administrator shall hold public hearings with respect to standards proposed under subsection (b). The hearings shall, to the extent practicable, be held in air quality control regions that are most seriously affected by aircraft emissions.

(f) FINAL REGULATIONS.—Within 90 days after the issuance of standards proposed under subsection (b), the Administrator shall issue regulations with such modifications as the Administrator considers appropriate. The regulations may be revised from time to time.

(g) EFFECTIVE DATE OF REGULATIONS.—Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within that period.

(h) REGULATIONS THAT CREATE HAZARDS TO AIRCRAFT SAFETY.—Any regulation in effect under this section with respect to aircraft shall not

apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that the regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis on which the finding is made.

**§ 223103. Enforcement of standards**

(a) REGULATIONS TO ENSURE COMPLIANCE WITH STANDARDS.—The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to ensure compliance with all standards prescribed under section 223102 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making those standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by chapter 447 of title 49.

(b) EXECUTION OF POWERS AND DUTIES.—In the execution of all powers and duties vested in the Secretary under this section, the Secretary of Transportation—

(1) shall ensure that all necessary inspections are accomplished; and

(2) may execute any power or duty vested in the Secretary by any other provision of law.

(c) NOTICE AND APPEAL RIGHTS.—In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 223102 of this title or of a regulation prescribed under subsection (a) is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in chapter 461 of title 49, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if the Board finds no violation of the standard or regulation and that the amendment, modification, or revocation is consistent with safety in air transportation.

**§ 223104. State standards and controls**

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless the standard is identical to a standard applicable to such aircraft under this chapter.

# Chapter 225—Clean Fuel Vehicles

## § 225101. Definitions

(a) IN GENERAL.—In this chapter:

(1) BASE GASOLINE.—The term ''base gasoline'' means gasoline that meets the following specifications:

| | |
|---|---|
| Specifications of Base Gasoline Used as Basis for Reactivity Readjustment: | |
| API gravity | 57.8 |
| Sulfur, ppm | 317 |
| Color | Purple |
| Benzene, vol. % | 1.35 |
| Reid vapor pressure | 8.7 |
| Drivability | 1195 |
| Antiknock index | 87.3 |
| Distillation, D–86 degrees F | |
| IBP | 92 |
| 10% | 126 |
| 50% | 219 |
| 90% | 327 |
| EP | 414 |
| Hydrocarbon Type, Vol. % FIA: | |
| Aromatics | 30.9 |
| Olefins | 8.2 |
| Saturates | 60.9 |

(2) CLEAN ALTERNATIVE FUEL.—

(A) IN GENERAL.—The term ''clean alternative fuel'' means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to the vehicle under this subdivision when using that fuel or power source.

(B) FLEXIBLE FUEL VEHICLES AND DUAL FUEL VEHICLES.—In the case of any flexible fuel vehicle or dual fuel vehicle, the term ''clean alternative fuel'' means a fuel with respect to which the vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 225103(d)(2) of this title when operating on clean alternative fuel (or any California Air Resources Board standards that replace those standards pursuant to section 225103(e) of this title).

(3) CLEAN-FUEL VEHICLE.—The term ''clean-fuel vehicle'' means a vehicle in a class or category of vehicles that has been certified to meet for any model year the clean-fuel vehicle standards applicable under this chapter for that model year to clean-fuel vehicles in that class or category.

(4) COVERED FLEET.—

(A) IN GENERAL.—The term ''covered fleet'' means 10 or more motor vehicles that are owned or operated by a single person.

(B) DETERMINATION.—In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by the person, by any person that controls the person, by any person controlled by the person, and by any person under common control with the person shall be treated as owned by the person.

(C) EXCLUSIONS.—The term ''covered fleet'' does not include—

(i) motor vehicles held for lease or rental to the general public;

(ii) motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles);

(iii) motor vehicles used for motor vehicle manufacturer product evaluations or tests;

(iv) law enforcement and other emergency vehicles; or

(v) nonroad vehicles (including farm and construction vehicles).

(5) COVERED FLEET VEHICLE.—

(A) IN GENERAL.—The term ''covered fleet vehicle'' means a motor vehicle that is—

(i) in a vehicle class for which standards are applicable under this chapter; and

(ii) in a covered fleet that is centrally fueled (or capable of being centrally fueled).

(B) CAPABILITY OF BEING CENTRALLY FUELED.—No vehicle that under normal operations is garaged at a personal residence at night shall be considered to be a vehicle that is capable of being centrally fueled within the meaning of subparagraph (A)(ii).

(6) NONMETHANE ORGANIC GAS.—

(A) IN GENERAL.—The term ''nonmethane organic gas'' means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample.

(B) INCLUSIONS.—The term ''nonmethane organic gas'' includes, at a minimum—

(i) all oxygenated organic gases containing 5 or fewer carbon atoms (including aldehydes, ketones, alcohols, ethers, and others); and

(ii) all alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms.

(C) DEMONSTRATION OF COMPLIANCE WITH NONMETHANE ORGANIC GAS STANDARD.—To demonstrate compliance with a stand-

ard, nonmethane organic gas emissions shall be measured in accordance with the procedures entitled ''California Non-Methane Organic Gas Test Procedures''.

(D) ADJUSTMENT.—In the case of vehicles using fuels other than base gasoline, the level of nonmethane organic gas emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

(b) TERMS DEFINED IN CHAPTER 221.—The definitions applicable to chapter 221 under section 221101 of this title shall apply for purposes of this chapter.

(c) MODIFICATION OF DEFINITIONS AND METHODS FOR MAKING REACTIVITY ADJUSTMENTS.—The Administrator shall modify the definitions of nonmethane organic gas and base gasoline and the methods for making reactivity adjustments to conform to the definitions and method used in California under the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

**§ 225102. Requirements applicable to clean-fuel vehicles**

(a) PROMULGATION OF STANDARDS.—The Administrator shall promulgate regulations under this chapter containing clean-fuel vehicle standards for the clean-fuel vehicles specified in this chapter.

(b) OTHER REQUIREMENTS.—

(1) CLEAN-FUEL VEHICLES OF UP TO 8,500 POUNDS.—Clean-fuel vehicles of up to 8,500 pounds gross vehicle weight rating subject to standards set forth in this chapter shall comply with all motor vehicle requirements of this subdivision (such as requirements relating to on-board diagnostics, evaporative emissions, and others) that are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 225104 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with this chapter.

(2) CLEAN-FUEL VEHICLES OF MORE THAN 8,500 POUNDS.—Clean-fuel vehicles of more than 8,500 pounds gross vehicle weight rating subject to standards set forth in this chapter shall comply with all requirements of this subdivision that apply to conventional gasoline-fueled or diesel-fueled vehicles of the same category and model year, except as provided in section 225104 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with this chapter.

(c) IN-USE USEFUL LIFE AND TESTING.—

(1) LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS UP TO 6,000 POUNDS.—In the case of light-duty vehicles and light-duty trucks up to 6,000 pounds gross vehicle weight rating, the useful life for purposes of determining in-use compliance with the standards under section 225103 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent), whichever first occurs.

(2) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—In the case of light-duty trucks of more than 6,000 pounds gross vehicle weight rating, the useful life for purposes of determining in-use compliance with the standards under section 225103 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent), whichever first occurs.

**§ 225103. Standards for light-duty clean-fuel vehicles**

(a) EXHAUST STANDARDS FOR LIGHT-DUTY VEHICLES AND CERTAIN LIGHT-DUTY TRUCKS.—

(1) APPLICABILITY.—The standards set forth in this subsection shall apply in the case of clean-fuel vehicles that are—

(A) light-duty trucks of up to 6,000 pounds gross vehicle weight rating (but not including light-duty trucks of more than 3,750 pounds loaded vehicle weight); or

(B) light-duty vehicles.

(2) STANDARDS.—For air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

| Pollutant | NMOG | CO | $NO_x$ | PM* | HCHO (formaldehyde) |
|---|---|---|---|---|---|
| 50,000 mile standard | 0.075 | 3.4 | 0.2 | ..... | 0.015 |
| 100,000 mile standard | 0.090 | 4.2 | 0.3 | 0.08 | 0.018 |

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(b) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 POUNDS LOADED VEHICLE WEIGHT BUT NOT MORE THAN 5,750 POUNDS LOADED VEHICLE WEIGHT AND NOT MORE THAN 6,000 POUNDS GROSS VEHICLE WEIGHT RATING.—

(1) APPLICABILITY.—The standards set forth in this subsection shall apply in the case of clean-fuel vehicles that are light-duty trucks of more than 3,750 pounds loaded vehicle weight but not more than 5,750 pounds loaded vehicle weight and not more than 6,000 pounds gross vehicle weight rating.

(2) STANDARDS.—For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW BUT NOT MORE THAN 5,750 LBS. LVW AND NOT MORE THAN 6,000 LBS. GVWR

| Pollutant | NMOG | CO | $NO_x$ | PM* | HCHO (formaldehyde) |
|---|---|---|---|---|---|
| 50,000 mile standard | 0.100 | 4.4 | 0.4 | ..... | 0.018 |
| 100,000 mile standard | 0.130 | 5.5 | 0.5 | 0.08 | 0.023 |

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(c) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—The standards set forth in this subsection shall apply in the case of clean-fuel vehicles that are light-duty trucks of more than 6,000 pounds gross weight rating and less than or equal to 8,500 pounds gross weight rating, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in the table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS GREATER THAN 6,000 LBS. GVWR

Test Weight Category: Up to 3,750 lbs. tw

| Pollutant | NMOG | CO | $NO_x$ | PM* | HCHO (formaldehyde) |
|---|---|---|---|---|---|
| 50,000 mile standard | 0.125 | 3.4 | 0.4** | ..... | 0.015 |
| 120,000 mile standard | 0.180 | 5.0 | 0.6 | 0.08 | 0.022 |

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

| Pollutant | NMOG | CO | $NO_x$ | PM* | HCHO (formaldehyde) |
|---|---|---|---|---|---|
| 50,000 mile standard | 0.160 | 4.4 | 0.7** | ..... | 0.018 |
| 120,000 mile standard | 0.230 | 6.4 | 1.0 | 0.10 | 0.027 |

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvwr

| Pollutant | NMOG | CO | $NO_x$ | PM* | HCHO (formaldehyde) |
|---|---|---|---|---|---|
| 50,000 mile standard | 0.195 | 5.0 | 1.1** | ..... | 0.022 |
| 120,000 mile standard | 0.280 | 7.3 | 1.5 | 0.12 | 0.032 |

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
**Standard not applicable to diesel-fueled vehicles.
For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

(d) FLEXIBLE AND DUAL-FUEL VEHICLES.—

(1) IN GENERAL.—The Administrator shall establish standards and requirements under this section for vehicles weighing not more than 8,500 pounds gross vehicle weight rating that are capable of operating on more than 1 fuel. The standards shall require that such vehicles meet the exhaust standards applicable under subsections (a), (b), and (c) for carbon monoxide, nitrogen oxides, formaldehyde, and, if appropriate, particulate matter for single-fuel vehicles of the same vehicle category and model year.

(2) EXHAUST NMOG STANDARD FOR OPERATION ON CLEAN ALTERNATIVE FUEL.—In addition to standards for the pollutants described in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of nonmethane organic gas not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which the vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL

Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty Vehicles

| Vehicle Type | Column A (50,000 mi.) Standard (gpm) | Column B (100,000 mi.) Standard (gpm) |
|---|---|---|
| Beginning MY 1996: | | |
| LDT's (0–3,750 lbs. LVW) and light-duty vehicles | 0.125 | 0.156 |
| LDT's (3,751–5,750 lbs. LVW) | 0.160 | 0.20 |
| Beginning MY 2001: | | |
| LDT's (0–3,750 lbs. LVW) and light-duty vehicles | 0.075 | 0.090 |

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL—Continued

Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty Vehicles

| Vehicle Type | Column A (50,000 mi.) Standard (gpm) | Column B (100,000 mi.) Standard (gpm) |
|---|---|---|
| LDT's (3,751–5,750 lbs. LVW) | 0.100 | 0.130 |

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More Than 6,000 lbs. GVWR

| Vehicle Type | Column A (50,000 mi.) Standard (gpm) | Column B (120,000 mi.) Standard (gpm) |
|---|---|---|
| Beginning MY 1998: | | |
| LDT's (0–3,750 lbs. TW) | 0.125 | 0.180 |
| LDT's (3,751–5,750 lbs. TW) | 0.160 | 0.230 |
| LDT's (above 5,750 lbs. TW) | 0.195 | 0.280 |

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 120,000 miles.

(3) NMOG STANDARD FOR OPERATION ON CONVENTIONAL FUEL.—In addition to the standards described in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of nonmethane organic gas not exceed the levels (expressed in grams per mile) specified in the tables below:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty Vehicles

| Vehicle Type | Column A (50,000 mi.) Standard (gpm) | Column B (100,000 mi.) Standard (gpm) |
|---|---|---|
| Beginning MY 1996: | | |
| LDT's (0–3,750 lbs. LVW) and light-duty vehicles | 0.25 | 0.31 |
| LDT's (3,751–5,750 lbs. LVW) | 0.32 | 0.40 |
| Beginning MY 2001: | | |
| LDT's (0–3,750 lbs. LVW) and light-duty vehicles | 0.125 | 0.156 |
| LDT's (3,751–5,750 lbs. LVW) | 0.160 | 0.200 |

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks of up to 6,000 lbs. GVWR

| Vehicle Type | Column A (50,000 mi.) Standard (gpm) | Column B (120,000 mi.) Standard (gpm) |
|---|---|---|
| Beginning MY 1998: | | |
| LDT's (0–3,750 lbs. TW) | 0.25 | 0.36 |
| LDT's (3,751–5,750 lbs. TW) | 0.32 | 0.46 |
| LDT's (above 5,750 lbs. TW) | 0.39 | 0.56 |

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.
For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 120,000 miles.

(e) REPLACEMENT BY CARB STANDARDS.—

(1) SINGLE SET OF CARB STANDARDS.—If California promulgates regulations establishing and implementing a single set of standards ap-

plicable in California pursuant to a waiver approved under section 221109 of this title to any category of vehicles described in subsection (a), (b), (c), or (d) and that set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 225102 of this title and subsection (a), (b), (c), or (d), the California set of standards shall apply to clean-fuel vehicles in that category in lieu of the standards otherwise applicable under section 225102 of this title and subsection (a), (b), (c), or (d), as the case may be.

(2) MULTIPLE SETS OF CARB STANDARDS.—If California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 221109 of this title to any category of vehicles described in subsection (a), (b), (c), or (d) and each of the California sets of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 225102 of this title and subsection (a), (b), (c), or (d), those standards shall be treated as qualifying California standards for purposes of this paragraph. Where more than 1 set of qualifying standards are established and administered by California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to those vehicles under section 225102 of this title and this section.

(f) LESS STRINGENT CARB STANDARDS.—If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles described in subsection (a), (b), (c), or (d) are modified after November 15, 1990, to provide an emission standard that is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d), or if any effective date contained in the regulations is delayed, the modified standards or the delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) to any vehicles covered by the modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years after the effective date otherwise applicable under subsection (a), (b), (c), or (d). After the interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) shall take effect with respect to those vehicles (unless subsequently replaced under subsection (e)).

(g) NONAPPLICABILITY TO HEAVY-DUTY VEHICLES.—Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board, nothing in this section shall apply to

heavy-duty engines in vehicles of more than 8,500 pounds gross vehicle weight rating.

### § 225104. Administration and enforcement as per California standards

(a) IN GENERAL.—Where the numerical clean-fuel vehicle standards applicable under this chapter to vehicles of not more than 8,500 pounds gross vehicle weight rating are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board, those standards shall be administered and enforced by the Administrator—

(1) in the same manner and with the same flexibility as California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board; and

(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of the California standards, including requirements regarding certification, production-line testing, and in-use compliance;

unless the Administrator determines (in promulgating the regulations establishing the clean-fuel vehicle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under section 221109 of this title.

(b) HEAVY-DUTY VEHICLES.—Nothing in this section shall apply in the case of standards under section 225105 of this title for heavy-duty vehicles.

### § 225105. Standards for heavy-duty clean-fuel vehicles of more than 8,500 up to 26,000 pounds gross vehicle weight rating

(a) COMBINED NITROGEN OXIDE AND NONMETHANE HYDROCARBON STANDARD.—For classes or categories of heavy-duty vehicles or engines having a gross vehicle weight rating greater than 8,500 pounds and up to 26,000 pounds gross vehicle weight rating, the standards under this chapter for clean-fuel vehicles shall require that combined emissions of nitrogen oxides and nonmethane hydrocarbons shall not exceed 3.15 grams per brake horsepower hour. No standard shall be promulgated under this section for any heavy-duty vehicle of more than 26,000 pounds gross vehicle weight rating.

(b) REVISED STANDARDS THAT ARE LESS STRINGENT.—

(1) IN GENERAL.—The Administrator may promulgate a revised less stringent standard for the vehicles or engines described in subsection (a) if the Administrator determines that the 50 percent reduction required under subsection (a) is not technologically feasible for clean die-

sel-fueled vehicles and engines, taking into account durability, costs, lead time, safety, and other relevant factors.

(2) PETITION.—Any person may at any time petition the Administrator to make a determination under paragraph (1). The Administrator shall act on such a petition within 6 months after the petition is filed.

(3) PERCENTAGE REDUCTION.—Any revised less stringent standards promulgated under this subsection shall require at least a 30 percent reduction in lieu of the 50 percent reduction described in paragraph (1).

**§ 225106. Centrally fueled fleets**

(a) DEFINITION OF COVERED AREA.—In this section:

(1) IN GENERAL.—The term ''covered area'' means—

(A) an ozone nonattainment area with a 1980 population of 250,000 or more classified under subchapter II of chapter 215 as a serious area, severe area, or extreme area based on data for calendar years 1987, 1988, and 1989; and

(B) a carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989.

(2) EXCLUSION.—The term ''covered area'' does not include a carbon monoxide nonattainment area in which mobile sources do not contribute significantly to carbon monoxide exceedances.

(3) INTERPRETATION METHODOLOGY.—In determining the areas to be treated as covered areas under paragraph (1), the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

(b) FLEET PROGRAM REQUIRED FOR COVERED AREAS.—

(1) STATE IMPLEMENTATION PLAN PROVISION.—The implementation plan of each State in which there is located all or part of a covered area shall contain a provision establishing a clean-fuel vehicle program for fleets under this section.

(2) PLAN PROVISIONS FOR RECLASSIFIED AREAS.—In the case of an ozone nonattainment areas reclassified as a serious area, severe area, or extreme area under chapter 215 with a 1980 population of 250,000 or more, the State shall submit a plan provision meeting the requirements of this subsection within 1 year after reclassification. The plan provision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the

Administrator may adjust for a limited period the deadlines for compliance where compliance with those deadlines would be infeasible.

(3) CONSULTATION; CONSIDERATION OF FACTORS.—Each State required to have an implementation plan provision under this subsection shall develop the provision in consultation with fleet operators, vehicle manufacturers, vehicle fuel producers and distributors, and other interested persons, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment, and other relevant factors.

(c) REQUIREMENTS.—

(1) IN GENERAL.—The plan provision required under this section shall require that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area.

(2) SPECIFIED PERCENTAGE.—For each model year, the specified percentage shall be as follows:

(A) Light-duty trucks up to 6,000 pounds gross vehicle weight rating and light-duty vehicles: 70%.

(B) Heavy-duty trucks above 8,500 pounds gross vehicle weight rating: 50%.

(d) CHOICE OF VEHICLES AND FUEL.—The plan provision shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of subsection (c).

(e) AVAILABILITY OF CLEAN ALTERNATIVE FUEL.—The plan provision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

(f) CREDITS.—

(1) ISSUANCE OF CREDITS.—The plan provision shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean-fuel vehicles that meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories that are not covered by this section but that meet standards established for such vehicles under paragraph (4).

(2) USE OF CREDITS; LIMITATIONS BASED ON WEIGHT CLASSES.—

(A) USE OF CREDITS.—Credits under this subsection may be used by the person holding the credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, the credits shall maintain the same value as if used at an earlier date.

(B) LIMITATIONS BASED ON WEIGHT CLASSES.—Credits issued with respect to the purchase of vehicles of up to 8,500 pounds gross vehicle weight rating may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 pounds gross vehicle weight rating. Credits issued with respect to the purchase of vehicles of more than 8,500 pounds gross vehicle weight rating may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 pounds gross vehicle weight rating.

(C) WEIGHTING.—Credits issued for purchase of a clean-fuel vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

(3) REGULATIONS; ADMINISTRATION.—The Administrator shall promulgate regulations for a credit program under this subsection. The State shall administer the credit program under this subsection.

(4) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—

(A) IN GENERAL.—Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for ultra-low emission vehicles and zero emission vehicles that are more stringent than the standard otherwise applicable to clean-fuel vehicles under this chapter.

(B) CERTIFICATION; ADMINISTRATION; ENFORCEMENT.—The Administrator shall certify clean-fuel vehicles as complying with the more stringent standards, and administer and enforce the more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section.

(C) CALIFORNIA STANDARDS.—The standards established by the Administrator under this paragraph for vehicles under 8,500 pounds gross vehicle weight rating shall conform as closely as pos-

sible to standards established by California for ultra-low emission vehicles and zero emission vehicles in the same class. For vehicles of 8,500 pounds gross vehicle weight rating or greater, the Administrator shall promulgate comparable standards for purposes of this subsection.

(5) EARLY FLEET CREDITS.—The plan provision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this chapter during any period after approval of the plan provision and prior to the effective date of the fleet program under this section.

(g) AVAILABILITY TO PUBLIC.—At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, the fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of the Federal facility.

(h) TRANSPORTATION CONTROL MEASURES.—The Administrator shall by regulation ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subdivision 2.

### § 225107. Vehicle conversions

(a) CONVERSION OF EXISTING AND NEW CONVENTIONAL VEHICLES TO CLEAN-FUEL VEHICLES.—

(1) IN GENERAL.—The requirements of section 225106 of this title may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles that comply with the applicable requirements of that section.

(2) TREATMENT AS PURCHASE.—For purposes of those requirements the conversion of a vehicle to a clean-fuel vehicle shall be treated as the purchase of a clean-fuel vehicle.

(3) EFFECT OF CHAPTER.—Nothing in this chapter shall be construed to provide that any covered fleet operator subject to fleet vehicle purchase requirements under section 225106 of this title shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) REGULATIONS.—

(1) IN GENERAL.—The Administrator shall, consistent with the requirements of this subdivision applicable to new vehicles, promulgate

regulations governing conversions of conventional vehicles to clean-fuel vehicles.

(2) CONTENTS.—The regulations shall—

(A) establish criteria for such conversions that will ensure that a converted vehicle will comply with the standards applicable under this chapter to clean-fuel vehicles; and

(B) provide for the application to such conversions of the same provisions of this subdivision (including provisions relating to administration and enforcement) as are applicable to standards under sections 225102, 225103, 225104, and 225105 of this title, except that in the case of conversions the Administrator may modify the applicable regulations implementing those provisions as the Administrator considers necessary to implement this chapter.

(c) ENFORCEMENT.—

(1) IN GENERAL.—A person that converts conventional vehicles to clean-fuel vehicles pursuant to subsection (b) shall be considered to be a manufacturer for purposes of sections 221106 and 221107 of this title and related enforcement provisions.

(2) EFFECT OF PARAGRAPH.—Nothing in paragraph (1) shall require a person that performs such conversions to warrant any part or operation of a vehicle other than as required under this chapter. Nothing in this paragraph shall limit the applicability of any other warranty to unrelated parts or operations.

(d) TAMPERING.—The conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered a violation of section 221103(a)(1)(C) of this title if the conversion complies with the regulations promulgated under subsection (b).

(e) SAFETY.—The Secretary of Transportation shall, if necessary, promulgate regulations under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles.

### § 225108. Federal agency fleets

(a) ADDITIONAL PROVISIONS APPLICABLE.—This section shall apply, in addition to the other provisions of this chapter, in the case of covered fleet vehicles owned or operated by an agency, department, or instrumentality of the United States, except as otherwise provided in subsection (e).

(b) COST OF VEHICLES TO FEDERAL AGENCY.—Notwithstanding section 604 of title 40, the Administrator of General Services shall not include the incremental costs of clean-fuel vehicles in the amount to be reimbursed to Federal agencies if the Administrator of General Services determines that amounts appropriated under subsection (g) are sufficient to provide for the

incremental cost of such vehicles over the cost of comparable conventional vehicles.

(c) LIMITATIONS ON APPROPRIATIONS.—Amounts appropriated under subsection (g) shall be applicable only to—

(1) the portion of the costs of acquisition, maintenance, and operation of clean-fuel vehicles that exceeds the cost of acquisition, maintenance, and operation of comparable conventional vehicles;

(2) the portion of the costs of fuel storage and dispensing equipment attributable to clean-fuel vehicles that exceeds the costs for those purposes required for conventional vehicles; and

(3) the portion of the costs of acquisition of clean-fuel vehicles that represents a reduction in revenue from the disposal of clean-fuel vehicles as compared with revenue resulting from the disposal of comparable conventional vehicles.

(d) VEHICLE COSTS.—The incremental cost of clean-fuel vehicles over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles that may be required by the United States.

(e) EXEMPTIONS.—The requirements of this chapter shall not apply to vehicles with respect to which the Secretary of Defense certifies to the Administrator that an exemption is needed based on national security considerations.

(f) ACQUISITION REQUIREMENT.—Federal agencies, to the extent practicable, shall obtain clean-fuel vehicles from original equipment manufacturers.

(g) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated such sums as are required to carry out this section.

(2) ADDITION TO ACQUISITION SERVICES FUND.—Such sums as are appropriated for the Administrator of General Services to carry out this section shall be added to the Acquisition Services Fund established by section 321 of title 40.

### § 225109. California pilot test program

(a) ESTABLISHMENT.—The Administrator shall establish a pilot program in California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

(b) APPLICABILITY.—This section shall apply—

(1) only to light-duty trucks and light-duty vehicles; and

(2) only in California, except as provided in subsection (f).

(c) PROGRAM REQUIREMENTS.—

(1) IN GENERAL.—The Administrator shall promulgate regulations establishing requirements under this section applicable in California.

(2) CLEAN-FUEL VEHICLES.—The regulations shall provide that clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets under section 225106 of this title) in numbers that meet or exceed 300,000 in each model year.

(3) CLEAN ALTERNATIVE FUELS.—

(A) SIP.—The California implementation plan shall include a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this section can operate shall be produced and distributed by fuel suppliers and made available in California.

(B) SUFFICIENCY.—At a minimum, sufficient clean alternative fuels shall be produced, distributed, and made available to ensure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and type of, such vehicles sold and the geographic distribution of such vehicles within the State.

(C) DETERMINATION.—The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers' projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

(D) CREDITS.—The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding the requirements, and any person granted credits may transfer some or all of the credits for use by 1 or more persons in demonstrating compliance with the requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and on such terms and conditions as the State finds appropriate.

(E) SPECIFICATIONS.—The State may by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to re-

duce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

(F) UNDERGROUND STORAGE TANKS.—If a retail gasoline dispensing facility would have to remove or replace 1 or more motor vehicle fuel underground storage tanks and accompanying piping to comply with this section, and it had removed and replaced the tank or tanks and accompanying piping to comply with subtitle I of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) before November 15, 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of the tank or tanks.

(G) EFFECT OF SECTION.—Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

(H) FAILURE OF STATE TO MAINTAIN CLEAN AIR PROGRAM.—If California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall establish a clean fuel program for California under this paragraph and section 211110(c) of this title that meets the requirements of this paragraph.

(d) CREDITS FOR MOTOR VEHICLE MANUFACTURERS.—

(1) IN GENERAL.—

(A) GRANT OF CREDITS.—The Administrator may by regulation grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of the manufacturer's share of the requirements of subsection (c)(2) for either of the following (or any combination thereof):

(i) The sale of more clean-fuel vehicles than is required under subsection (c)(2).

(ii) The sale of clean-fuel vehicles that meet standards established by the Administrator as provided in paragraph (3) that are more stringent than the clean-fuel vehicle standards otherwise applicable to clean-fuel vehicles.

(B) USE OF CREDITS.—A manufacturer granted credits under subparagraph (A) may transfer some or all of the credits for use by 1 or more other manufacturers in demonstrating compliance with the requirements prescribed under this section.

(C) CONSIDERATIONS.—The Administrator may make the credits available for use after consideration of enforceability, environ-

mental, and economic factors and on such terms and conditions as the Administrator finds appropriate.

(D) OTHER REQUIREMENTS OR CREDITS.—The Administrator shall grant credits in accordance with this paragraph notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law (including a regulation).

(2) ADMINISTRATION; REGULATIONS.—The Administrator shall administer the credit program established under this subsection. The Administrator shall promulgate regulations for the credit program.

(3) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under section 225106(f) of this title shall apply for purposes of the credit program under this subsection.

(e) NO EXTENSION OR TERMINATION BY ADMINISTRATOR; NONAPPLICABILITY OF SECTION 215109.—

(1) NO EXTENSION OR TERMINATION BY ADMINISTRATOR.—The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after November 15, 1990.

(2) NONAPPLICABILITY OF SECTION 215109.—Section 215109 of this title does not apply to the program under this section.

(f) VOLUNTARY OPT-IN FOR OTHER STATES.—

(1) REGULATIONS.—The Administrator shall promulgate regulations establishing a voluntary opt-in program under this subsection pursuant to which—

(A) clean-fuel vehicles that are required to be produced, sold, and distributed in California under this section; and

(B) clean alternative fuels required to be produced and distributed under this section by fuel suppliers and made available in California;

may also be sold and used in other States that have an implementation plan provision under paragraph (2).

(2) PLAN PROVISION.—Any State in which there is located all or part of an ozone nonattainment area classified under chapter 215 as a serious area, severe area, or extreme area may include in its implementation plan a provision under which incentives are provided for the sale or use in the ozone nonattainment area or State of clean-fuel vehicles that are required to be produced, sold, and distributed in Cali-

fornia, and for the use in the ozone nonattainment area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such a plan provision shall not take effect until 1 year after the State has provided notice of the provision to motor vehicle manufacturers and to fuel suppliers.

(3) INCENTIVES.—

(A) IN GENERAL.—The incentives under paragraph (2) may include any or all of the following:

(i) A State registration fee on new motor vehicles registered in the State that are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle.

(ii) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

(iii) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

(B) USE OF PROCEEDS.—The proceeds of a fee under subparagraph (A)(i) shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers that sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

(C) COVERED FLEET VEHICLES.—The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

(4) NO SALES OR PRODUCTION MANDATE.—The regulations and plan provisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. The regulations and plan provisions shall provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

### § 225110. General provisions

(a) STATE REFUELING FACILITIES.—If any State adopts an enforceable provision in an implementation plan applicable to a nonattainment area that provides that existing State refueling facilities will be made available to the public for the purchase of clean alternative fuels or that State-operated refueling facilities for clean alternative fuels will be constructed and operated by the State and made available to the public at reasonable times, taking into consideration safety, costs, and other relevant factors, in approving the plan under section 211110 of this title and chapter 215 the Administrator may credit a State with the emission reductions attributable to those actions for purposes of chapter 215.

(b) NO PRODUCTION MANDATE.—The Administrator shall have no authority under this chapter to mandate the production of clean-fuel vehicles except as provided in the California pilot test program or to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this chapter. Nothing in this chapter shall be construed to give the Administrator authority to mandate marketing or pricing practices, policies, or strategies for fuels.

(c) TANK AND FUEL SYSTEM SAFETY.—The Secretary of Transportation shall, in accordance with chapter 301 of title 49, promulgate regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles.

(d) COORDINATION WITH SECRETARY OF ENERGY AND SECRETARY OF TRANSPORTATION.—The Administrator shall coordinate with the Secretary of Energy and the Secretary of Transportation in carrying out the Administrator's duties under this chapter.

# Subdivision 4—Noise Pollution
# Chapter 231—Noise Pollution

Sec.
231101. Abatement of noise from Federal activities.

## § 231101. Abatement of noise from Federal activities

In any case where a Federal department or agency is carrying out or sponsoring an activity resulting in noise that the Administrator determines amounts to a public nuisance or is otherwise objectionable, the department or agency shall consult with the Administrator to determine possible means of abating the noise.

# Subdivision 5—Acid Deposition Control
# Chapter 233—Acid Deposition Control

Sec.
233101. Findings and purposes.
233102. Definitions.
233103. Sulfur dioxide allowance program for existing units and new units.
233104. Conservation and renewable energy reserve; alternative allowance allocation for units in certain utility systems with optional baseline.
233105. Phase II sulfur dioxide requirements.
233106. Allowances for States with emission rates at or below 0.80 pound per million British thermal units.
233107. Nitrogen oxide emission reduction program.
233108. Permits and compliance plans.
233109. Election for additional sources.
233110. Excess emission penalty; excess emission offset.
233111. Monitoring, reporting, and recordkeeping requirements.
233112. General compliance with other provisions.
233113. Enforcement.
233114. Clean coal technology regulatory incentives.
233115. Contingency guarantee; auctions; reserve.

## § 233101. Findings and purposes

(a) FINDINGS.—Congress finds that—

(1) the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials, visibility, and public health;

(2) the principal sources of the acidic compounds and their precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

(3) the problem of acid deposition is of national and international significance;

(4) there exist strategies and technologies for the control of precursors to acid deposition that are economically feasible;

(5) current and future generations of Americans would be adversely affected by delaying measures to remedy the problem;

(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment; and

(7) steam-electric generating units should use control measures to reduce precursor emissions.

(b) PURPOSES.—

(1) EMISSION REDUCTIONS.—

(A) IN GENERAL.—A purpose of this subdivision is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of 10,000,000 tons from 1980 emission levels, and, in combination with other provisions of this division, of nitrogen oxides emissions of approximately 2,000,000 tons from 1980 emission levels, in the 48 contiguous States and the District of Columbia.

(B) INTENT.—It is the intent of this subdivision to effectuate the reductions described in subparagraph (A) by requiring compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system.

(2) ENERGY CONSERVATION, USE OF RENEWABLE AND CLEAN ALTERNATIVE TECHNOLOGIES, AND POLLUTION PREVENTION.—A purpose of this subdivision is to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with this subdivision, for reducing air pollution and other adverse impacts of energy production and use.

**§ 233102. Definitions**

In this subdivision:

(1) ACTUAL 1985 SULFUR DIOXIDE EMISSION RATE.—

(A) UTILITY UNITS.—The term ''actual 1985 sulfur dioxide emission rate'', with respect to a utility unit, means the 1985 sulfur dioxide emission rate in pounds per million British thermal units as reported for the utility unit in the NAPAP Emissions Inventory, Version 2, National Utility Reference File.

(B) NONUTILITY UNITS.—The term ''actual 1985 sulfur dioxide emission rate'', with respect to a nonutility unit, means the 1985 sulfur dioxide emission rate in pounds per million British thermal units as reported for the nonutility unit in the NAPAP Emissions Inventory, Version 2.

(2) AFFECTED SOURCE.—The term ''affected source'' means a source that includes 1 or more affected units.

(3) AFFECTED UNIT.—The term ''affected unit'' means a unit that is subject to emission reduction requirements or limitations under this subdivision.

(4) ALLOWABLE 1985 SULFUR DIOXIDE EMISSION RATE.—

(A) IN GENERAL.—The term ''allowable 1985 sulfur dioxide emission rate'', with respect to a unit, means—

(i) a federally enforceable emission limitation for sulfur dioxide applicable to the unit in 1985; or

(ii) the limitation applicable in such year after 1985 as the Administrator may determine if a limitation described in clause (i) for 1985 does not exist.

(B) EMISSION LIMITATION NOT EXPRESSED IN POUNDS OF EMISSIONS PER MILLION BRITISH THERMAL UNITS OR AVERAGING PERIOD NOT EXPRESSED ON AN ANNUAL BASIS.—If the emission limitation for a unit is not expressed in pounds of emissions per million British thermal units or the averaging period of the emission limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emission limitation in pounds per million British thermal units to establish the allowable 1985 sulfur dioxide emission rate.

(5) ALLOWANCE.—The term ''allowance'' means an authorization, allocated to an affected unit by the Administrator under this subdivision, to emit, during or after a specified calendar year, 1 ton of sulfur dioxide.

(6) BASELINE.—The term ''baseline'' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British thermal units, calculated as follows:

(A) UTILITY UNITS.—

(i) IN GENERAL.—For a utility unit that was in commercial operation prior to January 1, 1985, the baseline is the annual average quantity of million British thermal units consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form EIA–767.

(ii) FORM EIA–767 NOT FILED.—For a utility unit for which a Form EIA–767 was not filed, the baseline is the level specified for the unit in—

(I) the 1985 NAPAP Emissions Inventory, Version 2, National Utility Reference File; or

(II) a corrected database established by the Administrator pursuant to subparagraph (E).

(B) NONUTILITY UNITS.—

(i) IN GENERAL.—For nonutility units, the baseline is the NAPAP Emissions Inventory, Version 2.

(ii) NONUTILITY UNITS NOT INCLUDED IN THE NAPAP EMISSIONS INVENTORY, VERSION 2, OR A CORRECTED DATABASE.—For a nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected database established by the Administrator pursuant to subparagraph (E), the baseline is the annual average quantity, in million British thermal units consumed in fuel by the unit, as calculated pursuant to a method that the Administrator shall prescribe by regulation.

(C) EXCLUSION OF SHUTDOWN PERIODS OF 4 MONTHS OR LONGER.—The Administrator may exclude periods during which a unit is shut down for a continuous period of 4 calendar months or longer and make appropriate adjustments under this paragraph.

(D) ADJUSTMENT FOR ACCIDENTS.—On petition of the owner or operator of a unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(E) DATABASE.—The Administrator shall, on application or on the Administrator's own motion, supplement data needed in support of this subdivision and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 sulfur dioxide emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances under this subdivision. The corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in the reports be subject to judicial review.

(7) BASIC PHASE II ALLOWANCE ALLOCATION.—The term ''basic Phase II allowance allocation'' means—

(A) for calendar years 2000 to 2009, an allocation of allowances made by the Administrator pursuant to section 233103 of this title and paragraph (1), (3), or (4) of subsection (b), paragraph (1), (2), (3), or (5) of subsection (c), paragraph (1), (2), (4), or (5) of subsection (d), subsection (e) or (f), paragraph (1), (2), (3), (4), or (5) of subsection (g), or subsection (h)(1), (i), or (j) of section 233105 of this title; and

(B) for each calendar year beginning in 2010, an allocation of allowances made by the Administrator pursuant to section 233103 of this title and paragraph (1), (3), or (4) of subsection (b), paragraph (1), (2), (3), or (5) of subsection (c), paragraph (1), (2), (4), or (5) of subsection (d), subsection (e) or (f), paragraph (1), (2), (3), (4), or (5) of subsection (g), paragraph (1) or (2)(B) of subsection (h), or subsection (i) or (j) of section 233105 of this title.

(8) CAPACITY FACTOR.—The term ''capacity factor'' means the ratio of the actual electric output from a unit to the potential electric output from that unit.

(9) COMMENCE.—The term ''commence'', as applied to construction of a new electric utility unit by an owner or operator, means to—

(A) undertake a continuous program of construction; or

(B) enter into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(10) COMMENCE COMMERCIAL OPERATION.—The term ''commence commercial operation'' means to begin to generate electricity for sale.

(11) COMPLIANCE PLAN.—The term ''compliance plan'' means, for purposes of the requirements of this subdivision—

(A) a statement that a source will comply with all applicable requirements under this subdivision; or

(B) where applicable, a schedule and description of the method or methods for compliance and certification by an owner or operator that a source is in compliance with the requirements of this subdivision.

(12) CONSTRUCTION.—The term ''construction'' means fabrication, erection, or installation of an affected unit.

(13) CONTINUOUS EMISSION MONITORING SYSTEM.—The term ''continuous emission monitoring system'' means the equipment, as required by section 233111 of this title, used to sample, analyze, measure, and

provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units, pounds per hour, or such other form as the Administrator may prescribe by regulations under section 233111 of this title).

(14) DESIGNATED REPRESENTATIVE.—The term ''designated representative'' means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

(15) EXISTING UNIT.—

(A) IN GENERAL.—The term ''existing unit'' means a unit (including a unit subject to section 211111 of this title) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, that is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the purposes of this subdivision.

(B) EXCLUSIONS.—The term ''existing unit'' does not include a simple combustion turbine or a unit that serves a generator with a nameplate capacity of 25 megawatts electric or less.

(16) EXISTING UTILITY UNIT.—The term ''existing utility unit'' means an existing unit that is a utility unit.

(17) GENERATOR.—The term ''generator'' means a device that produces electricity and that is reported as a generating unit pursuant to Department of Energy Form EIA–860.

(18) INDUSTRIAL SOURCE.—The term ''industrial source'' means a unit that does not serve a generator that produces electricity, a nonutility unit, or a process source (as defined in section 233109 of this title).

(19) LIFE-OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGEMENT.—The term ''life-of-the-unit, firm power contractual arrangement'' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of the unit's total costs, pursuant to a contract—

(A) for the life of the unit;

(B) for a cumulative term of not less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit is built, with option rights to purchase or re-lease a portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(20) NAPAP.—The term ''NAPAP'' means the National Acid Precipitation Assessment Program.

(21) NEW UNIT.—The term ''new unit'' means a unit that commences commercial operation on or after November 15, 1990.

(22) NEW UTILITY UNIT.—The term ''new utility unit'' means a new unit that is a utility unit.

(23) NONUTILITY UNIT.—The term ''nonutility unit'' means a unit other than a utility unit.

(24) PERMITTING AUTHORITY.—The term ''permitting authority'' means—

(A) the Administrator; or

(B) a State or local air pollution control agency, with an approved permitting program under subdivision 6.

(25) PHASE II BONUS ALLOWANCE ALLOCATION.—The term ''Phase II bonus allowance allocation'' means, for calendars years 2000 through 2009, an allocation made by the Administrator pursuant to—

(A) section 233103 of this title;

(B) subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 233105 of this title; or

(C) section 233106 of this title.

(26) QUALIFYING PHASE I TECHNOLOGY.—The term ''qualifying phase I technology'' means a technological system of continuous emission reduction that achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels that were not subject to treatment prior to combustion.

(27) REPOWER.—

(A) IN GENERAL.—The term ''repower'' means—

(i) to replace an existing coal-fired boiler with 1 of the clean coal technologies described in subparagraph (B); or

(ii) to be an oil- or gas-fired unit that was awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(B) CLEAN COAL TECHNOLOGIES.—The clean coal technologies described in subparagraph (A)(i) are—

(i) atmospheric or pressurized fluidized bed combustion technology;

(ii) integrated gasification combined cycle technology;

(iii) magnetohydrodynamic technology;

(iv) direct and indirect coal-fired turbine technology;

(v) integrated gasification fuel cell technology;

(vi) a derivative of 1 or more of the technologies described in clauses (i) through (v), as determined by the Administrator in consultation with the Secretary of Energy; and

(vii) any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(28) RESERVE.—The term ''reserve'' means a bank of allowances established by the Administrator under this subdivision.

(29) STATE.—The term ''State'' means 1 of the 48 contiguous States and the District of Columbia.

(30) UNIT.—The term ''unit'' means a fossil fuel-fired combustion device used to generate electricity.

(31) UTILITY UNIT.—

(A) IN GENERAL.—The term ''utility unit'' means—

(i) a unit that serves a generator in any State that produces electricity for sale; or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) EXCLUSIONS.—The term ''utility unit'' does not include—

(i) a unit that—

(I) was in commercial operation during 1985; but

(II) did not, during 1985, serve a generator in any State that produced electricity for sale; or

(ii) a unit that cogenerates steam and electricity, unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than ⅓ of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

**§ 233103. Sulfur dioxide allowance program for existing units and new units**

(a) ALLOCATIONS OF ANNUAL ALLOWANCES FOR EXISTING UNITS AND NEW UNITS.—

(1) IN GENERAL.—For the emission limitation programs under this subdivision, the Administrator shall allocate annual allowances for the unit, to be held or distributed by the designated representative of the owner or operator of each affected unit at an affected source in accordance with this subdivision, in an amount equal to the annual tonnage emission limitation calculated under section 233105, 233106, or 233109 of this title except as otherwise specifically provided elsewhere in this subdivision.

(2) TOTAL ANNUAL EMISSIONS.—

(A) IN GENERAL.—Except as provided in paragraphs (2) and (3) of section 233105(a) and section 233109 of this title, the Administrator shall not allocate annual allowances to emit sulfur dioxide pursuant to section 233105 of this title in such an amount as would result in total annual emissions of sulfur dioxide from utility units in excess of 8,900,000 tons, except that the Administrator shall not take into account unused allowances carried forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated.

(B) REDUCTION IN BASIC PHASE II ALLOWANCE ALLOCATIONS.—If necessary to meet the restrictions imposed in subparagraph (A), the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 233105 of this title.

(3) ANNUAL ALLOCATION.—Subject to section 233115 of this title, the Administrator shall allocate allowances for each affected unit at an affected source annually, as provided in this subsection and section 233108 of this title.

(4) REMOVAL FROM COMMERCIAL OPERATION.—Except as provided in section 233109 of this title, the removal of an existing unit from commercial operation at any time shall not terminate or otherwise affect the allocation of allowances pursuant to section 233105 of this title to which the unit is entitled.

(5) COST.—Allowances shall be allocated by the Administrator without cost to the recipient, except for allowances sold by the Administrator pursuant to section 233115 of this title.

(6) LIST OF ALLOCATIONS.—The Administrator shall publish a proposed list of the basic Phase II allowance allocations, the Phase II bonus allowance allocations and, if applicable, allocations pursuant to section 233105(a)(3) of this title for each unit subject to the emission limitation requirements of section 233105 of this title for the year

2000 and the year 2010. After notice and opportunity for public comment, the Administrator shall publish a final list of such allocations, subject to section 233105(a)(2) of this title. The Administrator shall publish a revised final statement of allowance allocations, subject to section 233105(a)(2) of this title.

(b) ALLOWANCE TRANSFER SYSTEM.—

(1) IN GENERAL.—Allowances allocated under this subdivision may be transferred among designated representatives of the owners or operators of affected sources under this subdivision and any other person that holds allowances, as provided by the allowance system regulations promulgated by the Administrator. The regulations shall establish the allowance system prescribed under this section, including requirements for the allocation, transfer, and use of allowances under this subdivision.

(2) USE OF ALLOWANCES.—The regulations shall—

(A) prohibit the use of any allowance prior to the calendar year for which the allowance is allocated; and

(B) provide, consistent with the purposes of this subdivision, for the identification of unused allowances and for unused allowances to be carried forward and added to allowances allocated in subsequent years, including allowances allocated to units subject to Phase I requirements (as described in section 404 of the Clean Air Act (42 U.S.C. 7651c) (as in effect before the repeal of that section)) that are applied to emission limitations requirements in Phase II (as described in section 233105 of this title).

(3) CERTIFICATION OF TRANSFER.—A transfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator.

(4) PRE-ALLOCATION TRANSFERS.—The regulations shall permit the transfer of an allowance prior to issuance of the allowance. Recorded pre-allocation transfers shall be deducted by the Administrator from the number of allowances that would otherwise be allocated to the transferor, and added to the allowances allocated to the transferee. A pre-allocation transfer shall not affect the prohibition contained in this subsection against the use of an allowance prior to the year for which the allowance is allocated.

(c) ALLOWANCE TRACKING SYSTEM.—

(1) IN GENERAL.—The Administrator shall by regulation promulgate a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and

competitive functioning of the allowance system. All allowance allocations and transfers shall, on recordation by the Administrator, be deemed a part of each unit's permit requirements pursuant to section 233108 of this title, without any further permit review and revision.

(2) ELECTRIC RELIABILITY.—

(A) IN GENERAL.—To ensure electric reliability—

(i) the regulations shall not prohibit or affect temporary increases and decreases in emissions from units in a utility system, power pool, or utility entering into an allowance pool agreement that result from their operations (including emergencies and central dispatch); and

(ii) such temporary emissions increases and decreases shall not require transfer of allowances among units or require recordation.

(B) DESIGNATED REPRESENTATIVES.—The owners or operators of such units shall act through a designated representative.

(C) TOTAL TONNAGE OF EMISSIONS.—The total tonnage of emissions in any calendar year (calculated at the end thereof) from all such units shall not exceed the total allowances for such units for the calendar year concerned.

(d) NEW UTILITY UNITS.—It shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator. A new utility unit shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a) unless the new utility unit is subject to paragraph (2) or (3) of section 233105(g) of this title. A new utility unit may obtain an allowance from any person in accordance with this subdivision. The owner or operator of any new utility unit in violation of this subsection shall be liable for fulfilling the obligations specified in section 233110 of this title.

(e) NATURE OF ALLOWANCES.—

(1) LIMITED AUTHORIZATION.—An allowance allocated under this subdivision is a limited authorization to emit sulfur dioxide in accordance with this subdivision.

(2) NOT A PROPERTY RIGHT.—An allowance does not constitute a property right.

(3) NO LIMITATION ON AUTHORITY TO TERMINATE OR LIMIT AUTHORIZATION.—Nothing in this subdivision or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit an allowance.

(4) OTHER PROVISIONS.—Nothing in this section relating to allowances shall be construed as affecting the application of any other provi-

sion of this division (including provisions relating to applicable NAAQSes and State implementation plans) to, or compliance with any other such provision by, an affected unit or affected source.

(5) STATE LAW.—Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law.

(6) FEDERAL POWER ACT.—Nothing in this section shall be construed as modifying the Federal Power Act (16 U.S.C. 791a et seq.) or as affecting the authority of the Federal Energy Regulatory Commission under that Act.

(7) COMPETITIVE BIDDING.—Nothing in this subdivision shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which the program is established.

(8) PERMITS.—An allowance, once allocated to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this subdivision (including the regulations of the Administrator) without regard to whether a permit is in effect under subdivision 6 or section 233108 of this title with respect to the unit for which the allowance was originally allocated and recorded. Each permit under this subdivision and each permit issued under subdivision 6 for any affected unit shall provide that the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that affected unit.

(f) PROHIBITION.—

(1) HOLDING, USE, OR TRANSFER OF ALLOWANCE.—It shall be unlawful for any person to hold, use, or transfer an allowance allocated under this subdivision except in accordance with regulations promulgated by the Administrator.

(2) EMISSIONS.—

(A) IN GENERAL.—It shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that affected unit for that year by the owner or operator of the unit.

(B) OTHER EMISSION LIMITATIONS.—On the allocation of allowances under this subdivision, the prohibition contained in subparagraph (A) shall supersede any other emission limitation applicable under this subdivision to the units for which the allowances are allocated.

(3) CALENDAR YEAR FOR USE.—An allowance may not be used prior to the calendar year for which the allowance is allocated.

(4) PERMITTING, MONITORING, AND ENFORCEMENT.—Nothing in this section (including the allowance system regulations) shall—

(A) relieve the Administrator of the Administrator's permitting, monitoring, and enforcement obligations under this division; or

(B) relieve affected sources of their requirements and liabilities under this division.

(g) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this subdivision shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such a program is established.

(h) APPLICABILITY OF ANTITRUST LAWS.—

(1) DEFINITION OF ANTITRUST LAWS.—In this section, the term ''antitrust laws'' has the meaning given the term in the 1st section of the Clayton Act (15 U.S.C. 12).

(2) EFFECT OF SECTION.—Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of an allowance; or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

### § 233104. Conservation and renewable energy reserve; alternative allowance allocation for units in certain utility systems with optional baseline

(a) CONSERVATION AND RENEWABLE ENERGY RESERVE.—

(1) ESTABLISHMENT.—The Administrator shall establish a conservation and renewable energy reserve (referred to in this subsection as the ''Reserve'').

(2) ALLOCATIONS.—The Administrator may allocate from the Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 233103 of this title.

(3) REDUCTION OF BASIC PHASE II ALLOWANCE ALLOCATION.—To provide 300,000 allowances for the Reserve, in each year through calendar year 2009, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances.

(4) REMAINING ALLOWANCES.—If allowances remain in the Reserve after January 2, 2010, the Administrator shall allocate those allowances for affected units under section 233105 of this title on a pro rata basis.

(5) PRO RATA BASIS.—For purposes of this subsection, for any unit subject to the emission limitation requirements of section 233105 of this title, the term ''pro rata basis'' refers to the ratio that—

(A) the reductions made in the unit's allowances to establish the Reserve; bears to

(B) the total of such reductions for all such units.

(b) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

(1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—

(A) IN GENERAL.—In the case of a unit described in subparagraph (B), at the election of the owner or operator of the unit made not later than March 1, 1991, the unit's baseline may be calculated—

(i) as provided under section 233102(6) of this title; or

(ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor.

(B) UNITS.—A unit referred to in subparagraph (A) is a unit that was subject to the emission limitation requirements of section 404 of the Clean Air Act (42 U.S.C. 7651c) (as in effect before the repeal of that section) that, as of November 15, 1990—

(i) had an emission rate below 1.0 pound per million British thermal units;

(ii) had decreased its sulfur dioxide emission rate by 60 percent or greater since 1980; and

(iii) was part of a utility system that had a weighted average sulfur dioxide emission rate for all fossil fuel-fired units below 1.0 pound per million British thermal units.

(2) ALLOWANCE ALLOCATION.—

(A) IN GENERAL.—When the owner or operator of a unit described in paragraph (1) elects to calculate the unit's baseline as provided in paragraph (1)(A)(ii), the Administrator shall allocate allowances for the unit pursuant to section 233103(a)(1) of this title, this section, and section 233105 of this title (as basic Phase II allowance allocations) in an amount equal to—

(i) the baseline selected; multiplied by

(ii) the lower of—

(I) the average annual emission rate for the unit in 1989; or

(II) 1.0 pound per million British thermal units.

(B) ALLOWANCE IN LIEU OF OTHER ALLOCATION.—An allowance allocation under subparagraph (A) shall be in lieu of any al-

location of allowances under this section and section 233105 of this title.

**§ 233105. Phase II sulfur dioxide requirements**

(a) APPLICABILITY.—

(1) IN GENERAL.—

(A) EXISTING UNITS.—Each existing utility unit as provided in this subsection is subject to the limitations or requirements of this section.

(B) AFFECTED UNITS.—Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subdivision.

(C) AFFECTED SOURCES.—Each source that includes 1 or more affected units is an affected source.

(D) EXISTING UNITS NOT IN OPERATION DURING 1985.—In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate.

(E) UNIT OPERATED IN VIOLATION OF THIS SECTION.—The owner or operator of any unit operated in violation of this section shall be fully liable under this chapter for fulfilling the obligations specified in section 233110 of this title.

(2) ALLOCATION OF PHASE II BONUS ALLOWANCES.—

(A) ALLOCATION.—In addition to basic Phase II allowance allocations, in each year ending in calendar year 2009, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2) and (c)(4), subparagraphs (A) and (B) of subsection (d)(3), and subsection (h)(2) and section 233106 of this title.

(B) CALCULATION.—The Administrator shall—

(i) calculate, for each unit granted an extension pursuant to section 409 of the Clean Air Act (42 U.S.C. 7651h) (as in effect before the repeal of that section), the difference between—

(I) the number of allowances allocated for the unit in calendar year 2000; and

(II)(aa) the unit's baseline; multiplied by

(bb) 1.20 pounds per million British thermal units; divided by

(cc) 2000; and

(ii) sum the calculations for all such units.

(C) DEDUCTION.—In each year ending in calendar year 2009, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to subparagraph (B).

(3) ADDITIONAL ALLOWANCES.—

(A) IN GENERAL.—In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, the Administrator shall allocate for each unit listed on table A and located in Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to—

(i) 50,000; multiplied by

(ii) the unit's pro rata share of the total number of basic Phase II allowances allocated for all units listed on table A.

TABLE A.—UNITS

| State | Plant Name | Generator |
|---|---|---|
| Alabama | Colbert | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | | 5 |
| | E.C. Gaston | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| Florida | Big Bend | 1 |
| | | 2 |
| | | 3 |
| | Crist | 6 |
| | | 7 |
| Georgia | Bowen | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | Hammond | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | J. McDonough | 1 |
| | | 2 |
| | Wansley | 1 |
| | | 2 |
| | Yates | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | | 5 |
| | | 6 |
| | | 7 |
| Illinois | Baldwin | 1 |
| | | 2 |
| | | 3 |
| | Coffeen | 1 |
| | | 2 |
| | Grand Tower | 4 |
| | Hennepin | 2 |
| | Kincaid | 1 |
| | | 2 |
| | Meredosia | 3 |
| | Vermilion | 2 |
| Indiana | Bailly | 7 |
| | | 8 |
| | Breed. | |
| | Cayuga | 1 |
| | | 2 |

TABLE A.—UNITS—Continued

| State | Plant Name | Generator |
|---|---|---|
| | E. W. Stout | 5 |
| | | 6 |
| | | 7 |
| | F. B. Culley | 2 |
| | | 3 |
| | F. E. Ratts | 1 |
| | | 2 |
| | Gibson | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | H. T. Pritchard. | |
| | Michigan City | 12 |
| | Petersburg | 1 |
| | | 2 |
| | R. Gallagher | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | Tanners Creek | 4 |
| | Wabash River | 1 |
| | | 2 |
| | | 3 |
| | | 5 |
| | | 6 |
| | Warrick | 4 |
| Iowa | Burlington | 1 |
| | Des Moines | 7 |
| | George Neal | 1 |
| | M.L. Kapp | 2 |
| | Prairie Creek | 4 |
| | Riverside | 5 |
| Kansas | Quindaro | 2 |
| Kentucky | Coleman | 1 |
| | | 2 |
| | | 3 |
| | Cooper | 1 |
| | | 2 |
| | E.W. Brown | 1 |
| | | 2 |
| | | 3 |
| | Elmer Smith | 1 |
| | | 2 |
| | Ghent | 1 |
| | Green River | 4 |
| | H.L. Spurlock | 1 |
| | Henderson II | 1 |
| | | 2 |
| | Paradise | 3 |
| | Shawnee | 10 |
| Maryland | Chalk Point | 1 |
| | | 2 |
| | C. P. Crane | 1 |
| | | 2 |
| | Morgantown | 1 |
| | | 2 |
| Michigan | J. H. Campbell | 1 |
| | | 2 |
| Minnesota | High Bridge | 6 |
| Mississippi | Jack Watson | 4 |
| | | 5 |
| Missouri | Asbury | 1 |
| | James River | 5 |
| | Labadie | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | Montrose | 1 |
| | | 2 |
| | | 3 |
| | New Madrid | 1 |
| | | 2 |
| | Sibley | 3 |
| | Sioux | 1 |
| | | 2 |
| | Thomas Hill | 1 |
| | | 2 |
| New Hampshire | Merrimack | 1 |
| | | 2 |

TABLE A.—UNITS—Continued

| State | Plant Name | Generator |
|---|---|---|
| New Jersey | B.L. England | 1 |
| | | 2 |
| New York | Dunkirk | 3 |
| | | 4 |
| | Greenidge | 4 |
| | Milliken | 1 |
| | | 2 |
| | Northport | 1 |
| | | 2 |
| | | 3 |
| | Port Jefferson | 3 |
| | | 4 |
| Ohio | Ashtabula | 5 |
| | Avon Lake | 8 |
| | | 9 |
| | Cardinal | 1 |
| | | 2 |
| | Conesville | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | Eastlake | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | | 5 |
| | Edgewater | 4 |
| | Gen. J.M. Gavin | 1 |
| | | 2 |
| | Miami Fort | 5 |
| | | 6 |
| | | 7 |
| | Muskingum River | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | | 5 |
| | Niles | 1 |
| | | 2 |
| | Pieway | 5 |
| | R.E. Burger | 3 |
| | | 4 |
| | | 5 |
| | W.H. Sammis | 5 |
| | | 6 |
| | | 7 |
| | W.C. Beckjord | 5 |
| | | 6 |
| Pennsylvania | Armstrong | 1 |
| | | 2 |
| | Brunner Island | 1 |
| | | 2 |
| | | 3 |
| | Cheswick | 1 |
| | Conemaugh | 1 |
| | | 2 |
| | Hatfield's Ferry | 1 |
| | | 2 |
| | | 3 |
| | Martins Creek | 1 |
| | | 2 |
| | Portland | 1 |
| | | 2 |
| | Shawville | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | Sunbury | 3 |
| | | 4 |
| Tennessee | Allen | 1 |
| | | 2 |
| | | 3 |
| | Cumberland | 1 |
| | | 2 |
| | Gallatin | 1 |
| | | 2 |
| | | 3 |
| | | 4 |

TABLE A.—UNITS—Continued

| State | Plant Name | Generator |
|---|---|---|
| | Johnsonville | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | | 5 |
| | | 6 |
| | | 7 |
| | | 8 |
| | | 9 |
| | | 10 |
| West Virginia | Albright | 3 |
| | Fort Martin | 1 |
| | | 2 |
| | Harrison | 1 |
| | | 2 |
| | | 3 |
| | Kammer | 1 |
| | | 2 |
| | | 3 |
| | Mitchell | 1 |
| | | 2 |
| | Mount Storm | 1 |
| | | 2 |
| | | 3 |
| Wisconsin | Edgewater | 4 |
| | La Crosse/Genoa | 3 |
| | Nelson Dewey | 1 |
| | | 2 |
| | N. Oak Creek | 1 |
| | | 2 |
| | | 3 |
| | | 4 |
| | Pulliam | 8 |
| | S. Oak Creek | 5 |
| | | 6 |
| | | 7 |
| | | 8 |

(B) ALLOWANCES NOT SUBJECT TO 8,900,000 TON LIMITATION.—Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation under section 223103(a) of this title.

(b) UNITS EQUAL TO OR GREATER THAN 75 MEGAWATTS ELECTRIC AND 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—

(1) GENERAL PROHIBITION.—Except as otherwise provided in paragraph (3), unless the owner or operator of the existing utility unit holds allowances to emit not less than the existing utility unit's total annual emissions, it shall be unlawful for an existing unit that serves a generator with nameplate capacity equal to, or greater, than 75 megawatts electric and an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds per million British thermal units to exceed an annual sulfur dioxide tonnage emission limitation equal to—

(A) the unit's baseline; multiplied by

(B) an emission rate equal to 1.20 pounds per million British thermal units; divided by

(C) 2,000.

(2) ADDITIONAL ALLOWANCES FOR UNITS WITH AN ACTUAL 1985 SULFUR DIOXIDE EMISSION RATE GREATER THAN 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS AND LESS THAN 2.50 POUNDS PER MILLION BRITISH THERMAL UNITS AND A BASELINE CAPACITY FACTOR OF LESS THAN 60 PERCENT.—In addition to allowances allocated pursuant to paragraph (1) and section 233103(a) of this title as basic Phase II allowance allocations, for each calendar year through 2009, the Administrator shall allocate annually for each unit subject to the emission limitation requirements of paragraph (1) with an actual 1985 sulfur dioxide emission rate greater than 1.20 pounds per million British thermal units and less than 2.50 pounds per million British thermal units and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to—

(A) 1.20 pounds per million British thermal units; multiplied by

(B) 50 percent of the difference, on a British thermal unit basis, between—

(i) the unit's baseline; and

(ii) the unit's fuel consumption at a 60 percent capacity factor.

(3) PROHIBITION APPLICABLE TO CERTAIN UNITS CONSUMING LIGNITE COAL.—Unless the owner or operator of the existing unit holds allowances to emit not less than the existing unit's total annual emissions, it shall be unlawful for an existing utility unit with an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds per million British thermal units whose annual average fuel consumption during 1985, 1986, and 1987 on a British thermal unit basis exceeded 90 percent in the form of lignite coal located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 107 of the Clean Air Act (42 U.S.C. 7407) (as in effect on that date) for any pollutant subject to the requirements of section 109 of the Clean Air Act (42 U.S.C. 7409) (as in effect on that date) to exceed an annual sulfur dioxide tonnage limitation equal to—

(A) the unit's baseline; multiplied by

(B) the lesser of—

(i) the unit's actual 1985 sulfur dioxide emission rate; or

(ii) its allowable 1985 sulfur dioxide emission rate; divided by

(C) 2,000.

(4) ALLOWANCES FOR CERTAIN UNITS CONVERTED TO COAL.—

(A) IN GENERAL.—The Administrator shall allocate annually for each unit that is subject to the emission limitation requirements of paragraph (1) and is located in a State with an installed electrical generating capacity of more than 30,000,000 kilowatts in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980, and December 31, 1985, allowances equal to the difference between—

(i)(I) the unit's annual fuel consumption, on a British thermal unit basis, at a 65 percent capacity factor; multiplied by

(II) the lesser of the unit's actual emission rate or allowable emission rate during the 1st full calendar year after conversion; divided by

(III) 2,000; and

(ii) the number of allowances allocated for the unit pursuant to paragraph (1).

(B) RESTRICTION.—

(i) IN GENERAL.—The number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000.

(ii) REDUCTION OF ALLOWANCE.—If necessary to meeting the restriction imposed by clause (i), the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) COAL- OR OIL-FIRED UNITS BELOW 75 MEGAWATTS ELECTRIC AND ABOVE 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—

(1) UTILITY OPERATING COMPANIES WITH CAPACITY EQUAL TO OR GREATER THAN 250 MEGAWATTS ELECTRIC.—Except as provided in paragraph (3), unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for a coal- or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 megawatts electric and an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds per million British thermal units and that is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity was, as of December 31, 1989, equal to or greater than 250 megawatts electric to exceed an annual sulfur dioxide emission limitation equal to—

(A) the unit's baseline; multiplied by

(B) an emission rate equal to 1.20 pounds per million British thermal units; divided by

(C) 2,000.

(2) UTILITY OPERATING COMPANIES WITH CAPACITY OF LESS THAN 250 MEGAWATTS ELECTRIC.—Unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 megawatts electric and an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds per million British thermal units (excluding units subject to section 211111 of this title or to a federally enforceable emission limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 pounds per million British thermal units) and that is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity was, as of December 31, 1989, less than 250 megawatts electric to exceed an annual sulfur dioxide tonnage emission limitation equal to—

(A) the unit's baseline; multiplied by

(B) the lesser of the unit's actual 1985 sulfur dioxide emission rate or its allowable 1985 sulfur dioxide emission rate; divided by

(C) 2,000.

(3) CERTAIN EXISTING UTILITY UNITS WITH CAPACITY OF LESS THAN 75 MEGAWATTS ELECTRIC AND AN ACTUAL 1985 SULFUR DIOXIDE EMISSION RATE EQUAL TO OR GREATER THAN 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—

(A) BEFORE JANUARY 2, 2010.—Unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for an existing utility unit that has a nameplate capacity of less than 75 megawatts electric and an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds per million British thermal units that became operational on or before December 31, 1965, and that is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity of greater than 250 and less than 450 megawatts electric that served fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emission tonnage limitation equal to—

(i) the unit's baseline; multiplied by

(ii) the lesser of its actual 1985 sulfur dioxide emission rate or its allowable 1985 sulfur dioxide emission rate; divided by

(iii) 2,000.

(B) AFTER JANUARY 1, 2010.—After January 1, 2010, it shall be unlawful for a unit described in subparagraph (A) to exceed an annual emission tonnage limitation equal to—

(i) its baseline; multiplied by

(ii) an emission rate of 1.20 pounds per million British thermal units; divided by

(iii) 2,000.

(4) ADDITIONAL ALLOWANCES FOR CERTAIN UNITS WITH AN ACTUAL 1985 EMISSION RATE OF LESS THAN 2.50 POUNDS PER MILLION BRITISH THERMAL UNITS.—In addition to allowances allocated pursuant to paragraph (1) and section 233103(a) of this title as basic Phase II allowance allocations, for each calendar year through 2009, the Administrator shall allocate annually for each unit subject to the emission limitation requirements of paragraph (1) with an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 and less than 2.50 pounds per million British thermal units and a baseline capacity factor of less than 60 percent allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to—

(A) 1.20 pounds per million British thermal units; multiplied by

(B) 50 percent of the difference, on a British thermal unit basis, between—

(i) the unit's baseline; and

(ii) the unit's fuel consumption at a 60 percent capacity factor.

(5) CERTAIN UNITS THAT ARE PART OF CERTAIN ELECTRIC UTILITY SYSTEMS.—

(A) BEFORE JANUARY 2, 2010.—

(i) IN GENERAL.—Unless the owner or operator of the existing utility unit holds for use allowances to emit not less than the unit's total annual emissions, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 megawatts electric and an actual 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds per million British thermal units that is part of an electric utility system described in clause (ii) to exceed an annual sulfur dioxide emissions tonnage limitation equal to—

(I) the unit's baseline; multiplied by

(II) an emission rate of 2.5 pounds per million British thermal units; divided by

(III) 2,000.

(ii) ELECTRIC UTILITY SYSTEMS DESCRIBED.—An electric utility system described in clause (i) is an electric utility system that, as of November 15, 1990—

(I) had at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices;

(II) had more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 megawatts electric; and

(III) had units of greater than 400 megawatts electric all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for EPA on January 10, 1986).

(B) AFTER JANUARY 1, 2010.—After January 1, 2010, it shall be unlawful for a unit described in subparagraph (A) to exceed an annual emission tonnage limitation equal to—

(i) the unit's baseline; multiplied by

(ii) an emission rate of 1.20 pounds per million British thermal units; divided by

(iii) 2,000.

(d) COAL-FIRED UNITS BELOW 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—

(1) LESS THAN 0.60 POUND PER MILLION BRITISH THERMAL UNITS.—Unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for any coal-fired existing utility unit the lesser of whose actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission rate is less than 0.60 pound per million British thermal units to exceed an annual sulfur dioxide tonnage emission limitation equal to—

(A) the unit's baseline; multiplied by

(B) the lesser of 0.60 pound per million British thermal units or the unit's allowable 1985 sulfur dioxide emission rate; multiplied by

(C) 120 percent; divided by

(D) 2,000.

(2) EQUAL TO OR GREATER THAN 0.60 POUND PER MILLION BRITISH THERMAL UNITS.—Unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for any coal-fired existing utility unit the lesser of whose actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission rate is equal to or greater than 0.60 and less than 1.20

pounds per million British thermal units to exceed an annual sulfur dioxide tonnage emission limitation equal to—

(A) the unit's baseline; multiplied by—

(B) the lesser of its actual 1985 sulfur dioxide emission rate or its allowable 1985 sulfur dioxide emission rate; multiplied by

(C) 120 percent; divided by

(D) 2,000.

(3) ADDITIONAL ALLOWANCES.—

(A) LESS THAN 0.60 POUND PER MILLION BRITISH THERMAL UNITS.—In addition to allowances allocated pursuant to paragraph (1) and section 233103(a) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, for each calendar year through 2009, the Administrator shall allocate annually for each unit subject to the emission limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

(i)(I) the lesser of 0.60 pound per million British thermal units or the unit's allowable 1985 sulfur dioxide emission rate; multiplied by

(II) the unit's baseline adjusted to reflect operation at a 60 percent capacity factor; divided by

(III) 2,000; exceeds

(ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 233103(a) of this title as basic Phase II allowance allocations.

(B) EQUAL TO OR GREATER THAN 0.60 POUND PER MILLION BRITISH THERMAL UNITS.—In addition to allowances allocated pursuant to paragraph (2) and section 233103(a) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, for each calendar year through 2009, the Administrator shall allocate annually for each unit subject to the emission limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to the amount by which—

(i)(I)(aa) the lesser of the unit's actual 1985 sulfur dioxide emission rate or its allowable 1985 sulfur dioxide emission rate; multiplied by

(bb) the unit's baseline adjusted to reflect operation at a 60 percent capacity factor; divided by

(II) 2,000; exceeds

(ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 233103(a) of this title as basic Phase II allowance allocations.

(C) ELECTION.—An operating company with units subject to the emission limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such an election shall apply to the annual allowance allocation for each unit in the operating company subject to the emission limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) ALTERNATIVE ALLOCATION.—Notwithstanding any other provision of this section, at the election of the owner or operator, the Administrator shall allocate, in lieu of allocation pursuant to paragraph (1), (2), (3), or (5), allowances for a unit subject to the emission limitation requirements of this subsection that commenced commercial operation on or after January 1, 1981, and before December 31, 1985, that was subject to, and in compliance with, section 211111 of this title in an amount equal to—

(A) the unit's annual fuel consumption, on a British thermal unit basis, at a 65 percent capacity factor; multiplied by

(B) the unit's allowable 1985 sulfur dioxide emission rate; divided by

(C) 2,000.

(5) ALLOWANCES FOR OIL- OR GAS-FIRED UNITS AWARDED A CLEAN COAL TECHNOLOGY DEMONSTRATION GRANT.—For the purposes of this section, in the case of an oil- or gas-fired unit that was awarded a clean coal technology demonstration grant as of January 1, 1991, by EPA, the Administrator shall allocate for the oil- or gas-fired unit allowances in an amount equal to—

(A) the unit's baseline; multiplied by

(B) 1.20 pounds per million British thermal units; divided by

(C) 2,000.

(e) OIL- OR GAS-FIRED EXISTING UTILITY UNITS EQUAL TO OR GREATER THAN 0.60 AND LESS THAN 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—Unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for any oil- or gas-fired existing utility unit the lesser of whose actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission rate is equal to or greater than 0.60 but less than 1.20 pounds per million

British thermal units to exceed an annual sulfur dioxide tonnage limitation equal to—

(1) the unit's baseline; multiplied by

(2) the lesser of the unit's allowable 1985 sulfur dioxide emission rate or its actual 1985 sulfur dioxide emission rate; multiplied by

(3) 120 percent; divided by

(4) 2,000.

(f) OIL- OR GAS-FIRED UNITS LESS THAN 0.60 POUND PER MILLION BRITISH THERMAL UNITS.—

(1) EMISSION LIMITATION.—Unless the owner or operator of the unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for any oil- or gas-fired existing utility unit the lesser of whose actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission rate is less than 0.60 pound per million British thermal units and whose average annual fuel consumption during the period 1980 to 1989 on a British thermal unit basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emission limitation equal to—

(A) the unit's baseline; multiplied by

(B) the lesser of 0.60 pound per million British thermal units or the unit's allowable 1985 emissions; multiplied by

(C) 120 percent; divided by

(D) 2,000.

(2) ADDITIONAL ALLOWANCES.—

(A) IN GENERAL.—In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 233103(a) of this title, the Administrator shall allocate—

(i) for each unit described in subparagraph (B)(i) its pro rata share of 7,000 allowances; and

(ii) for each unit described in subparagraph (B)(ii) its pro rata share of 2,000 allowances.

(B) UNIT DESCRIPTION.—A unit referred to in subparagraph (A) is—

(i) any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county; and

(ii) any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county.

(g) UNITS THAT COMMENCED OPERATION BETWEEN 1986 AND DECEMBER 31, 1995.—

(1) EMISSION LIMITATION.—Unless the owner or operator of the utility unit holds allowances to emit not less than the unit's total annual emissions, it shall be unlawful for a utility unit that commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990, to exceed an annual tonnage emission limitation equal to—

(A) the unit's annual fuel consumption, on a British thermal unit basis, at a 65 percent capacity factor; multiplied by

(B) the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per million British thermal units); divided by

(C) 2,000.

(2) ADDITIONAL ALLOWANCES FOR CERTAIN UNITS.—

(A) IN GENERAL.—The Administrator shall allocate allowances pursuant to section 233103 of this title to each unit that is listed in table B in an annual amount equal to the amount specified in table B.

TABLE B

| Unit | Allowances |
|---|---|
| Brandon Shores | 8,907 |
| Miller 4 | 9,197 |
| TNP One 2 | 4,000 |
| Zimmer 1 | 18,458 |
| Spruce 1 | 7,647 |
| Clover 1 | 2,796 |
| Clover 2 | 2,796 |
| Twin Oak 2 | 1,760 |
| Twin Oak 1 | 9,158 |
| Cross 1 | 6,401 |
| Malakoff 1 | 1,759 |

(B) ALLOWANCES UNDER OTHER PARAGRAPHS.—Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, except that the owner or operator of a unit listed in table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) ALLOWANCES FOR UNITS THAT COMMENCED COMMERCIAL OPERATION ON OR AFTER OCTOBER 1, 1990, BUT NOT LATER THAN DECEMBER 31, 1992.—The Administrator shall allocate to the owner or operator of a utility unit that commenced commercial operation on or after October 1, 1990, but not later than December 31, 1992, allowances in an amount equal to—

(A) the unit's annual fuel consumption, on a British thermal unit basis, at a 65 percent capacity factor; multiplied by

(B) the lesser of 0.30 pound per million British thermal units or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per million British thermal units); divided by

(C) 2,000.

(4) ALLOWANCES FOR UNITS THAT COMMENCED CONSTRUCTION BEFORE DECEMBER 31, 1990, AND COMMENCED COMMERCIAL OPERATION BETWEEN JANUARY 1, 1993, AND DECEMBER 31, 1995.—The Administrator shall allocate to the owner or operator of any utility unit that commenced construction before December 31, 1990, and commenced commercial operation between January 1, 1993, and December 31, 1995, allowances in an amount equal to—

(A) the unit's annual fuel consumption, on a British thermal unit basis, at a 65 percent capacity factor; multiplied by

(B) the lesser of 0.30 pound per million British thermal units or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per million British thermal units); divided by

(C) 2,000.

(5) CERTAIN EXISTING UTILITY UNITS THAT COMPLETED CONVERSION FROM PREDOMINANTLY GAS-FIRED EXISTING OPERATION TO COAL-FIRED OPERATION BETWEEN JANUARY 1, 1985, AND DECEMBER 31, 1987.—Unless the owner or operator of the unit holds allowances equal to its actual emissions, it shall be unlawful for any existing utility unit that completed conversion from predominantly gas-fired existing operation to coal-fired operation between January 1, 1985, and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8341(b)) to exceed an annual sulfur dioxide tonnage emission limitation equal to—

(A) the unit's annual fuel consumption, on a British thermal unit basis, at a 65 percent capacity factor; multiplied by

(B) the lesser of 1.20 pounds per million British thermal units or the unit's allowable 1987 sulfur dioxide emission rate; divided by

(C) 2,000.

(6) INAPPLICABILITY TO CERTAIN FACILITIES.—Unless the Administrator has approved a designation of the facility under section 233109 of this title, this subdivision shall not apply to—

(A) a qualifying small power production facility or qualifying cogeneration facility (within the meaning of section 3 of the Federal Power Act (16 U.S.C. 796)); or

(B) a new independent power production facility (as defined in section 233115(a) of this title) except that section 233115(a)(4)(C) of this title shall not apply for purposes of this paragraph if, as of November 15, 1990—

(i) an applicable power sales agreement had been executed;

(ii) the facility was the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility had issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement was executed within a reasonable period of time; or

(iv) the facility had been selected as a winning bidder in a utility competitive bid solicitation)).

(h) OIL- OR GAS-FIRED UNITS WHOSE FUEL CONSUMPTION DURING THE PERIOD 1980 TO 1989 EXCEEDED 90 PERCENT IN THE FORM OF NATURAL GAS.—

(1) EMISSION LIMITATION.—Unless the owner or operator of the unit holds allowances to emit not less than the oil- or gas-fired utility unit's total annual emissions, it shall be unlawful for any oil- or gas-fired utility unit whose average annual fuel consumption during the period 1980 to 1989 on a British thermal unit basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to—

(A) the unit's baseline; multiplied by

(B) the unit's actual 1985 sulfur dioxide emission rate; divided by

(C) 2,000.

(2) ADDITIONAL ALLOWANCES.—

(A) THROUGH 2009.—In addition to allowances allocated pursuant to paragraph (1) and section 233103(a) of this title as basic Phase II allowance allocations, for each calendar year through 2009, the Administrator shall allocate annually for each unit subject to the emission limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) in an amount equal to—

(i) the unit's baseline; multiplied by

(ii) 0.050 pound per million British thermal units; divided by

(iii) 2,000.

(B) BEGINNING JANUARY 1, 2010.—In addition to allowances allocated pursuant to paragraph (1) and section 233103(a) of this title, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emission limitation requirements of paragraph (1) allowances in an amount equal to—

(i) the unit's baseline; multiplied by

(ii) 0.050 pound per million British thermal units; divided by

(iii) 2,000.

(i) UNITS IN HIGH GROWTH STATES.—

(1) UNITS LOCATED IN A STATE THAT EXPERIENCED A GROWTH IN POPULATION IN EXCESS OF 25 PERCENT BETWEEN 1980 AND 1988 AND HAD AN INSTALLED ELECTRICAL GENERATING CAPACITY OF MORE THAN 30,000,000 KILOWATTS IN 1988.—

(A) IN GENERAL.—In addition to allowances allocated pursuant to this section and section 233103(a) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually allowances for each unit described in subparagraph (B) in an amount equal to the difference between—

(i) the number of allowances that would be allocated for the unit pursuant to the emission limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a British thermal unit basis of any 3 consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator; and

(ii) the number of allowances allocated for the unit pursuant to the emission limitation requirements of this section.

(B) UNITS.—A unit referred to in subparagraph (A) is a unit that is subject to an emission limitation requirement under this section and is located in a State that—

(i) experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the Secretary of Commerce; and

(ii) had an installed electrical generating capacity of more than 30,000,000 kilowatts in 1988.

(C) LIMITATION.—The number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 40,000. If necessary to meet the 40,000 allowance restriction, the Administrator shall reduce pro rata the additional annual allowances allocated to each unit under this paragraph.

(2) CERTAIN UNITS THE LESSER OF WHOSE ACTUAL 1980 EMISSION RATE OR ALLOWABLE 1980 EMISSION RATE HAD DECLINED BY 50 PERCENT OR MORE AS OF NOVEMBER 15, 1990.—

(A) IN GENERAL.—In addition to allowances allocated pursuant to this section and section 233103(a) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit described in subparagraph (B) allowances in an amount equal to the difference between—

(i) the number of allowances that would be allocated for the unit pursuant to the emission limitation requirements of subsection (b)(1) adjusted to reflect the unit's annual average fuel consumption on a British thermal unit basis for any 3 consecutive years between 1980 and 1989 (inclusive), as elected by the owner or operator; and

(ii) the number of allowances allocated for the unit pursuant to the emission limitation requirements of subsection (b)(1).

(B) UNITS.—A unit referred to in subparagraph (A) is a unit subject to the emission limitation requirements of subsection (b)(1)—

(i) the lesser of whose actual 1980 emission rate or allowable 1980 emission rate had declined by 50 percent or more as of November 15, 1990;

(ii) whose actual emission rate was less than 1.2 pounds per million British thermal units as of January 1, 2000;

(iii) that commenced operation after January 1, 1970;

(iv) that is owned by a utility company whose combined commercial and industrial kilowatt-hour sales increased by more than 20 percent between calendar year 1980 and November 15, 1990; and

(v) whose company-wide fossil-fuel sulfur dioxide emission rate declined 40 percent or more from 1980 to 1988.

(C) LIMITATION.—The number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meet the 5,000 allowance restriction, the Administrator

shall reduce pro rata the additional allowances allocated to each unit pursuant to this paragraph.

(j) CERTAIN MUNICIPALLY OWNED POWERPLANTS.—

(1) ADDITIONAL ALLOWANCES.—In addition to allowances allocated pursuant to this section and section 233103(a) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each unit described in paragraph (2) allowances in an amount equal to—

(A) the unit's annual fuel consumption on a British thermal unit basis at a 60 percent capacity factor; multiplied by

(B) the lesser of its allowable 1985 sulfur dioxide emission rate or its actual 1985 sulfur dioxide emission rate; divided by

(C) 2,000.

(2) UNITS.—A unit referred to in paragraph (1) is a municipally owned oil- or gas-fired existing utility unit with nameplate capacity equal to or less than 40 megawatts electric the lesser of whose actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission rate is less than 1.20 pounds per million British thermal units.

**§ 233106. Allowances for States with emission rates at or below 0.80 pound per million British thermal units**

(a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance allocations, on the election of the Governor of any State with a statewide 1985 sulfur dioxide emission rate equal to or less than 0.80 pound per million British thermal units averaged over all fossil fuel-fired utility steam generating units, for each calendar year through 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 233105(a)(2) of this title to all such units in the State in an amount equal to—

(1) 125,000; multiplied by

(2) the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 233103(a) of this title, each Governor of a State eligible to make an election under subsection (a) shall notify the Administrator of the election. If the Governor of any such State fails to notify the Administrator of the Governor's election, the Administrator shall allocate allowances pursuant to section 233105 of this title.

(c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the Administrator shall allocate allowances to units subject this section pursuant to section 233105 of this title.

**§ 233107. Nitrogen oxide emission reduction program**

(a) APPLICABILITY.—A coal-fired utility unit that is an affected unit pursuant to section 233105 of this title is an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides established under subsection (b).

(b) EMISSION LIMITATIONS.—

(1) ANNUAL ALLOWABLE EMISSION LIMITATIONS.—

(A) IN GENERAL.—The Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed—

(i) for tangentially fired boilers, 0.45 pound per million British thermal units; or

(ii) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 pound per million British thermal units.

(B) HIGHER RATE.—The Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low nitrogen oxide burner technology.

(C) PROHIBITION.—It shall be unlawful for any unit that is an affected unit on January 1, 1995, and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) ALLOWABLE EMISSION LIMITATIONS ON A POUND PER MILLION BRITISH THERMAL UNIT, ANNUAL AVERAGE BASIS.—

(A) IN GENERAL.—The Administrator shall by regulation establish allowable emission limitations on a pound per million British thermal unit, annual average basis, for nitrogen oxides for the following types of utility boilers:

(i) Wet bottom wall-fired boilers.

(ii) Cyclones.

(iii) Units applying cell burner technology.

(iv) All other types of utility boilers.

(B) BASIS.—The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs, and energy and environmental impacts,

the costs of which are comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1).

(C) REVISION OF APPLICABLE EMISSION LIMITATIONS FOR TANGENTIALLY FIRED AND DRY BOTTOM, WALL-FIRED BOILERS (OTHER THAN CELL BURNERS).—

(i) IN GENERAL.—Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low nitrogen oxide burner technology is available.

(ii) LIMITATION.—No unit that was an affected unit pursuant to section 404 of the Clean Air Act (42 U.S.C. 7651c) (as in effect before the repeal of that section) and that is subject to subsection (b)(1) shall be subject to the revised emission limitations under clause (i), if any.

(c) REVISED PERFORMANCE STANDARDS.—The Administrator shall promulgate revised standards of performance under section 211111 of this title for nitrogen oxides emissions from fossil fuel-fired steam generating units, including utility units and nonutility units. The revised standards of performance shall reflect improvements in methods for the reduction of emissions of nitrogen oxides.

(d) ALTERNATIVE EMISSION LIMITATIONS.—

(1) IN GENERAL.—A permitting authority shall, on request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b) on a determination that—

(A) a unit subject to subsection (b)(1) cannot meet the applicable limitation using low nitrogen oxide burner technology; or

(B) a unit subject to subsection (b)(2) cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

(2) BASIS.—The permitting authority shall base a determination under paragraph (1) on a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator, that the owner or operator—

(A) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(B) has properly operated the equipment for a period of 15 months (or such other period of time as the Administrator determines through the regulations), and provides operating and moni-

toring data for that period demonstrating that the unit cannot meet the applicable emission rate; and

(C) has specified an emission rate that the unit can meet on an annual average basis.

(3) OPERATING PERMIT.—The permitting authority—

(A) shall issue an operating permit for the unit in accordance with section 233108 of this title and subdivision 6 that permits the unit, during the demonstration period described in paragraph (2)(B), to emit at a rate in excess of the applicable emission rate; and

(B) at the conclusion of the demonstration period, shall revise the operating permit to reflect the alternative emission rate demonstrated under subparagraphs (B) and (C) of paragraph (2).

(4) NO ADDITIONAL CONTROL TECHNOLOGY.—A unit subject to subsection (b)(1) for which an alternative emission limitation is established shall not be required to install any control technology except low nitrogen oxide burners.

(5) ALTERNATIVE NITROGEN OXIDE CONTROL TECHNOLOGY.—Nothing in this section shall preclude an owner or operator from installing and operating an alternative nitrogen oxide control technology capable of achieving the applicable emission limitation.

(e) EMISSIONS AVERAGING.—

(1) IN GENERAL.—In lieu of complying with the applicable emission limitations under paragraph (1) or (2) of subsection (b) or under subsection (d), the owner or operator of 2 or more units subject to 1 or more of the applicable emission limitations set pursuant to those provisions may petition the permitting authority for alternative contemporaneous annual emission limitations for the units that ensure that the actual annual emission rate in pounds of nitrogen oxides per million British thermal units averaged over the units in question is a rate that is less than or equal to the British thermal unit-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to paragraphs (1) and (2) of subsection (b).

(2) OPERATING PERMITS.—If the permitting authority determines, in accordance with regulations issued by the Administrator, that the conditions in paragraph (1) can be met, the permitting authority shall issue operating permits for the units in accordance with section 233108 of this title and subdivision 6 that allow alternative contemporaneous annual emission limitations. Such emission limitations shall remain in

effect only while both units continue operation under the conditions specified in their respective operating permits.

### § 233108. Permits and compliance plans

(a) PERMIT PROGRAM.—

(1) IN GENERAL.—This subdivision shall be implemented, subject to section 233103 of this title, by permits issued to units subject to this subdivision in accordance with subdivision 6 and enforced in accordance with that subdivision, as modified by this subdivision.

(2) PROHIBITIONS.—Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(A) annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator, or the designated representative of the owner or operator, of the unit holds for the unit;

(B) exceedances of applicable emission rates;

(C) the use of any allowance prior to the year for which it was allocated; and

(D) contravention of any other provision of the permit.

(3) DURATION.—A permit issued to implement this subdivision shall be issued for a period of 5 years, notwithstanding subdivision 6.

(4) INCONSISTENCY WITH REQUIREMENTS.—No permit shall be issued that is inconsistent with the requirements of this subdivision or of subdivision 6 as applicable.

(b) COMPLIANCE PLAN.—

(1) IN GENERAL.—Each initial permit application shall be accompanied by a compliance plan for the source to comply with its requirements under this subdivision.

(2) MULTIPLE AFFECTED UNITS.—Where an affected source consists of more than 1 affected unit—

(A) the plan shall cover all such units; and

(B) for purposes of section 235102(c) of this title, the source shall be considered to be a facility.

(3) ALLOWANCES.—Nothing in this section regarding compliance plans or in subdivision 6 shall be construed as affecting allowances.

(4) STATEMENT DEEMED TO MEET COMPLIANCE PLANNING REQUIREMENTS.—Except as provided under subsection (c)(1)(B), submission of a statement by the owner or operator (or the designated representative of the owners and operators) of a unit subject to the emission limitation requirements of sections 233105 and 233107 of this title that the unit will meet the applicable emission limitation requirements of those sections in a timely manner or, in the case of the emis-

sion limitation requirements of section 233105 of this title, that the owner or operator will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the proposed and approved compliance planning requirements of this section and subdivision 6.

(5) TRANSFERS OF ALLOWANCES.—Recordation by the Administrator of the transfer of an allowance shall amend automatically all applicable proposed or approved permit applications, compliance plans, and permits.

(6) ADDITIONAL REQUIREMENTS.—The Administrator may require—

(A) for a source, a demonstration of attainment of NAAQSes; and

(B) from the owner or operator of 2 or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

(c) NITROGEN OXIDE EMISSION PERMITS.—

(1) IN GENERAL.—The Administrator shall issue permits to affected sources under section 233107 of this title.

(2) PERMIT APPLICATION AND COMPLIANCE PLAN.—

(A) IN GENERAL.—The owner or operator, or the designated representative of the owner or operator, of each affected source under section 233107 of this title shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator under paragraph (4). The permit application and the compliance plan shall be binding on the owner or operator and the designated representative of the owner or operator for purposes of this subdivision and shall be enforceable in lieu of a permit until a permit is issued by the Administrator for the source.

(B) REDUCTION OF UTILIZATION OR SHUTDOWN.—In the case of a compliance plan for an affected source under section 233107 of this title for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit as compared with its baseline or by shutting down the unit, the owner or operator shall include in the proposed compliance plan a specification of the unit or units that will provide electrical generation to compensate for the reduced output at the affected source, or a demonstration that the reduced utilization will be accomplished through energy conservation or improved unit efficiency.

(3) EPA ACTION ON COMPLIANCE PLANS.—The Administrator shall review each proposed compliance plan to determine whether it satisfies the requirements of this subdivision, and shall approve or disapprove the plan within 6 months after receipt of a complete submission. If a plan is disapproved, it may be resubmitted for approval with such changes as the Administrator shall require consistent with the requirements of this subdivision and within such period as the Administrator prescribes as part of the disapproval.

(4) REGULATIONS; ISSUANCE OF PERMITS.—The Administrator shall promulgate regulations, in accordance with subdivision 6, to implement a Federal permit program to issue permits for affected sources under this subdivision.

(d) 2d PHASE PERMITS.—

(1) PERMIT PROGRAM.—

(A) IN GENERAL.—To provide for permits for—

(i) new electric utility steam generating units required under section 233103(d) of this title to have allowances;

(ii) affected units or affected sources under section 233105 of this title; and

(iii) existing units subject to nitrogen oxide emission reductions under section 233107 of this title;

each State in which 1 or more such units or sources are located shall submit in accordance with subdivision 6 a permit program for approval as provided by that subdivision.

(B) SUSPENSION OF ISSUANCE OF PERMITS UNDER SUBDIVISION 6.—On approval of the program, for the units or sources subject to the approved program the Administrator shall suspend the issuance of permits under subdivision 6.

(2) SUBMISSION OF PERMIT APPLICATIONS AND COMPLIANCE PLANS.—The owner or operator or the designated representative of each affected source under section 233105 of this title shall submit a permit application and compliance plan for that source to the permitting authority.

(3) ISSUANCE OF PERMITS.—

(A) IN GENERAL.—Each State with an approved permit program shall issue permits to the owner or operator, or the designated representative of the owner or operator, of affected sources under section 233105 of this title that satisfy the requirements of this subdivision and subdivision 6 and that submitted to the State a permit application and compliance plan pursuant to paragraph (2). In the case of a State without an approved permit

program by July 1, 1996, the Administrator shall issue a permit to the owner or operator or the designated representative of each such affected source. In the case of an affected source for which an application and compliance plan are timely received under paragraph (2), the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owner or operator and shall be enforceable as a permit for purposes of this subdivision and subdivision 6 until a permit is issued by the permitting authority for the affected source.

(B) RENEWALS.—The 3d sentence of section 558(c) of title 5 shall apply to permits issued by a permitting authority under this subdivision and subdivision 6.

(4) ANNUAL TONNAGE.—A permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide that the owner or operator or designated representative holds for the unit.

(e) NEW UNITS.—The owner or operator of each source that includes a new electric utility steam generating unit shall submit a permit application and compliance plan to the permitting authority not later than 24 months before the date on which the unit commences operation. The permitting authority shall issue a permit to the owner or operator, or the designated representative of the owner or operator, of the unit that satisfies the requirements of this subdivision and subdivision 6.

(f) UNITS SUBJECT TO CERTAIN OTHER LIMITS.—The owner or operator, or designated representative of the owner or operator, of any unit subject to an emission rate requirement under section 233107 of this title shall submit a permit application and compliance plan for the unit to the permitting authority. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of this subdivision and subdivision 6, including any appropriate monitoring and reporting requirements.

(g) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section. In considering any permit application and compliance plan under this subdivision, a permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

(h) PROHIBITIONS.—

(1) FAILURE TO SUBMIT APPLICATION OR COMPLIANCE PLAN.—It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this subdivision to fail to submit an application or compliance plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) OPERATION.—It shall be unlawful for any person to operate any source subject to this subdivision except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 235104(f) of this title, with a permit issued under subdivision 6 that complies with this subdivision for sources subject to this subdivision shall be deemed to be compliance with this subsection and with section 235102(a) of this title.

(3) RELIABILITY.—To ensure reliability of electric power, nothing in this subdivision or subdivision 6 shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 211113 of this title.

(i) MULTIPLE OWNERS.—

(1) IN GENERAL.—No permit shall be issued under this section to an affected unit until the designated representative of the owner or operator has filed a certificate of representation with regard to matters under this subdivision, including the holding and distribution of allowances and the proceeds of transactions involving allowances.

(2) MULTIPLE HOLDERS OF TITLE OR LEASEHOLD INTEREST; LIFE-OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGEMENTS.—

(A) IN GENERAL.—Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, an affected unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state—

(i) that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement; or

(ii) if the multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be

deemed to be held or distributed in accordance with the contract.

(B) PASSIVE LESSORS.—A passive lessor, or a person that has an equitable interest through a passive lessor, whose rental payments are not based, either directly or indirectly, on the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during the term of the leasehold or thereafter, unless expressly provided for in the leasehold agreement.

(C) SINGLE HOLDER.—Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

**§ 233109. Election for additional sources**

(a) APPLICABILITY.—The owner or operator of any unit that is not, and will not become, an affected unit under section 233103(d) or 233105 of this title, or that is a process source under subsection (d), that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subdivision. An election shall be submitted to the Administrator for approval, with a permit application and proposed compliance plan in accordance with section 233108 of this title. The Administrator shall approve a designation that meets the requirements of this section, and the designated unit or source shall be allocated allowances and be an affected unit for purposes of this subdivision.

(b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data are not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) EMISSION LIMITATIONS.—Annual emission limitations for sulfur dioxide shall be equal to—

(1)(A) the baseline; multiplied by

(B)(i) the lesser of the unit's actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission rate in pounds per million British thermal units; or

(ii) if the unit did not operate in 1985, the lesser of the unit's actual emission rate or allowable emission rate for a calendar year after 1985 (as determined by the Administrator); divided by

(2) 2,000.

(d) PROCESS SOURCES.—

(1) IN GENERAL.—The Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this subdivision.

(2) REGULATIONS.—The Administrator shall by regulation—

(A) define the sources that may be designated;

(B) specify the emission limitation;

(C) specify the operating, emission baseline, and other data requirements;

(D) prescribe continuous emission monitoring system or other monitoring requirements; and

(E) promulgate permit, reporting, and any other requirements necessary to implement the program under paragraph (1).

(e) ALLOWANCES AND PERMITS.—The Administrator shall issue allowances to an affected unit under this section in an amount equal to the emission limitation calculated under subsection (c) or (d), in accordance with section 233103 of this title. Such an allowance may be used in accordance with, and shall be subject to, section 233103 of this title. An affected source under this section shall be subject to the requirements of sections 233103, 233108, 233110, 233111, 233112, and 233113 of this title.

(f) LIMITATION.—

(1) IN GENERAL.—Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that such allowances may be transferred or carried forward for use in subsequent years to the extent that—

(A) the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section with thermal energy generated by any other unit or units subject to the requirements of this subdivision; and

(B) the designated unit's allowances are transferred or carried forward for use at the other replacement unit or units.

(2) NO ALLOWANCES IN AN AMOUNT GREATER THAN THE EMISSIONS RESULTING FROM OPERATION OF THE SOURCE IN FULL COMPLIANCE.—In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this division.

(3) NO OPERATION OF UNIT IN VIOLATION OF OTHER REQUIREMENTS.—No such allowances shall authorize operation of a unit in violation of any other requirements of this division.

(g) IMPLEMENTATION.—The Administrator shall issue regulations to implement this section.

**§ 233110. Excess emission penalty; excess emission offset**

(a) EXCESS EMISSIONS PENALTY.—

(1) IN GENERAL.—The owner or operator of any unit or process source subject to the requirements of section 233103, 233105, 233106, or 233107 of this title, or designated under section 233109 of this title, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emission limitation requirement or, in the case of sulfur dioxide, of the allowances that the owner or operator holds for use for the unit for that calendar year, shall be liable for the payment of an excess emission penalty, except where the emissions are authorized pursuant to section 211110(d) of this title.

(2) BASIS.—A penalty under paragraph (1) shall be calculated on the basis of the number of tons emitted in excess of the unit's emission limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by $2,000.

(3) PAYMENT.—A penalty under paragraph (1) shall be due and payable without demand to the Administrator as provided in regulations issued by the Administrator.

(4) LIABILITY UNDER OTHER SECTIONS.—Any penalty under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty, or assessment against a unit for the same violation under any other section of this division.

(b) EXCESS EMISSION OFFSET.—

(1) IN GENERAL.—The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emission limitation requirement or of the allowances held for the unit for the calendar year shall be liable to offset the excess emission by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe.

(2) PLAN TO ACHIEVE OFFSETS.—The owner or operator of the source shall, within 60 days after the end of the year in which the excess emission occurred, submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. On approval of the proposed plan by the Administrator, as submitted, modified, or conditioned, the plan shall be deemed to be a condition of the operating permit for the unit without further review or revision of the permit.

(3) DEDUCTION OF ALLOWANCES.—In addition to requiring a plan under paragraph (2), the Administrator shall deduct allowances equal to the excess tonnage from those allocated for the source for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emission occurred.

(c) PENALTY ADJUSTMENT.—The Administrator shall annually by regulation adjust the penalty specified in subsection (a) for inflation, based on the Consumer Price Index as of November 15, 1990.

(d) PROHIBITION.—It shall be unlawful for the owner or operator of any source liable for a penalty and offset under this section to fail to—

(1) pay a penalty under subsection (a);

(2) provide, and thereafter comply with, a compliance plan as required by subsection (b); or

(3) offset an excess emission as required by subsection (b).

(e) SAVINGS PROVISION.—Nothing in this subdivision shall limit or otherwise affect the application of section 203104, 211113, 211114, or 211119 of this title except as otherwise explicitly provided in this subdivision.

**§ 233111. Monitoring, reporting, and recordkeeping requirements**

(a) APPLICABILITY.—

(1) IN GENERAL.—The owner or operator of an affected unit at an affected source shall—

(A) install and operate a continuous emission monitoring system on each affected unit at the affected source; and

(B) ensure the quality of the data for sulfur dioxide, nitrogen oxides, opacity, and volumetric flow at each affected unit.

(2) REGULATIONS.—

(A) IN GENERAL.—The Administrator shall by regulation specify the requirements for—

(i) continuous emission monitoring systems;

(ii) any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by a continuous emission monitoring system; and

(iii) recordkeeping and reporting of information from systems described in clauses (i) and (ii).

(B) CONTENTS.—The regulations may include limitations or the use of alternative compliance methods by units equipped with an alternative monitoring system as necessary to preserve the orderly functioning of the allowance system and ensure the emissions reductions contemplated by this subdivision.

(3) SINGLE STACK.—Where 2 or more units utilize a single stack, a separate continuous emission monitoring system shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each unit.

(b) REQUIREMENTS.—The owner or operator of each affected unit that has not previously met the requirements of subsection (a) and section 412(b) of the Clean Air Act (42 U.S.C. 7651k(b)) (as in effect before the repeal of that section) shall install and operate a continuous emission monitoring system, ensure the quality of the data, and keep records and reports in accordance with the regulations issued under subsection (a). On commencement of commercial operation of each new utility unit, the unit shall comply with the requirements of subsection (a).

(c) UNAVAILABILITY OF EMISSION DATA.—

(1) IN GENERAL.—If continuous emission monitoring system data or data from an alternative monitoring system approved by the Administrator under subsection (a) are not available for any affected unit during any period of a calendar year in which the data are required under this subdivision, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator—

(A) shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data were not available; and

(B) shall by regulation prescribe means to calculate emissions for that period.

(2) EXCESS EMISSION FEES AND OFFSETS.—The owner or operator shall be liable for excess emission fees and offsets under section 233110 of this title in accordance with the regulations.

(3) LIABILITY UNDER OTHER SECTIONS.—Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee, or assessment against the unit for the same violation under any other section of this division.

(d) PROHIBITION.—It shall be unlawful for the owner or operator of an affected source to operate a source without complying with the requirements of this section (including any regulations implementing this section).

### § 233112. General compliance with other provisions

Except as expressly provided, compliance with the requirements of this subdivision shall not exempt or exclude the owner or operator of an affected source from compliance with any other applicable requirements of this division.

**§ 233113. Enforcement**

In addition to the other requirements and prohibitions provided for in this subdivision, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for the unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

**§ 233114. Clean coal technology regulatory incentives**

(a) DEFINITIONS.—In this section:

(1) CLEAN COAL TECHNOLOGY.—The term ''clean coal technology'' means any technology (including technology applied at the precombustion, combustion, or post combustion stage) at a new or existing facility that will achieve significant reductions in air emissions of sulfur dioxide or nitrogen oxides associated with the utilization of coal in the generation of electricity, process steam, or industrial products, that was not in widespread use as of November 15, 1990.

(2) CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT.—The term ''clean coal technology demonstration project'' means a project using funds appropriated under the heading ''Department of Energy—Clean Coal Technology'', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or a similar project funded through appropriations for EPA.

(b) REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

(1) APPLICABILITY.—This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project.

(2) FEDERAL CONTRIBUTION.—The Federal contribution for a clean coal technology demonstration project shall be at least 20 percent of the total cost of the clean coal technology demonstration project.

(3) TEMPORARY PROJECTS.—Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of 5 years or less, and that complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the NAAQSes during and after the project is terminated, shall not subject the facility to the requirements of section 211111 of this title or chapter 213 or 215.

(4) PERMANENT PROJECTS.—For permanent clean coal technology demonstration projects that constitute repowering, a clean coal technology demonstration project shall not be subject to standards of performance under section 211111 of this title or to the review and permitting requirements of chapter 213 for any pollutant the potential

emissions of which will not increase as a result of the clean coal technology demonstration project.

(5) REGULATIONS.—The Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 211111 of this title and chapters 213 and 215, as appropriate, to facilitate projects consistent with this subsection. With respect to chapters 213 and 215, the regulations or rulings shall apply to all areas in which EPA is the permitting authority. In instances in which the State is the permitting authority under chapter 213 or 215, the State may adopt and submit to the Administrator for approval provisions in its implementation plan to apply the regulations or rulings promulgated under this subsection.

(c) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 211111 of this title or chapter 213 where the unit—

(1) was not in operation for the 2-year period prior to November 15, 1990, and the emissions from the unit continued to be carried in the permitting authority's emissions inventory as of that date;

(2) was equipped prior to shutdown with a continuous system of emission control that achieves a removal efficiency for sulfur dioxide of not less than 85 percent and a removal efficiency for particulates of not less than 98 percent;

(3) is equipped with low-nitrogen oxide burners prior to the time of commencement; and

(4) is otherwise in compliance with the requirements of this division.

**§ 233115. Contingency guarantee; auctions; reserve**

(a) DEFINITIONS.—In this section:

(1) AUCTION SUBACCOUNT.—The term ''auction subaccount'' means the subaccount for auctions established under subsection (d).

(2) DIRECT SALE SUBACCOUNT.—The term ''direct sale subaccount'' means the subaccount for direct sales established under subsection (c).

(3) INDEPENDENT POWER PRODUCER.—The term ''independent power producer'' means a person that owns or operates, in whole or in part, 1 or more new independent power production facilities.

(4) NEW INDEPENDENT POWER PRODUCTION FACILITY.—The term ''new independent power production facility'' means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) is nonrecourse project-financed (as defined by the Secretary of Energy within 3 months of November 15, 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 2(a) of the Public Utility Holding Company Act of 1935) (15 U.S.C. 79b(a)) (as in effect before the repeal of that section) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this subdivision.

(5) REQUIRED ALLOWANCES.—The term ''required allowances'' means the allowances required to operate a unit for so much of the unit's useful life as occurs after January 1, 2000.

(6) SPECIAL ALLOWANCE RESERVE.—The term ''special allowance reserve'' means the special allowance reserve established under subsection (b).

(b) SPECIAL ALLOWANCE RESERVE.—

(1) IN GENERAL.—The Administrator shall promulgate regulations establishing a special allowance reserve containing allowances to be sold under this section.

(2) WITHHOLDING.—For purposes of establishing the special allowance reserve, the Administrator shall withhold 2.8 percent of the basic Phase II allowance allocation of allowances for each year that would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the special allowance reserve.

(c) DIRECT SALE AT $1,500 PER TON.—

(1) DIRECT SALE SUBACCOUNT.—In accordance with regulations under this section, the Administrator shall establish a direct sale subaccount in the special allowance reserve. The direct sale subaccount shall contain allowances in the amount of 50,000 tons per year for each year.

(2) SALES.—

(A) IN GENERAL.—Allowances in the direct sale subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of $1,500 per allowance, adjusted by the Consumer Price Index in the same manner as is provided in paragraph (3).

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT $1,500 PER TON

| Year of Sale | Spot Sale (same year) | Advance Sale |
|---|---|---|
| 2000 and thereafter | 25,000 | 25,000 |

Allowances sold in the spot sale in any year are allowances that may be used only in that year (unless banked for use in a later year). Allowances sold in the advance sale in any year are allowances that may be used only in the 7th year after the year in which the allowances are first offered for sale (unless banked for use in a later year).

(B) APPROVAL.—Requests to purchase allowances from the direct sale subaccount shall be approved in the order of receipt until no allowances remain in the subaccount, except that an opportunity to purchase such allowances shall be provided to independent power producers before the allowances are offered to any other person.

(C) PAYMENT.—Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

(3) ISSUANCE OF GUARANTEED ALLOWANCES FROM DIRECT SALE SUBACCOUNT.—From the allowances available in the direct sale subaccount, on payment of the guaranteed price, the Administrator shall issue to any person exercising the right to purchase allowances pursuant to a guarantee under this subsection the allowances covered by the guarantee. Persons to which guarantees under this subsection have been issued shall have the opportunity to purchase allowances pursuant to the guarantee from the direct sale subaccount before the allowances in the reserve are offered for sale to any other person.

(4) PROCEEDS.—Notwithstanding section 3302 of title 31 or any other provision of law, the Administrator shall require that the proceeds of any sale under this subsection be transferred, within 90 days after the sale, without charge, on a pro rata basis to the owners or operators of the affected units from which the allowances were withheld under subsection (b) and that any unsold allowances be transferred to the auction subaccount. No proceeds of any sale under this subsection shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or to the Administrator.

(5) TERMINATION OF DIRECT SALE SUBACCOUNT.—If the Administrator determines that, during any period of 2 consecutive calendar years, fewer than 20 percent of the allowances available in the direct sale subaccount have been purchased under this paragraph, the Administrator shall terminate the direct sale subaccount and transfer the allowances to the auction subaccount.

(d) AUCTION SALES.—

(1) AUCTION SUBACCOUNT.—The Administrator shall establish in the special allowance reserve an auction subaccount. The auction subaccount shall contain allowances to be sold at auction under this section in the amount of 250,000 tons per year.

(2) ANNUAL AUCTIONS.—

(A) IN GENERAL.—In each year, the Administrator shall conduct auctions at which the allowances described in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator, in consultation with the Secretary of the Treasury.

(B) AMOUNTS.—The allowances described in paragraph (1) shall be offered for sale at auction in the amounts specified in table 2.

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

| Year of Sale | Spot Auction (same year) | Advance Auction |
|---|---|---|
| 2000 and thereafter | 100,000 | 100,000 |

Allowances sold in the spot sale in any year are allowances that may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances that may only be used in the 7th year after the year in which the allowances are first offered for sale (unless banked for use in a later year).

(C) SUBMISSION OF BIDS.—An auction shall be open to any person. A person wishing to bid for allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices.

(D) BID PRICE.—The regulations under subparagraph (A) shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest bid and continuing until all allowances for sale at an auction have been allocated. The regulations shall not permit a minimum price to be set for the purchase of withheld allowances.

(E) USE OF ALLOWANCES.—Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to this subdivision.

(3) PROCEEDS.—

(A) IN GENERAL.—Notwithstanding section 3302 of title 31 or any other provision of law, within 90 days after receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from which allowances were withheld under subsection (b). No funds transferred from a pur-

chaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) ALLOWANCES NOT SOLD.—At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) ADDITIONAL AUCTION PARTICIPANTS.—Any person holding allowances or to which allowances are allocated by the Administrator may submit the allowances to the Administrator to be offered for sale at auction under this subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting the allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. The allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(5) RECORDATION BY EPA.—The Administrator shall record and publicly report the nature, prices, and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at the auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subdivision.

(6) TERMINATION OF AUCTIONS.—If the Administrator determines that, during any period of 3 consecutive calendar years, fewer than 20 percent of the allowances available in the auction subaccount have been purchased, the Administrator may terminate the withholding of allowances and the auction sales under this section.

(e) CHANGES IN SALES, AUCTIONS, AND WITHHOLDING.—Pursuant to rulemaking after public notice and comment, the Administrator may at any time decrease the number of allowances withheld and sold under this section.

(f) CONDUCT OF SALES OR AUCTIONS BY OTHER FEDERAL DEPARTMENTS OR AGENCIES OR BY NONGOVERNMENTAL AGENCIES, GROUPS, OR ORGANIZATIONS.—Pursuant to regulations under this section, the Adminis-

trator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other Federal departments or agencies or by nongovernmental agencies, groups, or organizations.

# Subdivision 6—Permits

# Chapter 235—Permits



## § 235101. Definitions

In this subdivision:

(1) AFFECTED SOURCE.—The term ''affected source'' shall have the meaning given the term in section 233102 of this title.

(2) MAJOR SOURCE.—The term ''major source'' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

(A) A major source (as defined in section 211112 of this title).

(B) A major stationary source (as defined in section 201101 of this title or chapter 215).

(3) PERMITTING AUTHORITY.—The term ''permitting authority'' means—

(A) the Administrator; or

(B) an air pollution control agency authorized by the Administrator to carry out a permit program under this subdivision.

(4) SCHEDULE OF COMPLIANCE.—The term ''schedule of compliance'' means a schedule of remedial measures (including an enforceable sequence of actions or operations) leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

## § 235102. Permit programs

(a) PROHIBITION.—

(1) IN GENERAL.—It shall be unlawful for any person—

(A) to violate any requirement of a permit issued under this subdivision; or

(B) to operate, except in compliance with a permit issued by a permitting authority under this subdivision—

(i) an affected source (as provided in subdivision 5);

(ii) a major source;

(iii) any other source (including an area source) subject to standards or regulations under section 211111 or 211112 of this title;

(iv) any other source required to have a permit under chapter 213 or 215; or

(v) any other stationary source in a category designated (in whole or in part) by regulation promulgated by the Administrator.

(2) REGULATIONS.—Any regulation under paragraph (1)(B)(v) shall include a finding setting forth the basis for the designation made by the regulation.

(3) EFFECT OF SUBSECTION.—Nothing in this subsection shall be construed to alter the applicable requirements of this division that a permit be obtained before construction or modification.

(4) EXEMPTIONS.—The Administrator may, consistent with the applicable provisions of this division, promulgate regulations to exempt (in whole or in part) 1 or more categories of sources (except a major source) from the requirements of this subsection if the Administrator finds that compliance with the requirements is impracticable, infeasible, or unnecessarily burdensome on a category.

(b) MINIMUM ELEMENTS.—

(1) IN GENERAL.—The Administrator shall promulgate regulations establishing the minimum elements of a permit program to be administered by an air pollution control agency.

(2) ELEMENTS TO BE INCLUDED.—The elements shall include each of the following:

(A) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

(B) Monitoring and reporting requirements.

(C) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subdivision pay an annual or other periodic fee sufficient to cover all reasonable direct and indirect costs required to develop and administer the permit program requirements of this subdivision, including the reasonable costs of—

(i) reviewing and acting on any application for such a permit;

(ii) if the owner or operator receives a permit for a source, implementing and enforcing the terms and conditions of the

permit (not including any court costs or other costs associated with any enforcement action);

(iii) emission monitoring and ambient monitoring;

(iv) preparing generally applicable regulations or guidance;

(v) modeling, analyses, and demonstrations; and

(vi) preparing inventories and tracking emissions.

(D) Requirements for adequate personnel and funding to administer the program.

(E) A requirement that the permitting authority have adequate authority to—

(i) issue permits and ensure compliance by all sources required to have a permit under this subdivision with each applicable standard, regulation, or requirement under this division;

(ii) issue permits for a fixed term, not to exceed 5 years;

(iii) ensure that, on issuance or renewal, permits incorporate emission limitations and other requirements in an applicable implementation plan;

(iv) terminate, modify, or revoke and reissue permits for cause;

(v) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

(vi) ensure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this subdivision.

(F) Adequate, streamlined, and reasonable procedures for—

(i) expeditiously determining when applications are complete;

(ii) processing applications;

(iii) public notice, including offering an opportunity for public comment and a hearing; and

(iv) expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person that participated in the public comment process, and any other person that could obtain judicial review of that action under applicable law.

(G) To ensure against unreasonable delay by a permitting authority, adequate authority and procedures to provide that a failure of the permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 235103 of this title or, as appropriate, subdivision 5) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person described in subparagraph (F)(iv) to require that action be taken by the permitting authority on the application without additional delay.

(H) Authority, and reasonable procedures consistent with the need for expeditious action by a permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 235103(e) of this title, subject to section 211114(c) of this title.

(I) A requirement that a permitting authority, in the case of a permit with a term of 3 or more years for a major source, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this division after the issuance of the permit.

(J) Provisions to allow changes within a permitted facility (or a facility operating pursuant to section 235103(d) of this title) without requiring a permit revision, if—

(i) the changes are not modifications under any provision of subdivision 2;

(ii) the changes do not exceed the emissions allowable under the permit (whether expressed in the permit as a rate of emissions or in terms of total emissions); and

(iii) the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes (which shall be a minimum of 7 days unless the permitting authority provides in its regulations a different timeframe for emergencies).

(3) FEE PROGRAM.—

(A) DEFINITION OF REGULATED POLLUTANT.—In this paragraph, the term ''regulated pollutant'' means—

(i) a volatile organic compound;

(ii) a pollutant regulated under section 211111 or 211112 of this title; and

(iii) a pollutant for which a primary NAAQS has been promulgated (not including carbon monoxide).

(B) AMOUNT COLLECTED.—The total amount of fees collected by a permitting authority under paragraph (2)(C) shall conform to the following requirements:

(i) ADEQUATE REFLECTION OF REASONABLE COSTS.—The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in clauses (ii) through (iv), the program will result in the collection, in the aggregate, from all sources subject to paragraph (2)(C), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) EXCLUSION OF EMISSIONS IN EXCESS OF 4,000 TONS PER YEAR.—In determining the amount under clause (i), a permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of the regulated pollutant.

(iii) LESSER AMOUNT MEETING REQUIREMENTS.—The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of paragraph (2)(C).

(iv) ANNUAL INCREASE.—

(I) IN GENERAL.—The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by paragraph (2)(C)) in each year by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of the year exceeds the Consumer Price Index for the calendar year 1989.

(II) CONSUMER PRICE INDEX.—For purposes of this clause—

(aa) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year; and

(bb) the revision of the Consumer Price Index that is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

(C) COLLECTION BY THE ADMINISTRATOR.—

(i) IN GENERAL.—If the Administrator determines under subsection (d) that the fee provisions of the operating permit program do not meet the requirements of paragraph (2)(C), or if the Administrator makes a determination under subsection (i) that a permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this subdivision, collect reasonable fees from the sources identified under paragraph (2)(C). The fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

(ii) PENALTY.—A source that fails to pay a fee lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)).

(iii) SPECIAL FUND.—Any fees, penalties, and interest collected under this subparagraph shall be deposited in the Treasury in a special fund for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out EPA's activities for which the fees were collected.

(D) FEE REQUIRED TO BE COLLECTED BY A STATE, LOCAL, OR INTERSTATE AGENCY.—Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in paragraph (2)(C).

(4) PERMIT REVISIONS.—A revision required by paragraph (2)(I) shall be made as expeditiously as practicable and consistent with the procedures established under paragraph (2)(F) but not later than 18 months after the promulgation of standards and regulations described in paragraph (2)(I). No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such a permit revision shall be treated as a permit

renewal if it complies with the requirements of this subdivision regarding renewals.

(c) SINGLE PERMIT.—A single permit may be issued for a facility with multiple sources.

(d) SUBMISSION; APPROVAL OR DISAPPROVAL.—

(1) SUBMISSION.—The Governor of each State shall develop and submit to the Administrator—

(A) a permit program under State or local law or under an interstate compact meeting the requirements of this subdivision; and

(B) a legal opinion from the attorney general (or the attorney for a State air pollution control agency that has independent legal counsel, or from the chief legal officer of an interstate agency), that the laws of the State or locality provide or the interstate compact provides adequate authority to carry out the program.

(2) APPROVAL OR DISAPPROVAL.—Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove the program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this division, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(e) ADMINISTRATION AND ENFORCEMENT.—

(1) DISCRETIONARY SANCTIONS.—Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subdivision, the Administrator—

(A) shall provide notice to the State; and

(B) may, prior to the date that is 18 months after the date of the notice under subparagraph (A), apply any of the sanctions specified in section 215111(b) of this title.

(2) MANDATORY SANCTIONS.—Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subdivision, on the date that is 18 months after the date of the notice under paragraph (1)(A), the Administrator shall apply the sanctions under section 215111(b) of this title in the same manner and subject to the same deadlines and other

conditions as are applicable in the case of a determination, disapproval, or finding under section 215111(a) of this title.

(3) APPLICABILITY OF SANCTIONS IN NONATTAINMENT AREAS ONLY.—The sanctions under section 215111(b)(3) of this title shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which the area has been designated a nonattainment area.

(4) PROMULGATION, ADMINISTRATION, AND ENFORCEMENT OF PERMIT PROGRAM BY THE ADMINISTRATOR.—When the Administrator makes a finding under paragraph (1) with respect to a State, unless the State corrects the deficiency within 18 months after the date of the finding, the Administrator shall, 2 years after the date of the finding, promulgate, administer, and enforce a program under this subdivision for the State. Nothing in this paragraph shall be construed to affect the validity of a program that has been approved under this subdivision or the authority of any permitting authority acting under such a program until such time as a program is promulgated by the Administrator under this paragraph.

### § 235103. Permit applications

(a) APPLICABLE DATE.—Any source specified in section 235102(a) of this title shall become subject to a permit program, and required to have a permit, on the later of—

(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

(2) the date on which the source becomes subject to section 235102(a) of this title.

(b) COMPLIANCE PLAN.—

(1) IN GENERAL.—The regulations required by section 235102(b) of this title shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this chapter. The compliance plan shall include a schedule of compliance and a schedule under which the permittee will submit progress reports to the permitting authority not less frequently than every 6 months.

(2) CERTIFICATION; REPORTING.—The regulations required by section 235102(b) of this title shall require the permittee to—

(A) periodically (but not less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit; and

(B) promptly report any deviations from permit requirements to the permitting authority.

(c) DEADLINES.—Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this subdivision, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this subdivision for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt of the completed application, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the 1st full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall ensure that at least ⅓ of the permits are acted on by the permitting authority annually over a period of not to exceed 3 years after such effective date. The permitting authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this division.

(d) TIMELY AND COMPLETE APPLICATIONS.—Except for sources required to have a permit before construction or modification under the applicable requirements of this division, if an applicant has submitted a timely and complete application for a permit required by this subdivision (including renewals), but final action has not been taken on the application, the source's failure to have a permit shall not be a violation of this division unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this subdivision shall be in violation of section 235102(a) of this title before the date on which the source is required to submit an application under subsection (c).

(e) COPIES; AVAILABILITY.—A copy of each permit application, compliance plan (including the schedule of compliance), emission or compliance monitoring report, certification, and permit issued under this subdivision shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 211114(c) of this title, the applicant or permittee may submit the information separately. The requirements of section 211114(c) of this title shall apply to the information. The contents of a permit shall not be entitled to protection under section 211114(c) of this title.

**§ 235104. Permit requirements and conditions**

(a) CONDITIONS.—Each permit issued under this subdivision shall include—

(1) enforceable emission limitations and standards;

(2) a schedule of compliance;

(3) a requirement that the permittee submit to the permitting authority, not less often than every 6 months, the results of any required monitoring; and

(4) such other conditions as are necessary to ensure compliance with applicable requirements of this division, including the requirements of the applicable implementation plan.

(b) MONITORING AND ANALYSIS.—The Administrator may by regulation prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this division, but continuous emission monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of subdivision 5, or where required elsewhere in this division.

(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.—Each permit issued under this subdivision shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to ensure compliance with the permit terms and conditions. The monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this subdivision shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) GENERAL PERMITS.—A permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this subdivision. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 235103 of this title.

(e) TEMPORARY SOURCES.—A permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will ensure compliance with all the requirements of this division at all authorized locations, including ambient standards and compliance with any applicable increment or visibility requirements under chapter 213. Any such permit shall require the owner or operator to notify the permitting authority

in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) PERMIT SHIELD.—

(1) IN GENERAL.—Compliance with a permit issued in accordance with this subdivision shall be deemed compliance with section 235102 of this title.

(2) COMPLIANCE WITH OTHER PROVISIONS.—

(A) IN GENERAL.—Except as otherwise provided by the Administrator by regulation, the permit may provide that compliance with the permit shall be deemed compliance with other applicable provisions of this division that relate to the permittee if—

(i) the permit includes the applicable requirements of such provisions; or

(ii) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in the determination) are not applicable and the permit includes the determination or a concise summary of the determination.

(B) EFFECT OF SUBPARAGRAPH.—Nothing in subparagraph (A) shall alter or affect section 203103 of this title, including the authority of the Administrator under that section.

## § 235105. Notification to Administrator and contiguous States

(a) TRANSMISSION AND NOTICE.—

(1) COPIES OF PERMIT APPLICATION AND PROPOSED PERMIT TO THE ADMINISTRATOR.—A permitting authority shall—

(A) transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this division; and

(B) provide the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) NOTIFICATION TO STATES.—

(A) NOTIFICATION.—A permitting authority shall notify all States—

(i) whose air quality may be affected and that are contiguous to the State in which the emission originates; or

(ii) that are within 50 miles of the source;

of each permit application or proposed permit forwarded to the Administrator under this section.

(B) RECOMMENDATIONS.—A permitting authority shall provide an opportunity for States described in subparagraph (A) to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations is not accepted by the permitting authority, the permitting authority shall notify the State submitting the recommendations and the Administrator in writing of its decision not to accept that part of the recommendation and the reasons for the decision.

(b) PERMIT PROVISION NOT IN COMPLIANCE.—

(1) OBJECTION BY THE ADMINISTRATOR.—

(A) IN GENERAL.—If a permit contains provisions that are determined by the Administrator to be not in compliance with the applicable requirements of this division (including the requirements of an applicable implementation plan), the Administrator shall, in accordance with this subsection, object to issuance of the permit.

(B) RESPONSE.—The permitting authority shall respond in writing if the Administrator—

(i) within 45 days after receiving a copy of the proposed permit under subsection (a)(1); or

(ii) within 45 days after receiving notification under subsection (a)(2);

objects in writing to issuance of a permit as not in compliance with the requirements.

(C) REASONS.—With the objection, the Administrator shall provide a statement of the reasons for the objection.

(D) COPIES TO APPLICANT.—A copy of the objection and statement shall be provided to the applicant.

(2) NO OBJECTION BY THE ADMINISTRATOR.—

(A) PETITION.—If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to make an objection. A copy of the petition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to

raise the objections within that period or unless the grounds for the objection arose after that period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, the petition shall not postpone the effectiveness of the permit.

(B) GRANT OR DENIAL.—The Administrator shall grant or deny a petition under subparagraph (A) within 60 days after the petition is filed. The Administrator shall issue an objection within that period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this division (including the requirements of an applicable implementation plan). Any denial of such a petition shall be subject to judicial review under section 211113 of this title.

(C) REGULATIONS.—The Administrator shall include in regulations under this subdivision provisions to implement this paragraph.

(D) NONDELEGABILITY.—The Administrator may not delegate the requirements of this paragraph.

(3) REVISION OF PERMIT.—

(A) IN GENERAL.—On receipt of an objection by the Administrator under this subsection, a permitting authority may not issue a permit unless the permit is revised and issued in accordance with subsection (c).

(B) OBJECTION ON PETITION.—If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2)—

(i) the Administrator shall modify, terminate, or revoke the permit; and

(ii) the permitting authority may thereafter issue a revised permit only in accordance with subsection (c).

(c) ISSUANCE OR DENIAL.—If the permitting authority fails, within 90 days after the date of an objection under subsection (b), to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subdivision. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) WAIVER OF NOTIFICATION REQUIREMENTS.—

(1) WAIVER.—The Administrator may waive the requirements of subsections (a) and (b) at the time of approval of a permit program under this subdivision for any category (including any class, type, or

size within such category) of sources covered by the program other than major sources.

(2) CATEGORIES OF SOURCES.—The Administrator may by regulation establish categories of sources (other than major sources), including establishment of any class, type, or size within a category, to which the requirements of subsections (a) and (b) shall not apply.

(3) EXCLUSION FROM WAIVER.—The Administrator may exclude from any waiver under this subsection the notification requirement under subsection (a)(2).

(4) REVOCATION OR MODIFICATION.—Any waiver granted under this subsection may be revoked or modified by the Administrator by regulation.

(e) TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF PERMIT.—

(1) NOTIFICATION TO PERMITTING AUTHORITY AND SOURCE.—If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this subdivision, the Administrator shall notify the permitting authority and the source of the Administrator's finding.

(2) PROPOSED DETERMINATION.—The permitting authority shall, within 90 days after receipt of notification under paragraph (1), submit to the Administrator a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend the 90-day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary or that the permitting authority must require the permittee to submit additional information. The Administrator may review the proposed determination in accordance with subsections (a) and (b).

(3) ACTION BY THE ADMINISTRATOR.—If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

**§ 235106. Other authorities**

(a) IN GENERAL.—Nothing in this subdivision shall preclude a State or interstate permitting authority from establishing additional permitting requirements not inconsistent with this division.

(b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.—This subdivision (including provisions regarding schedules for submission and approval or

disapproval of permit applications) shall apply to permits implementing the requirements of subdivision 5 except as modified by that subdivision.

**§ 235107. Small business stationary source technical and environmental compliance assistance program**

(a) DEFINITIONS.—In this section:

(1) OMBUDSMAN.—The term ''Ombudsman'' means the Small Business Ombudsman.

(2) SMALL BUSINESS STATIONARY SOURCE.—

(A) IN GENERAL.—The term ''small business stationary source'' means a stationary source that—

(i) is owned or operated by a person that employs 100 or fewer individuals;

(ii) is a small business concern (as defined in the Small Business Act (15 U.S.C. 631 et seq.);

(iii) is not a major stationary source;

(iv) does not emit 50 tons or more per year of any regulated pollutant; and

(v) emits less than 75 tons per year of all regulated pollutants.

(B) INCLUSION OF OTHER SOURCES.—On petition by a source, a State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source that does not meet the criteria of clause (iii), (iv), or (v) of subparagraph (A) but that does not emit more than 100 tons per year of all regulated pollutants.

(C) EXCLUSION OF CERTAIN CATEGORIES OR SUBCATEGORIES OF SOURCES.—

(i) BY THE ADMINISTRATOR.—The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under subparagraph (A) any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this division without the application of this section.

(ii) BY A STATE.—A State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under subparagraph (A) any category or

subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this division without the application of this section.

(b) STATE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAMS.—

(1) IN GENERAL.—Consistent with sections 211110 and 211112 of this title, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for the State plans for establishing a small business stationary source technical and environmental compliance assistance program.

(2) ELEMENTS REQUIRED FOR APPROVAL.—The Administrator shall approve such a program if it includes each of the following:

(A) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this division.

(B) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(C) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this division.

(D) A compliance assistance program for small business stationary sources that assists small business stationary sources in determining applicable requirements and in receiving permits under this division in a timely and efficient manner.

(E) Adequate mechanisms to ensure that small business stationary sources receive notice of their rights under this division in such manner and form as to ensure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this division.

(F) Adequate mechanisms for informing small business stationary sources of their obligations under this division, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this division.

(G) Procedures for consideration of requests from a small business stationary source for modification of—

(i) any work practice or technological method of compliance; or

(ii) the schedule of milestones for implementing such a work practice or method of compliance preceding any applicable compliance date;

based on the technological and financial capability of any such small business stationary source.

(3) MODIFICATION OF WORK PRACTICES, TECHNOLOGICAL METHODS OF COMPLIANCE, AND SCHEDULES OF MILESTONES.—No modification of a work practice, technological method of compliance, or the schedule of milestones may be granted under paragraph (2)(G) unless it is in compliance with the applicable requirements of this division (including the requirements of the applicable implementation plan). Where such applicable requirements are set forth in Federal regulations, only modifications authorized in those regulations may be allowed.

(c) FEDERAL SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.—

(1) IN GENERAL.—The Administrator shall establish a small business stationary source technical and environmental compliance assistance program.

(2) ACTIVITIES.—The program shall—

(A) assist the States in the development of a State small business stationary source technical and environmental compliance assistance program required under subsection (b);

(B) issue guidance for the use of the States in the implementation of such programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(C) provide for implementation of the program provisions required under subsection (b)(2)(D) in any State that fails to submit such a program under that subsection.

(d) MONITORING.—

(1) IN GENERAL.—The Administrator shall direct the EPA Office of Small and Disadvantaged Business Utilization through the Ombudsman to monitor the small business stationary source technical and environmental compliance assistance program under this section.

(2) ACTIVITIES.—In carrying out monitoring activities, the Ombudsman shall—

(A) render advisory opinions on the overall effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(B) make periodic reports to Congress on the compliance of the small business stationary source technical and environmental compliance assistance program with the requirements of chapter 35 of title 44, chapter 6 of title 5, and section 504 of title 5;

(C) review information to be issued by the small business stationary source technical and environmental compliance assistance program for small business stationary sources to ensure that the information is understandable by the layperson; and

(D) have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(e) COMPLIANCE ADVISORY PANEL.—

(1) ESTABLISHMENT.—There shall be established in each State a compliance advisory panel (referred to in this subsection as a ''Panel'').

(2) MEMBERSHIP.—A Panel shall consist of at least—

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each selected by the majority and minority leadership of the lower house (or in the case of a State with a unicameral legislature, 2 members each selected by the majority leadership and the minority leadership));

(C) except in the case of a State with a unicameral legislature, 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each selected by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs, to represent that agency.

(3) ACTIVITIES.—A Panel shall—

(A) render advisory opinions concerning—

(i) the effectiveness of the small business stationary source technical and environmental compliance assistance program;

(ii) difficulties encountered; and

(iii) the degree and severity of enforcement;

(B) make periodic reports to the Administrator concerning the compliance of the State small business stationary source technical and environmental compliance assistance program with the requirements of chapter 35 of title 44, chapter 6 of title 5, and section 504 of title 5;

(C) review information for small business stationary sources to ensure that the information is understandable by the layperson; and

(D) have the small business stationary source technical and environmental compliance assistance program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(f) FEES.—A State (or the Administrator) may reduce any fee required under this division to take into account the financial resources of small business stationary sources.

(g) CONTINUOUS EMISSION MONITORS.—In developing regulations and control technique guidelines under this division that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this division, before applying the requirements to small business stationary sources, shall consider the necessity and appropriateness of the requirements for such sources. Nothing in this subsection shall affect the applicability of subdivision 5 provisions relating to continuous emissions monitoring.

(h) CONTROL TECHNIQUE GUIDELINES.—The Administrator shall consider, consistent with the requirements of this division, the size, type, and technical capabilities of small business stationary sources (and sources that are eligible under subsection (a)(2)(B) to be treated as small business stationary sources) in developing control technique guidelines applicable to such sources under this division.

# Subdivision 7—Stratospheric Ozone Reduction

# Chapter 237—Stratospheric Ozone Reduction

Sec.

## § 237101. Definitions

In this subdivision:

(1) APPLIANCE.—

(A) IN GENERAL.—The term ''appliance'' means any device that—

(i) contains and uses a class I substance or class II substance as a refrigerant; and

(ii) is used for a household or commercial purpose.

(B) INCLUSIONS.—The term ''appliance'' includes any air conditioner, refrigerator, chiller, or freezer.

(2) BASELINE YEAR.—The term ''baseline year'' means—

(A) calendar year 1986, in the case of any class I substance listed in Group I or II under section 237102(a) of this title;

(B) calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 237102(a) of this title; and

(C) a representative calendar year selected by the Administrator, in the case of—

(i) any substance added to the list of class I substances after the publication of the initial list under section 237102(a) of this title; and

(ii) any class II substance.

(3) CLASS I SUBSTANCE.—The term ''class I substance'' means a substance listed as provided in section 237102(a) of this title.

(4) CLASS II SUBSTANCE.—The term ''class II substance'' means a substance listed as provided in section 237102(b) of this title.

(5) COMMISSIONER.—The term ''Commissioner'' means the Commissioner of Food and Drugs.

(6) CONSUMPTION.—

(A) IN GENERAL.—The term ''consumption'' means, with respect to any substance—

(i) the amount of that substance produced in the United States; plus

(ii) the amount imported; minus

(iii) the amount exported to parties to the Montreal Protocol.

(B) CONSTRUCTION.—The term ''consumption'' shall be construed in a manner that is consistent with the Montreal Protocol.

(7) IMPORT.—The term ''import'' means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not the landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) MEDICAL DEVICE.—The term ''medical device'' means any device (as defined in section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in that section), or drug delivery system that—

(A) utilizes a class I substance or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and

(B) after notice and opportunity for public comment, is approved and determined to be essential by the Commissioner in consultation with the Administrator.

(9) MONTREAL PROTOCOL.—

(A) IN GENERAL.—The term ''Montreal Protocol'' means the Montreal Protocol on Substances That Deplete the Ozone Layer, done at Montreal September 16, 1987 (26 I.L.M. 1541; 1522 U.N.T.S. 29), a protocol to the Vienna Convention for the Protection of the Ozone Layer, done at Vienna March 22, 1985 (T.I.A.S. 11097).

(B) INCLUSIONS.—The term ''Montreal Protocol'' includes adjustments adopted by parties to the Montreal Protocol and amendments that enter into force.

(10) OZONE-DEPLETION POTENTIAL.—

(A) IN GENERAL.—The term ''ozone-depletion potential'' means a factor established by the Administrator to reflect the ozone-depletion potential of a substance, on a mass per kilogram basis, as compared with chlorofluorocarbon-11.

(B) CRITERIA.—The factor shall be based on—

(i) the substance's atmospheric lifetime;

(ii) the molecular weight of bromine and chlorine;

(iii) the substance's ability to be photolytically disassociated; and

(iv) other factors determined to be an accurate measure of relative ozone-depletion potential.

(11) PRODUCE.—

(A) IN GENERAL.—The term ''produce'' means to manufacture a substance from any raw material or feedstock chemical.

(B) EXCLUSIONS.—The term ''produce'' does not include—

(i) manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of another chemical; or

(ii) reuse or recycling of a substance.

**§ 237102. Listing of class I substances and class II substances**

(a) LIST OF CLASS I SUBSTANCES.—

(1) INITIAL LIST.—The Administrator shall publish an initial list of class I substances that contains the following substances:

Group I
chlorofluorocarbon-11 (CFC–11)
chlorofluorocarbon-12 (CFC–12)
chlorofluorocarbon-113 (CFC–113)
chlorofluorocarbon-114 (CFC–114)
chlorofluorocarbon-115 (CFC–115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC–13)
chlorofluorocarbon-111 (CFC–111)
chlorofluorocarbon-112 (CFC–112)
chlorofluorocarbon-211 (CFC–211)
chlorofluorocarbon-212 (CFC–212)
chlorofluorocarbon-213 (CFC–213)
chlorofluorocarbon-214 (CFC–214)
chlorofluorocarbon-215 (CFC–215)
chlorofluorocarbon-216 (CFC–216)
chlorofluorocarbon-217 (CFC–217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

(2) ISOMERS.—The initial list under this subsection includes the isomers of the substances described in paragraph (1), other than 1,1,2-trichloroethane (an isomer of methyl chloroform).

(3) ADDITIONS TO LIST.—Pursuant to subsection (c), the Administrator shall add to the list of class I substances any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer. The Administrator shall, pursuant to subsection (c), add to the list all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

(b) LIST OF CLASS II SUBSTANCES.—

(1) INITIAL LIST.—Simultaneously with publication of the initial list of class I substances, the Administrator shall publish an initial list of class II substances that contains the following substances:

hydrochlorofluorocarbon-21 (HCFC–21)
hydrochlorofluorocarbon-22 (HCFC–22)
hydrochlorofluorocarbon-31 (HCFC–31)
hydrochlorofluorocarbon-121 (HCFC–121)
hydrochlorofluorocarbon-122 (HCFC–122)
hydrochlorofluorocarbon-123 (HCFC–123)
hydrochlorofluorocarbon-124 (HCFC–124)
hydrochlorofluorocarbon-131 (HCFC–131)
hydrochlorofluorocarbon-132 (HCFC–132)
hydrochlorofluorocarbon-133 (HCFC–133)
hydrochlorofluorocarbon-141 (HCFC–141)
hydrochlorofluorocarbon-142 (HCFC–142)
hydrochlorofluorocarbon-221 (HCFC–221)
hydrochlorofluorocarbon-222 (HCFC–222)
hydrochlorofluorocarbon-223 (HCFC–223)
hydrochlorofluorocarbon-224 (HCFC–224)
hydrochlorofluorocarbon-225 (HCFC–225)
hydrochlorofluorocarbon-226 (HCFC–226)
hydrochlorofluorocarbon-231 (HCFC–231)
hydrochlorofluorocarbon-232 (HCFC–232)
hydrochlorofluorocarbon-233 (HCFC–233)
hydrochlorofluorocarbon-234 (HCFC–234)
hydrochlorofluorocarbon-235 (HCFC–235)
hydrochlorofluorocarbon-241 (HCFC–241)
hydrochlorofluorocarbon-242 (HCFC–242)
hydrochlorofluorocarbon-243 (HCFC–243)
hydrochlorofluorocarbon-244 (HCFC–244)
hydrochlorofluorocarbon-251 (HCFC–251)
hydrochlorofluorocarbon-252 (HCFC–252)
hydrochlorofluorocarbon-253 (HCFC–253)
hydrochlorofluorocarbon-261 (HCFC–261)
hydrochlorofluorocarbon-262 (HCFC–262)
hydrochlorofluorocarbon-271 (HCFC–271)

(2) ISOMERS.—The initial list under this subsection includes the isomers of the substances described in paragraph (1).

(3) ADDITIONS TO LIST.—Pursuant to subsection (c), the Administrator shall add to the list of class II substances any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

(c) ADDITIONS TO LISTS.—

(1) IN GENERAL.—The Administrator may add, by regulation, in accordance with the criteria set forth in subsection (a) or (b), as the case may be, any substance to the list of class I substances or class II substances under subsection (a) or (b). For purposes of exchanges under section 237107 of this title, whenever a substance is added to the list of class I substances the Administrator shall, to the extent consistent with the Montreal Protocol, assign the substance to existing Group I, II, III, IV, or V or place the substance in a new Group.

(2) PERIODIC LISTING.—Periodically, but not less frequently than every 3 years, the Administrator shall list, by regulation, as additional class I substances or class II substances the substances that the Administrator finds meet the criteria of subsection (a) or (b), as the case may be.

(3) PETITIONS.—

(A) IN GENERAL.—Any person may petition the Administrator to add a substance to the list of class I substances or class II sub-

stances. Pursuant to the criteria set forth in subsection (a) or (b), as the case may be, within 180 days after receiving such a petition, the Administrator shall propose to add the substance to the list or publish an explanation of the petition denial. In any case where the Administrator proposes to add a substance to the list, the Administrator shall add by regulation, or make a final determination not to add, the substance to the list within 1 year after receiving the petition.

(B) SHOWING.—Any petition under this paragraph shall include a showing by the petitioner that there are data on the substance adequate to support the petition.

(C) FURTHER INFORMATION.—If the Administrator determines that information on the substance is not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire the information.

(4) REMOVAL FROM LIST.—Only a class II substance that is added to the list of class I substances may be removed from the list of class II substances. No substance described in subsection (a), including methyl chloroform, may be removed from the list of class I substances.

(d) NEW LISTED SUBSTANCES.—

(1) EXTENSION.—In the case of any substance added to the list of class I substances or class II substances after publication of the initial lists of class I substances and class II substances under this section, the Administrator may extend any schedule or compliance deadline contained in section 237105 of this title to a later date than is specified in that section if the schedule or deadline is unattainable, considering when the substance is added to the list.

(2) LIMITATIONS.—

(A) CLASS I SUBSTANCES.—No extension under this subsection may extend the date for termination of production of any class I substance to a date that is more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances.

(B) CLASS II SUBSTANCES.—No extension under this subsection may extend the date for termination of production of any class II substance to a date more than 10 years after January 1 of the year after the year in which the substance is added to the list of class II substances.

(e) OZONE-DEPLETION AND GLOBAL WARMING POTENTIAL.—

(1) ASSIGNMENT OF NUMERICAL VALUE AND PUBLICATION OF CHLORINE AND BROMINE LOADING POTENTIAL AND ATMOSPHERIC LIFETIME.—Simultaneously with any addition to either of the lists, the Administrator shall—

(A) assign to each listed substance a numerical value representing the substance's ozone-depletion potential; and

(B) publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance.

(2) PUBLICATION OF GLOBAL WARMING POTENTIAL.—

(A) IN GENERAL.—One year after the addition of a substance to either of the lists, after notice and opportunity for public comment, the Administrator shall publish the global warming potential of each listed substance.

(B) NO BASIS FOR ADDITIONAL REGULATION.—Subparagraph (A) shall not be construed to be the basis of any additional regulation under this division.

(3) OZONE-DEPLETION POTENTIAL.—

(A) IN GENERAL.—In the case of the substances described in table 1, the ozone-depletion potential shall be as specified in table 1, unless the Administrator adjusts the substance's ozone-depletion potential based on criteria described in section 237101(10) of this title:

TABLE 1

| Substance | Ozone-depletion potential |
|---|---|
| chlorofluorocarbon-11 (CFC–11) | 1.0 |
| chlorofluorocarbon-12 (CFC–12) | 1.0 |
| chlorofluorocarbon-13 (CFC–13) | 1.0 |
| chlorofluorocarbon-111 (CFC–111) | 1.0 |
| chlorofluorocarbon-112 (CFC–112) | 1.0 |
| chlorofluorocarbon-113 (CFC–113) | 0.8 |
| chlorofluorocarbon-114 (CFC–114) | 1.0 |
| chlorofluorocarbon-115 (CFC–115) | 0.6 |
| chlorofluorocarbon-211 (CFC–211) | 1.0 |
| chlorofluorocarbon-212 (CFC–212) | 1.0 |
| chlorofluorocarbon-213 (CFC–213) | 1.0 |
| chlorofluorocarbon-214 (CFC–214) | 1.0 |
| chlorofluorocarbon-215 (CFC–215) | 1.0 |
| chlorofluorocarbon-216 (CFC–216) | 1.0 |
| chlorofluorocarbon-217 (CFC–217) | 1.0 |
| halon-1211 | 3.0 |
| halon-1301 | 10.0 |
| halon-2402 | 6.0 |
| carbon tetrachloride | 1.1 |
| methyl chloroform | 0.1 |
| hydrochlorofluorocarbon-22 (HCFC–22) | 0.05 |
| hydrochlorofluorocarbon-123 (HCFC–123) | 0.02 |
| hydrochlorofluorocarbon-124 (HCFC–124) | 0.02 |
| hydrochlorofluorocarbon-141(b) (HCFC–141(b)) | 0.1 |
| hydrochlorofluorocarbon-142(b) (HCFC–142(b)) | 0.06 |

(B) SPECIFICATION IN MONTREAL PROTOCOL.—Where the ozone-depletion potential of a substance is specified in the Montreal Protocol, the ozone-depletion potential specified for that sub-

stance under this section shall be consistent with the Montreal Protocol.

**§ 237103. Monitoring and reporting requirements**

(a) REGULATIONS.—The regulations of the Administrator regarding monitoring and reporting of class I substances and class II substances shall conform to the requirements of this section. The regulations shall include requirements with respect to the time and manner of monitoring and reporting as required under this section.

(b) PRODUCTION, IMPORT, AND EXPORT LEVEL REPORTS.—On a quarterly basis, or such other basis (not less than annually) as the Administrator may determine, each person that produces, imports, or exports a class I substance or class II substance shall file a report with the Administrator setting forth the amount of the substance that the person produced, imported, and exported during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. No such report shall be required from a person after April 1 of the calendar year after the person permanently ceases production, importation, and exportation of the substance and so notifies the Administrator in writing.

(c) BASELINE REPORTS FOR CLASS I SUBSTANCES.—Unless such information has previously been reported to the Administrator, on the date on which the 1st report under subsection (b) is required to be filed, each person that produces, imports, or exports a class I substance (other than a substance added to the list of class I substances after the publication of the initial list of class I substances under this section) shall file a report with the Administrator setting forth the amount of the class I substance that the person produced, imported, and exported during the baseline year. In the case of a substance added to the list of class I substances after publication of the initial list of class I substances under this section, the regulations shall require that each person that produced, imported, or exported the class I substance shall file a report with the Administrator within 180 days after the date on which the class I substance is added to the list, setting forth the amount of the class I substance that the person produced, imported, and exported in the baseline year.

(d) MONITORING AND REPORTS TO CONGRESS.—

(1) PRODUCTION, USE, AND CONSUMPTION OF CLASS I SUBSTANCES AND CLASS II SUBSTANCES.—The Administrator shall monitor the production, use, and consumption of class I substances and class II substances. Not less frequently than every 6 years, the Administrator shall report to Congress on the environmental and economic effects of any stratospheric ozone depletion.

(2) TROPOSPHERIC CONCENTRATION OF CHLORINE AND BROMINE AND LEVEL OF STRATOSPHERIC OZONE DEPLETION.—

(A) IN GENERAL.—The Administrator of the National Aeronautics and Space Administration and the Administrator of the National Oceanic and Atmospheric Administration shall monitor, and not less often than every 3 years submit to Congress a report on, the current average tropospheric concentration of chlorine and bromine and the level of stratospheric ozone depletion.

(B) CONTENTS.—A report under subparagraph (A) shall include updated projections of—

(i) peak chlorine loading;

(ii) the rate at which the atmospheric abundance of chlorine is projected to decrease; and

(iii) the date by which the atmospheric abundance of chlorine is projected to return to a level of 2 parts per billion.

(C) BASIS OF PROJECTIONS.—Updated projections under subparagraph (B) shall be made on the basis of—

(i) current international and domestic controls on substances covered by this subdivision; and

(ii) controls described in clause (i) supplemented by a year 2000 global phaseout of all halocarbon emissions (the base case).

(D) PURPOSE.—It is the purpose of Congress through this section to monitor closely the production and consumption of class II substances to ensure that the production and consumption of class II substances will not—

(i) increase significantly the peak chlorine loading that is projected to occur under the base case established for purposes of this section;

(ii) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case; or

(iii) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of 2 parts per billion.

(e) TECHNOLOGY STATUS REPORT IN 2015.—The Administrator shall review, on a periodic basis, the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without class II substances. If the Administrator finds, after notice and opportunity for public comment, that as a result of technological development problems, the development of such alternative systems or products

will not occur within the time necessary to provide for the manufacture of such equipment without class II substances prior to the applicable deadlines under section 237105 of this title, the Administrator shall, not later than January 1, 2015, so inform Congress.

(f) EMERGENCY REPORT.—

(1) IN GENERAL.—If, in consultation with the Administrator of the National Aeronautics and Space Administration and the Administrator of the National Oceanic and Atmospheric Administration, and after notice and opportunity for public comment, the Administrator determines that the global production, consumption, and use of class II substances are projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than 5/10ths part per billion, the Administrator shall so inform Congress immediately.

(2) DETERMINATION.—A determination under paragraph (2) shall be—

(A) based on the monitoring under subsection (d); and

(B) updated not less often than every 3 years.

### § 237104. Prohibition of production and consumption of class I substances

(a) PROHIBITION OF PRODUCTION OF CLASS I SUBSTANCES.—It shall be unlawful for any person to produce any amount of a class I substance except as provided in this section.

(b) EXCEPTIONS FOR MEDICAL DEVICES AND AVIATION SAFETY.—

(1) MEDICAL DEVICES.—The Administrator, after notice and opportunity for public comment, shall, to the extent that such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices if the authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(2) AVIATION SAFETY.—

(A) IN GENERAL.—The Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromotetrafluoroethane) solely for purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that the authorization is necessary for aviation safety purposes.

(B) EXAMINATION.—The Administrator of the Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue and whether an exception for such uses of methyl chloroform under this paragraph is necessary for purposes of airline safety.

(3) CAP ON EXCEPTIONS.—Under no circumstances may the authority set forth in paragraphs (1) and (2) be applied to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that produced by the person during the baseline year.

(c) METHYL BROMIDE.—

(1) SANITATION AND FOOD PROTECTION.—To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State, or local sanitation or food protection standard.

(2) CRITICAL USES.—To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.

(3) SCHEDULE.—Notwithstanding subsections (a) and (b), the Administrator shall promulgate regulations for reductions in, and terminate the production, importation, and consumption of, methyl bromide under a schedule that is in accordance with, but not more stringent than, the phaseout schedule of the Montreal Protocol as in effect on October 21, 1998.

(d) DEVELOPING COUNTRIES.—

(1) EXCEPTION.—The Administrator, after notice and opportunity for public comment, may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance solely for export to, and use in, developing countries that are parties to the Montreal Protocol and are operating under article 5 of the Montreal

Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) CAP ON EXCEPTION.—

(A) IN GENERAL.—Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year in an annual quantity greater than 15 percent of the baseline quantity of that class I substance produced by that person.

(B) TERMINATION OF EXCEPTION.—An exception authorized under this subsection shall terminate not later than January 1, 2010 (2012 in the case of methyl chloroform).

(3) METHYL BROMIDE.—Notwithstanding the phaseout and termination of production of methyl bromide pursuant to subsection (c)(3), the Administrator may, consistent with the Montreal Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries that are parties to the Copenhagen Amendment to the Montreal Protocol (32 I.L.M. 874).

(e) NATIONAL SECURITY.—

(1) IN GENERAL.—The President may, to the extent that such action is consistent with the Montreal Protocol, issue such orders regarding production and use of chlorofluorocarbon-114, halon-1211, halon-1301, and halon-2402, at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United States if the President finds that adequate substitutes are not available and that the production and use of the substance are necessary to protect the national security interests of the United States.

(2) EXEMPTIONS.—

(A) IN GENERAL.—An order under paragraph (1) may include, where necessary to protect the national security interests of the United States, an exemption from any prohibition or requirement contained in this subdivision.

(B) NOTIFICATION OF CONGRESS.—The President shall notify Congress within 30 days of the issuance of an order under paragraph (1) providing for an exemption under subparagraph (A). The notification shall include a statement of the reasons for the granting of the exemption.

(C) TIME PERIOD.—An exemption under this paragraph shall be for a specified period, which may not exceed 1 year.

(D) ADDITIONAL EXEMPTIONS.—Additional exemptions may be granted, each on the President's issuance of a new order under

paragraph (1). Each additional exemption shall be for a specified period, which may not exceed 1 year.

(E) LACK OF APPROPRIATION.—No exemption shall be granted under this paragraph due to lack of appropriation unless the President specifically requests an appropriation as a part of the budgetary process and Congress fails to make available the requested appropriation.

**§ 237105. Phaseout of production and consumption of class II substances**

(a) RESTRICTION ON USE OF CLASS II SUBSTANCES.—

(1) DEFINITION OF REFRIGERANT.—In this subsection, the term ''refrigerant'' means any class II substance used for heat transfer in a refrigerating system.

(2) PROHIBITION.—Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless the class II substance—

(A) has been used, recovered, and recycled;

(B) is used and entirely consumed (except for trace quantities) in the production of other chemicals;

(C) is used as a refrigerant in an appliance manufactured prior to January 1, 2020; or

(D) is listed as acceptable for use as a fire suppression agent for nonresidential applications in accordance with section 237112(c)(2) of this title.

(b) PRODUCTION PHASEOUT.—

(1) PRODUCTION IN QUANTITY GREATER THAN THE QUANTITY PRODUCED DURING THE BASELINE YEAR.—Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of that class II substance produced by that person during the baseline year.

(2) PRODUCTION IN ANY QUANTITY.—Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.

(c) REGULATIONS REGARDING PRODUCTION AND CONSUMPTION OF CLASS II SUBSTANCES.—The Administrator shall promulgate regulations to—

(1) phase out the production, and restrict the use, of class II substances in accordance with this section, subject to any acceleration of the phaseout of production under section 237106 of this title; and

(2) ensure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is ap-

plicable to the phaseout and termination of production of class II substances under this subdivision.

(d) EXCEPTIONS.—

(1) MEDICAL DEVICES.—

(A) IN GENERAL.—Notwithstanding the termination of production required under subsection (b)(2) and the restriction on use described in subsection (a), the Administrator, after notice and opportunity for public comment, shall, to the extent that such action is consistent with the Montreal Protocol, authorize the production and use of limited quantities of class II substances solely for purposes of use in medical devices if the authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(B) CAP ON EXCEPTION.—Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in annual quantities greater than 10 percent of that class II substance produced by that person during the baseline year.

(2) DEVELOPING COUNTRIES.—

(A) IN GENERAL.—Notwithstanding subsection (a) or (b), the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under subsections (a) and (b) solely for export to and use in developing countries that are parties to the Montreal Protocol, as determined by the Administrator. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of developing countries.

(B) CAP ON EXCEPTION.—

(i) BEFORE 2030.—Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in any year following the effective date of subsection (b)(1) and before the year 2030 in an annual quantity that is greater than 110 percent of the quantity of that class II substance produced by that person during the baseline year.

(ii) 2030 AND THEREAFTER.—Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in the year 2030 or any year thereafter in an annual quantity that

is greater than 15 percent of the quantity of that class II substance produced by that person during the baseline year.

(iii) TERMINATION OF EXCEPTIONS.—Each exception authorized under this paragraph shall terminate not later than January 1, 2040.

**§ 237106. Accelerated schedule**

(a) IN GENERAL.—The Administrator shall promulgate regulations that establish a schedule for phasing out the production, consumption, or use of class II substance that is more stringent than set forth in section 237105 of this title if—

(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with the class II substance, the Administrator determines that a more stringent schedule may be necessary to protect human health and the environment against those effects;

(2) based on the availability of substitutes for the class II substance, the Administrator determines that a more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors; or

(3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of the class II substance more rapidly than the applicable schedule under this subdivision.

(b) CONSIDERATION OF STATUS OF REMAINING PERIOD.—In making any determination under paragraph (1) or (2) of subsection (a), the Administrator shall consider the status of the period remaining under the applicable schedule under this subdivision.

(c) PETITION.—

(1) IN GENERAL.—Any person may petition the Administrator to promulgate regulations under this section. The Administrator shall grant or deny such a petition within 180 days after receipt of any such petition.

(2) SHOWING.—A petition under this subsection shall include a showing by the petitioner that there are data adequate to support the petition.

(3) FURTHER INFORMATION.—If the Administrator determines that information is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire the information.

(4) DENIAL OF PETITION.—If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied.

(5) GRANT OF PETITION.—If the Administrator grants the petition, the final regulations shall be promulgated within 1 year.

**§ 237107. Exchange authority**

(a) TRANSFERS.—The Administrator shall promulgate regulations under this subdivision providing for the issuance of allowances for the production of class I substances and class II substances in accordance with the requirements of this subdivision and governing the transfer of such allowances. The regulations shall ensure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I substances and class II substances than would occur in that year in the absence of such transactions.

(b) INTERPOLLUTANT TRANSFERS.—

(1) PRODUCTION ALLOWANCE.—The regulations under this section shall permit a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.

(2) GROUPS OF CLASS I SUBSTANCES.—Allowances for substances in each group of class I substances (as listed pursuant to section 237102 of this title) may be transferred only for allowances for other class I substances in the same group.

(3) GROUPS OF CLASS II SUBSTANCES.—The Administrator shall, as appropriate, establish groups of class II substances for trading purposes and assign class II substances to such groups. In the case of class II substances, allowances may be transferred only for allowances for other class II substances that are in the same group.

(c) TRADES WITH OTHER PERSONS.—The regulations under this section shall permit 2 or more persons to transfer production allowances (including interpollutant transfers that meet the requirements of subsections (a) and (b)) if the transferor of the allowances will be subject, under the regulations, to an enforceable and quantifiable reduction in annual production that—

(1) exceeds the reduction otherwise applicable to the transferor under this subdivision;

(2) exceeds the production allowances transferred to the transferee; and

(3) would not have occurred in the absence of the transaction.

(d) CONSUMPTION.—The regulations under this section shall provide for the issuance of consumption allowances in accordance with the requirements of this subdivision and for the trading of such allowances in the same man-

ner as is applicable under this section to the trading of production allowances under this section.

### § 237108. National recycling and emission reduction program

(a) IN GENERAL.—

(1) USE AND DISPOSAL OF CLASS I SUBSTANCES AND CLASS II SUBSTANCES.—The Administrator shall promulgate regulations establishing standards and requirements regarding use and disposal of class I substances and class II substances, including the use and disposal of class I substances and class II substances during service, repair, or disposal of appliances and industrial process refrigeration.

(2) CONTENTS.—The regulations under this subsection—

(A) shall include requirements that—

(i) reduce the use and emission of class I substances and class II substances to the lowest achievable level; and

(ii) maximize the recapture and recycling of class I substances and class II substances; and

(B) may include requirements—

(i) to use alternative substances (including substances that are not class I substances or class II substances) or to minimize use of class I substances or class II substances; or

(ii) to promote the use of safe alternatives pursuant to section 237112 of this title.

(b) SAFE DISPOSAL.—

(1) IN GENERAL.—The regulations under subsection (a) shall establish standards and requirements for the safe disposal of class I substances and class II substances.

(2) CONTENTS.—The regulations shall require that—

(A) a class I substance or class II substance contained in bulk in appliances, machines, or other goods shall be removed from each appliance, machine, or other good prior to disposal of, or delivery for recycling of, the appliance, machine, or good;

(B) any appliance, machine, or other good containing a class I substance or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature that will facilitate the recapture of the class I substance or class II substance during service and repair or disposal of the appliance, machine, or good; and

(C) any product in which a class I substance or class II substance is incorporated so as to constitute an inherent element of the product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of the class I substance or class II substance into the environment.

(3) EXCEPTION.—If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in the regulations an exception for that product.

(c) PROHIBITIONS.—

(1) RELEASE OR DISPOSAL OF CLASS I SUBSTANCE OR CLASS II SUBSTANCE.—

(A) IN GENERAL.—It shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I substance or class II substance used as a refrigerant in the appliance or industrial process refrigeration in a manner that permits the class I substance or class II substance to enter the environment.

(B) DE MINIMIS RELEASE.—A de minimis release associated with a good faith attempt to recapture and recycle or safely dispose of a class I substance or class II substance shall not be subject to the prohibition set forth in subparagraph (A).

(2) RELEASE OR DISPOSAL OF SUBSTITUTE SUBSTANCE FOR A CLASS I SUBSTANCE OR CLASS II SUBSTANCE.—

(A) DEFINITION OF APPLIANCE.—In this paragraph, the term ''appliance'' includes any device that contains and uses as a refrigerant a substitute substance and that is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(B) PROHIBITION.—It shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any substitute substance for a class I substance or class II substance that contains and uses as a refrigerant any such substitute substance, unless the Administrator determines that venting, releasing, or disposing of that substitute substance does not pose a threat to the environment.

## § 237109. Servicing of motor vehicle air conditioners

(a) DEFINITIONS.—In this section:

(1) APPROVED REFRIGERANT RECYCLING EQUIPMENT.—

(A) IN GENERAL.—The term ''approved refrigerant recycling equipment'' means equipment certified by the Administrator (or an independent standards testing organization approved by the Administrator) to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners.

(B) STRINGENCY.—The standards under subparagraph (A) shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to equipment described in subparagraph (A) (SAE standard J–1990).

(C) EQUIPMENT PURCHASED BEFORE THE PROPOSAL OF REGULATIONS.—Equipment purchased before the proposal of regulations under this section shall be considered certified if it is substantially identical to equipment certified as provided in subparagraph (A).

(2) PROPERLY TRAINED AND CERTIFIED.—

(A) IN GENERAL.—The term ''properly trained and certified'' means having training and certification in the proper use of approved refrigerant recycling equipment for motor vehicle air conditioners in conformity with standards established by the Administrator and applicable to the performance of service on motor vehicle air conditioners.

(B) STRINGENCY.—The standards under subparagraph (A) shall, at a minimum, be at least as stringent as specified, as of November 15, 1990, in SAE standard J–1989 under the certification program of the National Institute for Automotive Service Excellence or under a similar program such as the training and certification program of the Mobile Air Conditioning Society.

(3) PROPERLY USE.—

(A) IN GENERAL.—The term ''properly use'', with respect to the use of approved refrigerant recycling equipment, means to use in conformity with standards established by the Administrator and applicable to the use of the equipment.

(B) STRINGENCY.—The standards under subparagraph (A) shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to the use of equipment described in subparagraph (A) (SAE standard J–1989).

(4) REFRIGERANT.—The term ''refrigerant'' means any class I substance, class II substance, or substitute substance for a class I substance or class II substance used in a motor vehicle air conditioner.

(b) REGULATIONS.—The Administrator shall promulgate regulations establishing standards and requirements regarding the servicing of motor vehicle air conditioners.

(c) PROHIBITIONS.—

(1) PROPER USE.—No person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for the air conditioner without properly using approved refrigerant recycling equipment;

(2) PROPER TRAINING AND CERTIFICATION.—No person repairing or servicing motor vehicles for consideration may perform the service unless the person has been properly trained and certified.

(d) CERTIFICATION.—

(1) IN GENERAL.—Each person performing service on motor vehicle air conditioners for consideration shall certify to the Administrator that the person has acquired, and is properly using, approved refrigerant recycling equipment in service on motor vehicle air conditioners involving refrigerant and that each individual authorized by the person to perform that service is properly trained and certified.

(2) CONTENTS.—A certification under this subsection shall contain—

(A) the name and address of the person certifying; and

(B) the serial number of each unit of approved recycling equipment acquired by the person.

(3) MANNER OF CERTIFICATION.—A certification under this subsection—

(A) shall be signed and attested by the owner or another responsible officer; and

(B) may be made by submitting the required information to the Administrator on a standard form provided by the manufacturer of certified refrigerant recycling equipment.

(e) SMALL CONTAINERS OF CLASS I SUBSTANCES OR CLASS II SUBSTANCES.—It shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce to any person (other than a person performing service for consideration on motor vehicle air conditioning systems in compliance with this section) any class I substance or class II substance that is suitable for use as a refrigerant in a motor vehicle air conditioning system and that is in a container that contains less than 20 pounds of the refrigerant.

**§ 237110. Nonessential products containing chlorofluorocarbons**

(a) NONESSENTIAL PRODUCTS.—

(1) IN GENERAL.—The Administrator shall promulgate regulations that—

(A) identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal); and

(B) prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce.

(2) APPLICABILITY.—At a minimum, the prohibition shall apply to—

(A) chlorofluorocarbon-propelled plastic party streamers and noise horns;

(B) chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment; and

(C) other consumer products that are determined by the Administrator—

(i) to release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal); and

(ii) to be nonessential.

(3) DETERMINATION.—In determining whether a product is nonessential, the Administrator shall consider—

(A) the purpose or intended use of the product;

(B) the technological availability of substitutes for the product and for the class I substance;

(C) safety;

(D) health; and

(E) other relevant factors.

(b) PROHIBITIONS.—

(1) IN GENERAL.—It shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any nonessential product to which regulations under subsection (a) are applicable.

(2) OTHER PRODUCTS.—

(A) PROHIBITION.—It shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

(i) any aerosol product or other pressurized dispenser that contains a class II substance; or

(ii) any plastic foam product that contains, or is manufactured with, a class II substance.

(B) EXCEPTIONS.—The Administrator may grant exceptions from the prohibition under subparagraph (A)(i) where—

(i) the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns; and

(ii) the only available alternative to use of a class II substance is use of a class I substance that legally could be substituted for the class II substance.

(C) NONAPPLICABILITY.—Subparagraph (A)(ii) shall not apply to—

(i) a foam insulation product; or

(ii) an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I substance or class II substance) is practicable for effectively meeting those standards.

(c) MEDICAL DEVICES.—Nothing in this section applies to a medical device.

**§ 237111. Labeling**

(a) CONTAINERS CONTAINING A CLASS I SUBSTANCE OR CLASS II SUBSTANCE; PRODUCTS CONTAINING A CLASS I SUBSTANCE.—No container in which a class I substance or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

''Warning: Contains [insert name of substance], a substance that harms public health and environment by destroying ozone in the upper atmosphere''.

(b) PRODUCTS CONTAINING A CLASS II SUBSTANCE.—

(1) BEFORE JANUARY 1, 2015.—Before January 1, 2015, no product containing a class II substance shall be introduced into interstate commerce unless it bears the label described in subsection (a) if the Administrator determines, after notice and opportunity for public comment, that there is a substitute product or manufacturing process—

(A) that does not rely on the use of the class II substance;

(B) that reduces the overall risk to human health and the environment; and

(C) that is currently or potentially available.

(2) ON AND AFTER JANUARY 1, 2015.—Effective January 1, 2015, no product containing a class II substance shall be introduced into

interstate commerce unless it bears the label described in subsection (a).

(c) PRODUCTS MANUFACTURED WITH A CLASS I SUBSTANCE OR CLASS II SUBSTANCE.—

(1) BEFORE JANUARY 1, 2015.—

(A) CLASS II SUBSTANCES.—Before January 1, 2015, if the Administrator, after notice and opportunity for public comment, makes the determination described in subsection (b)(1) with respect to a product manufactured with a process that uses a class II substance, no such product shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating the following:

"Warning: Manufactured with [insert name of substance], a substance that harms public health and environment by destroying ozone in the upper atmosphere".

(B) CLASS I SUBSTANCES.—Before January 1, 2015, no product manufactured with a process that uses a class I substance shall be introduced into interstate commerce unless it bears a label described in subparagraph (A) unless the Administrator determines that there is no substitute product or manufacturing process that—

(i) does not rely on the use of the class I substance;

(ii) reduces the overall risk to human health and the environment; and

(iii) is currently or potentially available.

(2) ON AND AFTER JANUARY 1, 2015.—Effective January 1, 2015, no product manufactured with a process that uses a class I substance or class II substance shall be introduced into commerce unless it bears a label described in paragraph (1)(A).

(d) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Administrator to apply the requirements of this section to a product containing a class II substance or a product manufactured with a class I substance or class II substance that is not otherwise subject to the requirements. Within 180 days after receiving such a petition, the Administrator shall, pursuant to the criteria set forth in subsection (b), propose to apply the requirements of this section to the product or publish an explanation of the petition denial. If the Administrator proposes to apply the requirements to the product, the Administrator shall, by regulation, render a final determination pursuant to those criteria within 1 year after receiving the petition.

(2) SHOWING.—Any petition under this paragraph shall include a showing by the petitioner that there are data on the product adequate to support the petition.

(3) FURTHER INFORMATION.—If the Administrator determines that information on the product is not sufficient to make the required determination, the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire the information.

(4) EFFECTIVE DATE.—In the case of a product determined by the Administrator, on petition or on the Administrator's own motion, to be subject to the requirements of this section, the effective date for the requirements shall be 1 year after the date of the determination.

(e) RELATIONSHIP TO OTHER LAW.—

(1) NO DEFENSE.—The labeling requirements of this section shall not constitute, in whole or part, a defense to liability or a cause for reduction in damages in any civil or criminal action brought under any Federal or State law other than an action for failure to comply with the labeling requirements of this section.

(2) NO OTHER APPROVAL.—No other approval of a label by the Administrator under any other law administered by the Administrator shall be required with respect to the labeling requirements of this section.

(f) REGULATIONS.—The Administrator shall promulgate regulations to implement the labeling requirements of this section.

**§ 237112. Safe alternatives policy**

(a) POLICY.—To the maximum extent practicable, class I substances and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

(b) REVIEWS AND REPORTS.—The Administrator shall—

(1) in consultation and coordination with interested members of the public and the heads of relevant Federal agencies and departments—

(A) recommend Federal research programs and other activities to assist in—

(i) identifying alternatives to the use of class I substances and class II substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications; and

(ii) achieving a transition to the alternatives; and

(B) where appropriate, seek to maximize the use of Federal research facilities and resources to assist users of class I substances

and class II substances in identifying and developing alternatives to the uses described in subparagraph (A)(i);

(2)(A) in consultation and coordination with the Secretary of Defense and the heads of other relevant Federal agencies and departments, including the General Services Administration, examine Federal procurement practices with respect to class I substances and class II substances; and

(B) recommend measures to promote the transition by the Federal Government, as expeditiously as possible, to the use of safe substitutes;

(3) specify initiatives, including appropriate intergovernmental, international, and commercial information and technology transfers, to promote the development and use of safe substitutes for class I substances and class II substances, including alternative chemicals, product substitutes, and alternative manufacturing processes; and

(4) maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes that use class I substances and class II substances.

(c) ALTERNATIVES FOR CLASS I SUBSTANCES OR CLASS II SUBSTANCES.—

(1) IN GENERAL.—The Administrator shall promulgate regulations under this section providing that it shall be unlawful to replace any class I substance or class II substance with any substitute substance that the Administrator determines may present adverse effects on human health or the environment, where the Administrator has identified an alternative to the replacement that—

(A) reduces the overall risk to human health and the environment; and

(B) is currently or potentially available.

(2) LISTS.—The Administrator shall publish lists of—

(A) the substitutes prohibited under this subsection for specific uses; and

(B) the safe alternatives identified under this subsection for specific uses.

(d) PETITIONS.—

(1) IN GENERAL.—Any person may petition the Administrator to add a substance to the lists under subsection (c) or to remove a substance from either list. The Administrator shall grant or deny the petition within 90 days after receipt of the petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants the petition,

the Administrator shall publish a revised list within 6 months thereafter.

(2) SHOWING.—Any petition under this subsection shall include a showing by the petitioner that there are data on the substance adequate to support the petition.

(3) FURTHER INFORMATION.—If the Administrator determines that information on the substance is not sufficient to make a determination under paragraph (1), the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire the information.

(e) STUDIES AND NOTIFICATION.—

(1) IN GENERAL.—The Administrator shall—

(A) require any person that produces a chemical substitute for a class I substance to provide the Administrator with the person's unpublished health and safety studies on the substitute; and

(B) require producers to notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance.

(2) PUBLIC AVAILABILITY OF RECORDS, REPORTS, AND INFORMATION.—This subsection shall be subject to section 211114(c) of this title.

**§ 237113. Federal procurement**

(a) REGULATIONS.—The Administrator, in consultation with the Administrator of General Services and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to—

(1) conform its procurement regulations to the policies and requirements of this subdivision; and

(2) maximize the substitution of safe alternatives identified under section 237112 of this title for class I substances and class II substances.

(b) CONFORMITY; CERTIFICATION.—Each department, agency, and instrumentality of the United States shall—

(1) conform its procurement regulations to the policies and requirements of this subdivision; and

(2) certify to the President that its regulations have been modified in accordance with this section.

**§ 237114. Relationship to other laws**

(a) MONTREAL PROTOCOL.—This subdivision shall be construed, interpreted, and applied as a supplement to the terms and conditions of the

Montreal Protocol, as provided in paragraph 11 of article 2 of the Montreal Protocol, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this subdivision and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this subdivision shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement article 4 of the Montreal Protocol with other appropriate agencies.

(b) TECHNOLOGY EXPORT AND OVERSEAS INVESTMENT.—The President shall—

(1) prohibit the export of technologies used to produce a class I substance;

(2) prohibit direct or indirect investments by any person in facilities designed to produce a class I substance or class II substance in nations that are not parties to the Montreal Protocol; and

(3) direct that no Federal agency provide bilateral or multilateral subsidies, aids, credits, guarantees, or insurance programs for the purpose of producing any class I substance.

### § 237115. Control of substances, practices, processes, and activities that may reasonably be anticipated to affect the stratosphere

If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and the effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall—

(1) promptly promulgate regulations respecting the control of the substance, practice, process, or activity; and

(2) submit notice of the proposal and promulgation of the regulation to Congress.

### § 237116. Transfers among parties to Montreal Protocol

(a) DEFINITION OF APPLICABLE DOMESTIC LAW.—In this section, the term ''applicable domestic law'', with respect to the United States, means this division.

(b) IN GENERAL.—Consistent with the Montreal Protocol, the United States may engage in transfers with other parties to the Montreal Protocol under the following conditions:

(1) TRANSFERS OF PRODUCTION ALLOWANCES.—The United States may transfer production allowances to another party if, at the time of the transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States pro-

duction permitted under the revised production limits equals the least of—

(A) the maximum production level permitted for the substance or substances concerned in the transfer year under the Montreal Protocol minus the production allowances transferred;

(B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred; or

(C) the average of the actual national production level of the substance or substances concerned for the 3 years prior to the transfer minus the production allowances transferred.

(2) ACQUISITION OF PRODUCTION ALLOWANCES.—The United States may acquire production allowances from another party if, at the time of the transfer, the Administrator finds that the other party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in this subsection.

(c) EFFECT OF TRANSFERS ON PRODUCTION LIMITS.—The Administrator may—

(1) reduce the production limits established under this division as required as a prerequisite to transfers under subsection (b)(1); or

(2) increase production limits established under this division to reflect production allowances acquired under a transfer under subsection (b)(2).

(d) REGULATIONS.—The Administrator shall promulgate regulations to implement this section.

**§ 237117. International cooperation**

(a) IN GENERAL.—

(1) IN GENERAL.—The President shall undertake to enter into international agreements to—

(A) foster cooperative research that complements studies and research authorized by this subdivision; and

(B) develop standards and regulations that protect the stratosphere consistent with regulations applicable within the United States.

(2) NEGOTIATION OF AGREEMENTS; PROPOSALS.—For the purposes described in paragraph (1), the President, through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall—

(A) negotiate multilateral treaties, conventions, resolutions, or other agreements;

(B) formulate, present, or support proposals at the United Nations and other appropriate international forums; and

(C) report to Congress periodically on efforts to arrive at such agreements.

(b) ASSISTANCE TO DEVELOPING COUNTRIES.—The Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are parties to the Montreal Protocol and operating under article 5 of the Montreal Protocol.

### § 237118. Miscellaneous provisions

(a) RETENTION OF STATE AUTHORITY.—For purposes of section 211116 of this title, requirements concerning the areas addressed by this subdivision for the protection of the stratosphere against ozone layer depletion shall be treated as requirements for the control and abatement of air pollution.

(b) CONTROL OF POLLUTION FROM FEDERAL FACILITIES.—For purposes of section 211118 of this title, the requirements of this subdivision and corresponding State, interstate, and local requirements, administrative authority, process, and sanctions respecting the protection of the stratospheric ozone layer shall be treated as requirements for the control and abatement of air pollution within the meaning of section 211118 of this title.

# Divisions B through Y—Reserved
# Division Z—Miscellaneous
# Chapter 299—Miscellaneous

Sec.


### § 299101. Provision enacted by the Clean Air Act Amendments of 1977

The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 221102(a) of this title and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 221102(b) of this title.

### § 299102. Provision enacted by the Energy Security Act

(a) CARBON DIOXIDE STUDY.—

(1) AGREEMENT.—The Director of the Office of Science and Technology Policy (referred to in this section as the ''Director'') shall enter into an agreement with the National Academy of Sciences (referred to in this section as the ''Academy'') to carry out a comprehensive study of the projected impacts, on the level of carbon dioxide in the atmosphere, of—

(A) fossil fuel combustion;

(B) coal-conversion and related synthetic fuels activities authorized by the Energy Security Act (94 Stat. 611); and

(C) other sources.

(2) ASSESSMENT.—The study should include an assessment of the economic, physical, climatic, and social effects of the impacts described in paragraph (1).

(3) INTERNATIONAL WORLDWIDE ASSESSMENT.—In conducting the study, the Director and the Academy are encouraged to work with domestic and foreign governmental and nongovernmental entities and international entities to—

(A) develop an international, worldwide assessment of the problems involved; and

(B) suggest such original research on any aspect of those problems as the Academy considers necessary.

(b) REPORT.—

(1) IN GENERAL.—The Director and the Academy shall submit to Congress a report that includes the major findings and recommendations resulting from the study required under this section.

(2) ACADEMY CONTRIBUTION.—The Academy's contribution to the report shall not be subject to any prior clearance or review, nor shall any prior clearance or conditions be imposed on the Academy as part of the agreement made by the Director with the Academy under this section.

(3) CONTENTS.—The report shall in any event include recommendations regarding—

(A) how a long-term program of domestic and international research, monitoring, modeling, and assessment of the causes and effects of varying levels of atmospheric carbon dioxide should be structured, including comments by the Director on the interagency requirements of such a program and comments by the Secretary of State on the international agreements required to carry out such a program;

(B) how the United States can best play a role in the development of such a long-term program on an international basis;

(C) what domestic resources should be made available to such a program;

(D) how the ongoing United States Government carbon dioxide assessment program should be modified to be of increased utility in providing information and recommendations of the highest possible value to government policymakers; and

(E) the need for periodic reports to Congress in conjunction with any long-term program that the Director and the Academy may recommend under this section.

(c) INFORMATION.—The Secretary of Energy, the Secretary of Commerce, the Administrator, and the Director of the National Science Foundation shall furnish to the Director or the Academy on request any information that the Director or the Academy determines to be necessary for purposes of conducting the study required by this section.

(d) SEPARATE ASSESSMENT OF INTERAGENCY IMPLEMENTATION REQUIREMENTS.—The Director shall provide a separate assessment of the interagency requirements to implement a comprehensive program of the type described in subsection (b)(3).

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—For the expenses of carrying out the carbon dioxide study authorized by this section (as determined by the Office), there are authorized to be appropriated such sums as are necessary, not exceeding $3,000,000 in the aggregate.

(2) PROVISION OF AMOUNTS TO THE ACADEMY.—At least 80 percent of any amounts appropriated pursuant to paragraph (1) shall be provided to the Academy.

## § 299103. Provisions enacted by Public Law 101–549 (commonly known as the Clean Air Act Amendments of 1990)

(a) STATE STANDARDS FOR EMISSION OF NITROGEN OXIDES FROM UNINSTALLED AIRCRAFT ENGINE TEST CELLS.—

(1) STUDY.—The Administrator and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that addresses at a minimum the following issues and such other issues as the Administrator and the Secretary of Transportation, in consultation with the Secretary of Defense, consider appropriate:

(A) Whether technologies exist to control some or all emissions of nitrogen oxides from test cells.

(B) The effectiveness of such technologies.

(C) The cost of implementing such technologies.

(D) Whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines.

(E) Whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells.

(F) The impact of not controlling nitrogen oxides from test cells in the applicable nonattainment areas and on other sources, stationary and mobile, on nitrogen oxides in the applicable nonattainment areas.

(2) REPORT.—The Administrator and the Secretary of Transportation shall submit to Congress a report of the study conducted under this subsection.

(3) AUTHORITY TO REGULATE.—After completion of the study under paragraph (1), a State may adopt and enforce any standard for emission of nitrogen oxides from test cells only after issuing a public notice stating whether the standard is in accordance with the findings of the study.

(b) REVIEW OF ACID GAS SCRUBBING REQUIREMENTS.—Prior to the promulgation of any performance standard for solid waste incineration units combusting municipal waste under section 211111 or 211128 of this title, the Administrator shall review the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 Fed. Reg. 52190 (December 20, 1989)), taking into account section 211128(b)(2) of this title.

(c) NATIONAL ACID LAKES REGISTRY.—The Administrator shall publish a national acid lakes registry that shall list, to the extent practical, all lakes that are known to be acidified due to acid deposition. Lakes shall be added to the registry as they become acidic or as data become available to show they are acidic. Lakes shall be deleted from the registry as they become nonacidic.

(d) INDUSTRIAL SULFUR DIOXIDE EMISSIONS.—

(1) REPORT.—

(A) IN GENERAL.—Every 5 years, the Administrator shall submit to Congress a report that contains—

(i) an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in subdivision 5 of division A), including units subject to section 233105(g)(6) of this title, for all years for which data are available, and a forecast of the likely trend in sulfur dioxide emissions over the following 20-year period; and

(ii) estimates of the actual emission reduction in each year resulting from promulgation of diesel fuel desulfurization regulations.

(B) CESSATION OF EFFECTIVENESS.—On May 15, 2000, subparagraph (A) ceases to be effective with respect to the requirement to submit a report to Congress.

(2) 5.60 MILLION TON CAP.—

(A) IN GENERAL.—When the inventory required by this subsection indicates that sulfur dioxide emissions from industrial sources, including units subject to section 233105(g)(5) of this title, may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator shall take such actions under division A as may be appropriate to ensure that sulfur dioxide emissions do not exceed 5.60 million tons per year.

(B) ACTIONS.—Those actions may include—

(i) the promulgation of new and revised standards of performance for new sources, including units subject to section 233105(g)(5) of this title, under section 211111(b) of this title; and

(ii) promulgation of standards of performance for existing sources, including units subject to section 233105(g)(5) of this title, under authority of this subsection.

(C) STANDARD OF PERFORMANCE.—With respect to an existing source regulated under this subsection, the term ''standard of performance'' means a standard that the Administrator determines is applicable to that source and that reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction that, taking into consideration the cost of achieving that degree of emission reduction and any nonair quality health and environmental impact and energy requirements, the Administrator determines has been adequately demonstrated for that category of sources.

(3) ELECTION TO BECOME AFFECTED UNIT.—Regulations promulgated under section 233105(b) of this title shall not prohibit a source from electing to become an affected unit under section 233109 of this title.

(e) IMPACT ON SMALL COMMUNITIES.—Before implementing a provision of this section or Public Law 101–549 (commonly known as the Clean Air Act Amendments of 1990) (104 Stat. 2399), the Administrator shall consult with the EPA regional small communities coordinators to determine the im-

pact of the provision on small communities, including the estimated cost of compliance with the provision.

(f) INFORMATION GATHERING ON GREENHOUSE GASES CONTRIBUTING TO GLOBAL CLIMATE CHANGE.—

(1) MONITORING.—The Administrator shall promulgate regulations to require that all affected sources subject to subdivision 5 of division A shall monitor carbon dioxide emissions. The regulations shall require that the data be reported to the Administrator. Subsection (d) of section 233111 of this title shall apply for purposes of this subsection in the same manner and to the same extent as that subsection applies to the monitoring and data described in section 233111 of this title.

(2) PUBLIC AVAILABILITY OF CARBON CIOXIDE INFORMATION.—For each unit required to monitor and provide carbon dioxide data under paragraph (1), the Administrator shall—

(A) compute the unit's aggregate annual total carbon dioxide emissions;

(B) incorporate the data into a computer database; and

(C) make the aggregate annual data available to the public.

(g) WESTERN STATES ACID DEPOSITION RESEARCH.—

(1) MONITORING AND RESEARCH.—The Administrator shall sponsor monitoring and research and submit to Congress annual and periodic assessment reports on—

(A) the occurrence and effects of acid deposition on surface water located in the part of the United States west of the Mississippi River;

(B) the occurrence and effects of acid deposition on high elevation ecosystems (including forests and surface water); and

(C) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds.

(2) ANALYSIS OF DATA.—The Administrator shall analyze data generated from the studies conducted under paragraph (1), data from the Western Lakes Survey, and other appropriate research and utilize predictive modeling techniques that take into account the unique geographic, climatological, and atmospheric conditions that exist in the western United States to determine the potential occurrence and effects of acid deposition due to any projected increases in the emission of sulfur dioxide and nitrogen oxides in the part of the United States located west of the Mississippi River. The Administrator shall include the results of the project conducted under this paragraph in the reports submitted to Congress under paragraph (1).

(h) DISADVANTAGED BUSINESS CONCERNS.—

(1) DEFINITION OF DISADVANTAGED BUSINESS CONCERN.—

(A) IN GENERAL.—In this subsection, the term ''disadvantaged business concern'' means a concern—

(i)(I) that is at least 51 percent owned by 1 or more socially and economically disadvantaged individuals; or

(II) in the case of a publicly traded company, at least 51 percent of the stock of which is owned by 1 or more socially and economically disadvantaged individuals; and

(ii) the management and daily business operations of which are controlled by socially and economically disadvantaged individuals.

(B) FOR-PROFIT BUSINESS CONCERNS.—

(i) PRESUMPTION.—A for-profit business concern is presumed to be a disadvantaged business concern for purposes of this subsection if it is at least 51 percent owned by, or in the case of a concern that is a publicly traded company at least 51 percent of the stock of the company is owned by, 1 or more individuals who are members of the following groups:

(I) Black Americans.

(II) Hispanic Americans.

(III) Native Americans.

(IV) Asian Americans.

(V) Women.

(VI) Disabled Americans.

(ii) REBUTTAL.—The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals described in that clause with respect to that business concern are not experiencing impediments to establishing or developing the concern as a result of the individual's identification as a member of a group described in that clause.

(C) CERTAIN INSTITUTIONS.—The following institutions are presumed to be disadvantaged business concerns for purposes of this subsection:

(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

(ii) Minority institutions (as defined by the Secretary of Education pursuant to the General Education Provisions Act (20 U.S.C. 1221 et seq.)).

(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

(D) JOINT VENTURES.—

(i) IN GENERAL.—A joint venture may be considered to be a disadvantaged business concern under this subsection, notwithstanding the size of the joint venture, if—

(I) a party to the joint venture is a disadvantaged business concern; and

(II) that party owns at least 51 percent of the joint venture.

(ii) LIMITATION.—A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

(E) EFFECT OF PARAGRAPH.—Nothing in this paragraph prohibits any member of a racial or ethnic group not described in subparagraph (B)(i) from establishing that the member has been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

(2) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by Public Law 101–549 (commonly known as the Clean Air Act Amendments of 1990) (104 Stat. 2399) that uses EPA funds, the Administrator shall, to the extent practicable, require that not less than 10 percent of total Federal funding for the research will be made available to disadvantaged business concerns.

(3) PROHIBITION OF USE OF QUOTAS.—Nothing in this subsection permits or requires the use of quotas or a requirement that has the effect of a quota in determining eligibility under this subsection.

## § 299104. Provision enacted by the National Highway System Designation Act of 1995

(a) IN GENERAL.—The Administrator shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 215203 or 215303 of this title, but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with either section.

(b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not disapprove or apply an automatic discount to a State implementation plan provision under section 215203 or 215303 of this title on the basis of a

policy, regulation, or guidance providing for a discount of emission credits because the inspection and maintenance program in the plan provision is decentralized or is a test-and-repair program.

(c) EMISSION REDUCTION CREDITS.—

(1) STATE PLAN PROVISION.—Not later than 120 days after November 28, 1995, a State may submit an implementation plan provision proposing an interim inspection and maintenance program under section 215203 or 215303 of this title. The Administrator shall approve the program based on the full amount of credits proposed by the State for each element of the program if the proposed credits reflected good faith estimates by the State and the provision was otherwise in compliance with division A. If, within the 120-day period, the State submits to the Administrator proposed provisions of the implementation plan, has all of the statutory authority necessary to implement the provisions, and has proposed a regulation to adopt the provisions, the Administrator may approve the provisions without regard to whether or not the regulation had been issued as a final regulation by the State.

(2) EXPIRATION OF INTERIM APPROVAL.—

(A) IN GENERAL.—An interim approval under paragraph (1) shall expire on the earlier of—

(i) the last day of the 18-month period beginning on the date of the interim approval; or

(ii) the date of final approval.

(B) NO EXTENSION.—An interim approval may not be extended.

(3) FINAL APPROVAL.—The Administrator shall grant final approval of a provision submitted under paragraph (1) based on the credits proposed by the State during or after the period of interim approval if data collected on the operation of the State program demonstrates that the credits were appropriate and the provision is otherwise in compliance with division A.

(4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any determination with respect to interim or full approval shall be based on the elements of the program and shall not apply any automatic discount because the program is decentralized or is a test-and-repair program.

### § 299105. Provision enacted by the Transportation Equity Act for the 21st Century

(a) GRANTS.—Through grants under section 211103 of this title, the Administrator shall use appropriated funds not later than fiscal year 2000 to fund 100 percent of the cost of the establishment, purchase, operation, and maintenance of a $PM_{2.5}$ monitoring network necessary to implement the

NAAQSes for $PM_{2.5}$ under section 211109 of this title. Implementation shall not result in a diversion or reprogramming of funds from other Federal, State, or local Clean Air Act activities.

(b) ESTABLISHMENT OF NETWORK.—EPA and the States, consistent with their respective authorities under division A, shall ensure that the national network (designated in subsection (a)), which consists of the $PM_{2.5}$ monitors necessary to implement the NAAQSes, is established.

### § 299106. Provision enacted by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004

(a) CONSIDERATION OF SAFETY FACTORS.—In considering any request from California to authorize California to adopt or enforce standards of other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator shall give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

(b) REGULATION.—The Administrator shall promulgate regulations under division A that contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower.

(c) PREEMPTION.—

(1) PROHIBITION.—No State or any political subdivision thereof may adopt or attempt to enforce any standard or other requirement applicable to spark-ignition engines smaller than 50 horsepower.

(2) EXCEPTION FOR CALIFORNIA.—The prohibition under paragraph (1) does not apply to or restrict the authority granted to California under section 221109(e) of this title.

(3) EXCEPTION FOR OTHER STATES.—The prohibition under paragraph (1) does not apply to or restrict the authority of any State under section 221109(e)(2)(B) of this title to enforce standards or other requirements that were adopted by that State before September 1, 2003.

### § 299107. Provisions enacted by the Energy Policy Act of 2005

(a) SURVEY OF RENEWABLE FUEL MARKET.—

(1) SURVEY AND REPORT.—The Administrator, in consultation with the Secretary of Energy acting through the Administrator of the Energy Information Administration, shall annually—

(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

(i) conventional gasoline containing ethanol;

(ii) reformulated gasoline containing ethanol;

(iii) conventional gasoline containing renewable fuel; and

(iv) reformulated gasoline containing renewable fuel; and

(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.

(b) MTBE CONTAMINATION CLAIMS FILED AFTER AUGUST 8, 2005.—Claims and legal actions filed after August 8, 2005, related to allegations involving actual or threatened contamination of methyl tertiary butyl ether may be removed to the appropriate United States district court.

(b) TITLE 18.—

(1) IN GENERAL.—Part I of title 18, United States Code, is amended by inserting after chapter 33 the following:

**"CHAPTER 34—ENVIRONMENT**



**"§ 731. General provisions (subtitle I of title 55)**

"An officer or employee of the Environmental Protection Agency who is subject to, and knowingly violates, section 109104 of title 55 shall be imprisoned not more than 1 year, fined under this title, or both.

**"§ 732. Air (subtitle II of title 55)**

"(a) OFFENSES UNDER SUBTITLE II OF TITLE 55 GENERALLY.—

"(1) DEFINITIONS.—In this subsection:

"(A) AIR POLLUTANT.—The term 'air pollutant' has the meaning given the term in section 201101 of title 55.

"(B) APPLICABLE IMPLEMENTATION PLAN.—The term 'applicable implementation plan' has the meaning given the term in section 201101 of title 55.

"(C) ORGANIZATION.—

"(i) IN GENERAL.—The term 'organization' means a legal entity, other than a government, established or organized for any purpose.

"(ii) INCLUSIONS.—The term 'organization' includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(D) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—The term 'period of federally assumed enforcement' has the meaning given the term in section 211113(a) of title 55.

"(E) PERSON.—

"(i) IN GENERAL.—The term 'person' includes, in addition to the entities described in section 201101(19) of title 55, any responsible corporate officer.

"(ii) FOR PURPOSES OF PARAGRAPHS (2), (3), (4), AND (6).—Except in the case of knowing and willful violations, for purposes of paragraphs (2), (3), (4), and (6), the term 'person' does not include an employee who is carrying out the normal activities of the employee and who is acting under orders from the employer of the employee.

"(iii) FOR PURPOSES OF PARAGRAPH (5).—Except in the case of knowing and willful violations, for purposes of paragraph (5), the term 'person' does not include an employee who is carrying out the normal activities of the employee and who is not a part of senior management personnel or a corporate officer.

"(F) SERIOUS BODILY INJURY.—The term 'serious bodily injury' means bodily injury that involves—

"(i) a substantial risk of death;

"(ii) unconsciousness;

"(iii) extreme physical pain;

"(iv) protracted and obvious disfigurement; or

"(v) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

"(2) OFFENSES.—

"(A) IN GENERAL.—A person that knowingly violates—

"(i) a requirement or prohibition of an applicable implementation plan—

"(I) during any period of federally assumed enforcement; or

"(II) more than 30 days after having been notified by the Administrator under section 211113(b)(1) of title 55 that the person is violating the requirement or prohibition;

"(ii)(I) section 203103, 211111(j), 211112, 211113(b)(1), 211114, 211128, 213107(a), 213109, 235102(a), or 235103(c) of title 55; or

"(II) subdivision 5 or 7 of division A of subtitle II of title 55;

"(iii) a requirement of a regulation, order, waiver, or permit promulgated or approved under a section or subdivision specified in clause (ii); or

"(iv) a requirement for the payment of a fee owed the United States under division A of subtitle II of title 55 (other than subdivision 3);

shall be imprisoned not more than 5 years, fined under this title, or both.

"(B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFENDERS.—If a conviction of any person under this paragraph is for a violation committed after a 1st conviction of the person under this paragraph, the maximum penalty shall be doubled with respect to both the imprisonment and the fine.

"(3) NOTICES, APPLICATIONS, RECORDS, REPORTS, PLANS, OR OTHER DOCUMENTS; REQUIRED NOTIFICATIONS AND REPORTS; REQUIRED MONITORING DEVICES AND METHOD.—

"(A) IN GENERAL.—Any person that knowingly—

"(i) makes any false material statement, representation, or certification in, or omits material information from, or alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to division A of subtitle II of title 55 to be filed or maintained (whether with respect to the requirements imposed by the Administrator or with respect to the requirements imposed by a State);

"(ii) fails to notify or report as required under division A of subtitle II of title 55; or

"(iii) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under division A of subtitle II of title 55;

shall be imprisoned not more than 2 years, fined under this title, or both.

"(B) DOUBLING OF MAXIMUM PENALTY.—If a conviction of any person under this paragraph is for a violation committed after a 1st conviction of the person under this paragraph, the maximum penalty shall be doubled with respect to both the imprisonment and the fine.

"(4) FEES.—

"(A) IN GENERAL.—Any person that knowingly fails to pay any fee owed the United States under subdivision 1, 2, 5, 6, or 7 of division A of subtitle II of title 55 shall be imprisoned not more than 1 year, fined under this title, or both.

"(B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFENDERS.—If a conviction of any person under this paragraph is for a violation committed after a 1st conviction of the person under this paragraph, the maximum penalty shall be doubled with respect to both the imprisonment and the fine.

"(5) NEGLIGENT RELEASE.—

"(A) IN GENERAL.—Any person that—

"(i) negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 211112 of title 55 or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 211112 of title 55; and

"(ii) at the time negligently places another person in imminent danger of death or serious bodily injury;

shall be imprisoned not more than 1 year, fined under this title, or both.

"(B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFENDERS.—If a conviction of any person under this paragraph is for a violation committed after a 1st conviction of the person under this paragraph, the maximum penalty shall be doubled with respect to both the imprisonment and the fine.

"(C) RELEASE IN ACCORDANCE WITH STANDARD OR PERMIT.—For any air pollutant for which the Administrator has set an emission standard or for any source for which a permit has been issued under subdivision 6 of division A of subtitle II of title 55, a release of the pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph.

"(6) KNOWING RELEASE.—

"(A) IN GENERAL.—Any person that—

''(i) knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 211112 of title 55 or any extremely hazardous substance listed pursuant to section 302(a)(2) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed in section 211112 of title 55; and

''(ii) knows at the time that the person thereby places another person in imminent danger of death or serious bodily injury;

shall be imprisoned not more than 15 years, fined under this title, or both.

''(B) ORGANIZATIONS.—Any organization that commits a violation under subparagraph (A) shall be subject to a fine of not more than $1,000,000 for each violation.

''(C) DOUBLING OF MAXIMUM PENALTY.—If a conviction of any person under this paragraph is for a violation committed after a 1st conviction of the person under this paragraph, the maximum penalty shall be doubled with respect to both the imprisonment and the fine.

''(D) RELEASE IN ACCORDANCE WITH STANDARD OR PERMIT.—For any air pollutant for which the Administrator has set an emission standard or for any source for which a permit has been issued under subdivision 6 of division A of subtitle II of title 55, a release of the pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph.

''(E) KNOWLEDGE.—

''(i) IN GENERAL.—Except as provided in clause (ii), in determining whether a defendant that is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

''(I) the defendant is responsible only for actual awareness or actual belief possessed; and

''(II) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant.

''(ii) CIRCUMSTANTIAL EVIDENCE.—In proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

''(F) AFFIRMATIVE DEFENSE.—

''(i) IN GENERAL.—It is an affirmative defense to a prosecution under this paragraph that—

''(I) the conduct charged was freely consented to by the person endangered;

''(II) the danger and conduct charged were reasonably foreseeable hazards of—

''(aa) an occupation, a business, or a profession; or

''(bb) medical treatment or medical or scientific experimentation conducted by professionally approved methods; and

''(III) the person endangered had been made aware of the risks involved prior to giving consent.

''(ii) PREPONDERANCE OF THE EVIDENCE.—The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

''(G) OTHER DEFENSES AND BARS TO PROSECUTION; CONCEPTS OF JUSTIFICATION AND EXCUSE.—All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

''(b) UNAUTHORIZED DISCLOSURE OF INFORMATION.—

''(1) DEFINITIONS.—In this subsection:

''(A) COVERED PERSON.—The term 'covered person' has the meaning given the term in section 211112(q)(7)(D)(i) of title 55.

''(B) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term 'off-site consequence analysis information' has the meaning given the term in section 211112(q)(7)(D)(i) of title 55).

''(C) STATIONARY SOURCE.—The term 'stationary source' has the meaning given the term in section 211112(q)(1) of title 55.

''(2) OFFENSE.—Notwithstanding section 211113 of title 55 and subsection (a) of this section, a covered person that willfully violates a restriction or prohibition established by subparagraph (D) of section 211112(q)(7) of title 55 (including the regulations promulgated under clause (ii) of that subparagraph) shall be fined for an infraction under section 3571 of this title (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis informa-

tion, except that section 3571(d) of this title shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that the loss would occur. The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this subsection shall not exceed $1,000,000 for violations committed during any 1 calendar year.''.

(2) CONFORMING AMENDMENT.—The table of contents of part I of title 18, United States Code, is amended by inserting after the item relating to chapter 33 the following:

''**34. Environment** ..... **731''.**

**SEC. 4. CONFORMING AMENDMENTS.**

(a) TITLE 16.—The 1st section of the Act of August 1, 1958 (16 U.S.C. 742d–1), is amended by striking ''Secretary of the Interior'' and inserting ''Administrator of the Environmental Protection Agency''.

(b) TITLE 21.—

(1) Section 406 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346) is amended—

(A) by striking ''Any poisonous'' and inserting ''(a) IN GENERAL.—Any poisonous''; and

(B) by adding at the end the following:

''(b) TOLERANCES FOR PESTICIDE CHEMICALS.—

''(1) IN GENERAL.—The function of establishing tolerances for pesticide chemicals for purposes of subsection (a) shall be carried out by the Administrator.

''(2) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the function of the Administrator under paragraph (1), the Administrator has authority to—

''(A) monitor compliance with the tolerances and the effectiveness of surveillance and enforcement; and

''(B) provide technical assistance to the States and conduct research under this Act and the Public Health Service Act (42 U.S.C. 201 et seq.).

''(3) INCIDENTAL FUNCTIONS.—The function of the Administrator under paragraph (1) includes such functions as are incidental to or necessary for the performance by or under the Administrator of the function described in paragraph (1), including authority provided by law to prescribe regulations relating primarily to the function.''.

(2) Section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) is amended—

(A) in subsection (p)(2), by striking ''section 8 of the Environmental Research, Development, and Demonstration Act of 1978 (42 U.S.C. 4365),'' and inserting ''section 109102 of title 55, United States Code,'';

(B) by redesignating subsection (s) as subsection (t); and

(C) by inserting after subsection (r) the following:

''(s) AUTHORITY OF THE ADMINISTRATOR.—

''(1) IN GENERAL.—In carrying out the function of establishing tolerances for pesticide chemicals for purposes of this section, the Administrator has authority to—

''(A) monitor compliance with the tolerances and the effectiveness of surveillance and enforcement; and

''(B) provide technical assistance to the States and conduct research under this Act and the Public Health Service Act (42 U.S.C. 201 et seq.).

''(2) INCIDENTAL FUNCTIONS.—The function of the Administrator described in paragraph (1) includes such functions as are incidental to or necessary for the performance by or under the Administrator of the function, including authority provided by law to prescribe regulations relating primarily to the function.''.

(c) TITLE 26.—Section 169(d) of the Internal Revenue Code of 1986 (26 U.S.C. 169(d)) is amended—

(1) in paragraph (1)(B), by striking ''the Clean Air Act, as amended (42 U.S.C. 1857 et seq.);'' and inserting ''division A of subtitle II of title 55, United States Code;'';

(2) in paragraph (2), by striking ''section 302(b) of the Clean Air Act.'' and inserting ''section 201101 of title 55, United States Code.''; and

(3) in paragraph (3), by striking ''means, in the case of water pollution, the Secretary of the Interior and, in the case of air pollution, the Secretary of Health and Human Services'' and inserting ''means the Administrator of the Environmental Protection Agency''.

(d) TITLE 42.—Section 274h of the Atomic Energy Act of 1954 (42 U.S.C. 2021(h)) is amended—

(1) by striking the 1st and 4th sentences;

(2) in the 2d sentence, by striking ''Council'' and inserting ''Administrator of the Environmental Protection Agency (referred to in this subsection as the 'Administrator')''; and

(3) by striking ''Council'' each place it appears and inserting ''Administrator''.

**SEC. 5. TRANSITIONAL AND SAVINGS PROVISIONS.**

(a) DEFINITIONS.—In this section:

(1) RESTATED PROVISION.—The term ''restated provision'' means a provision of title 18 or 55, United States Code, that is enacted by section 3.

(2) SOURCE PROVISION.—The term ''source provision'' means a provision of law that is replaced by a restated provision.

(b) CUTOFF DATE.—The restated provisions replace certain provisions of law enacted on or before March 7, 2015. If a law enacted after that date amends or repeals a source provision, that law is deemed to amend or repeal, as the case may be, the corresponding restated provision. If a law enacted after that date is otherwise inconsistent with a restated provision or a provision of this Act, that law supersedes the restated provision or provision of this Act to the extent of the inconsistency.

(c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—A restated provision is deemed to have been enacted on the date of enactment of the corresponding source provision.

(d) REFERENCES TO RESTATED PROVISIONS.—A reference to a restated provision is deemed to refer to the corresponding source provision.

(e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source provision, including a reference in a regulation, order, or other law, is deemed to refer to the corresponding restated provision.

(f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A regulation, order, or other administrative action in effect under a source provision continues in effect under the corresponding restated provision.

(g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or an offense committed under a source provision is deemed to have been taken or committed under the corresponding restated provision.

**SEC. 6. REPEALS.**

The following provisions of law are repealed, except with respect to rights and duties that matured, penalties that were incurred, or proceedings that were begun before the date of enactment of this Act:

Schedule of Laws Repealed

| Act | Section | United States Code Former Classification |
|---|---|---|
| Clean Air Act (Act of July 14, 1955, ch. 360) | 101 | 42 U.S.C. 7401. |
| | 102 | 42 U.S.C. 7402. |
| | 103 | 42 U.S.C. 7403. |
| | 104 | 42 U.S.C. 7404. |
| | 105 | 42 U.S.C. 7405. |
| | 106 | 42 U.S.C. 7406. |
| | 107 | 42 U.S.C. 7407. |
| | 108 | 42 U.S.C. 7408. |
| | 109 | 42 U.S.C. 7409. |
| | 110 | 42 U.S.C. 7410. |
| | 111 | 42 U.S.C. 7411. |
| | 112 | 42 U.S.C. 7412. |

Schedule of Laws Repealed—Continued

| Act | Section | United States Code Former Classification |
|---|---|---|
| | 113 | 42 U.S.C. 7413. |
| | 114 | 42 U.S.C. 7414. |
| | 115 | 42 U.S.C. 7415. |
| | 116 | 42 U.S.C. 7416. |
| | 117 | 42 U.S.C. 7417. |
| | 118 | 42 U.S.C. 7418. |
| | 119 | 42 U.S.C. 7419. |
| | 120 | 42 U.S.C. 7420. |
| | 121 | 42 U.S.C. 7421. |
| | 122 | 42 U.S.C. 7422. |
| | 123 | 42 U.S.C. 7423. |
| | 124 | 42 U.S.C. 7424. |
| | 125 | 42 U.S.C. 7425. |
| | 126 | 42 U.S.C. 7426. |
| | 127 | 42 U.S.C. 7427. |
| | 128 | 42 U.S.C. 7428. |
| | 129 | 42 U.S.C. 7429. |
| | 130 | 42 U.S.C. 7430. |
| | 131 | 42 U.S.C. 7431. |
| | 160 | 42 U.S.C. 7470. |
| | 161 | 42 U.S.C. 7471. |
| | 162 | 42 U.S.C. 7472. |
| | 163 | 42 U.S.C. 7473. |
| | 164 | 42 U.S.C. 7474. |
| | 165 | 42 U.S.C. 7475. |
| | 166 | 42 U.S.C. 7476. |
| | 167 | 42 U.S.C. 7477. |
| | 168 | 42 U.S.C. 7478. |
| | 169 | 42 U.S.C. 7479. |
| | 169A | 42 U.S.C. 7491. |
| | 169B | 42 U.S.C. 7492. |
| | 171 | 42 U.S.C. 7501. |
| | 172 | 42 U.S.C. 7502. |
| | 173 | 42 U.S.C. 7503. |
| | 174 | 42 U.S.C. 7504. |
| | 175 | 42 U.S.C. 7505. |
| | 175A | 42 U.S.C. 7505a. |
| | 176 | 42 U.S.C. 7506. |
| | 176A | 42 U.S.C. 7506a. |
| | 177 | 42 U.S.C. 7507. |
| | 178 | 42 U.S.C. 7508. |
| | 179 | 42 U.S.C. 7509. |
| | 179B | 42 U.S.C. 7509a. |
| | 181 | 42 U.S.C. 7511. |
| | 182 | 42 U.S.C. 7511a. |
| | 183 | 42 U.S.C. 7511b. |
| | 184 | 42 U.S.C. 7511e. |
| | 185 | 42 U.S.C. 7511d. |
| | 185A | 42 U.S.C. 7511e. |
| | 185B | 42 U.S.C. 7511f. |
| | 186 | 42 U.S.C. 7512. |
| | 187 | 42 U.S.C. 7512a. |
| | 188 | 42 U.S.C. 7513. |
| | 189 | 42 U.S.C. 7513a. |
| | 190 | 42 U.S.C. 7513b. |
| | 191 | 42 U.S.C. 7514. |
| | 192 | 42 U.S.C. 7514a. |
| | 193 | 42 U.S.C. 7515. |
| | 202 | 42 U.S.C. 7521. |
| | 203 | 42 U.S.C. 7522. |
| | 204 | 42 U.S.C. 7523. |
| | 205 | 42 U.S.C. 7524. |
| | 206 | 42 U.S.C. 7525. |
| | 207 | 42 U.S.C. 7541. |
| | 208 | 42 U.S.C. 7542. |
| | 209 | 42 U.S.C. 7543. |
| | 210 | 42 U.S.C. 7544. |
| | 211 | 42 U.S.C. 7545. |
| | 212 | 42 U.S.C. 7546. |
| | 213 | 42 U.S.C. 7547. |
| | 214 | 42 U.S.C. 7548. |
| | 215 | 42 U.S.C. 7549. |
| | 216 | 42 U.S.C. 7550. |
| | 217 | 42 U.S.C. 7552. |
| | 218 | 42 U.S.C. 7553. |
| | 219 | 42 U.S.C. 7554. |
| | 231 | 42 U.S.C. 7571. |
| | 232 | 42 U.S.C. 7572. |
| | 233 | 42 U.S.C. 7573. |
| | 234 | 42 U.S.C. 7574. |
| | 241 | 42 U.S.C. 7581. |
| | 242 | 42 U.S.C. 7582. |
| | 243 | 42 U.S.C. 7583. |
| | 244 | 42 U.S.C. 7584. |
| | 245 | 42 U.S.C. 7585. |
| | 246 | 42 U.S.C. 7586. |
| | 247 | 42 U.S.C. 7587. |

Schedule of Laws Repealed—Continued

| Act | Section | United States Code Former Classification |
|---|---|---|
| | 248 | 42 U.S.C. 7588. |
| | 249 | 42 U.S.C. 7589. |
| | 250 | 42 U.S.C. 7590. |
| | 301 | 42 U.S.C. 7601. |
| | 302 | 42 U.S.C. 7602. |
| | 303 | 42 U.S.C. 7603. |
| | 304 | 42 U.S.C. 7604. |
| | 305 | 42 U.S.C. 7605. |
| | 306 | 42 U.S.C. 7606. |
| | 307 | 42 U.S.C. 7607. |
| | 308 | 42 U.S.C. 7608. |
| | 309 | 42 U.S.C. 7609. |
| | 310 | 42 U.S.C. 7610. |
| | 311 | 42 U.S.C. 7611. |
| | 312 | 42 U.S.C. 7612. |
| | 314 | 42 U.S.C. 7614. |
| | 315 | 42 U.S.C. 7615. |
| | 316 | 42 U.S.C. 7616. |
| | 317 | 42 U.S.C. 7617. |
| | 319 | 42 U.S.C. 7619. |
| | 320 | 42 U.S.C. 7620. |
| | 321 | 42 U.S.C. 7621. |
| | 322 | 42 U.S.C. 7622. |
| | 323 | 42 U.S.C. 7624. |
| | 324 | 42 U.S.C. 7625. |
| | 325 | 42 U.S.C. 7625–1. |
| | 326 | 42 U.S.C. 7625a. |
| | 327 | 42 U.S.C. 7626. |
| | 328 | 42 U.S.C. 7627. |
| | 329 | 42 U.S.C. 7628. |
| | 402 (as added by Pub. L. 91–604). | 42 U.S.C. 7641. |
| | 403 (as added by Pub. L. 91–604). | 42 U.S.C. 7642. |
| | 401 (as added by Pub. L. 101–549). | 42 U.S.C. 7651. |
| | 402 (as added by Pub. L. 101–549). | 42 U.S.C. 7651a. |
| | 403 (as added by Pub. L. 101–549). | 42 U.S.C. 7651b. |
| | 404 | 42 U.S.C. 7651c. |
| | 405 | 42 U.S.C. 7651d. |
| | 406 | 42 U.S.C. 7651e. |
| | 407 | 42 U.S.C. 7651f. |
| | 408 | 42 U.S.C. 7651g. |
| | 409 | 42 U.S.C. 7651h. |
| | 410 | 42 U.S.C. 7651i. |
| | 411 | 42 U.S.C. 7651j. |
| | 412 | 42 U.S.C. 7651k. |
| | 413 | 42 U.S.C. 7651*l*. |
| | 414 | 42 U.S.C. 7651m. |
| | 415 | 42 U.S.C. 7651n. |
| | 416 | 42 U.S.C. 7651*o*. |
| | 501 | 42 U.S.C. 7661. |
| | 502 | 42 U.S.C. 7661a. |
| | 503 | 42 U.S.C. 7661b. |
| | 504 | 42 U.S.C. 7661c. |
| | 505 | 42 U.S.C. 7661d. |
| | 506 | 42 U.S.C. 7661e. |
| | 507 | 42 U.S.C. 7661f. |
| | 601 | 42 U.S.C. 7671. |
| | 602 | 42 U.S.C. 7671a. |
| | 603 | 42 U.S.C. 7671b. |
| | 604 | 42 U.S.C. 7671c. |
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| | 606 | 42 U.S.C. 7671e. |
| | 607 | 42 U.S.C. 7671f. |
| | 608 | 42 U.S.C. 7671g. |
| | 609 | 42 U.S.C. 7671h. |
| | 610 | 42 U.S.C. 7671i. |
| | 611 | 42 U.S.C. 7671j. |
| | 612 | 42 U.S.C. 7671k. |
| | 613 | 42 U.S.C. 7671*l*. |
| | 614 | 42 U.S.C. 7671m. |
| | 615 | 42 U.S.C. 7671n. |
| | 616 | 42 U.S.C. 7671*o*. |
| | 617 | 42 U.S.C. 7671p. |
| | 618 | 42 U.S.C. 7671q. |
| National Environmental Policy Act of 1969 (Public Law 91–190) | 2 | 42 U.S.C. 4321. |
| | 101 | 42 U.S.C. 4331. |
| | 102 | 42 U.S.C. 4332. |
| | 103 | 42 U.S.C. 4333. |
| | 104 | 42 U.S.C. 4334. |
| | 105 | 42 U.S.C. 4335. |

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| | 201 | 42 U.S.C. 4341. |
| | 202 | 42 U.S.C. 4342. |
| | 203 | 42 U.S.C. 4343. |
| | 204 | 42 U.S.C. 4344. |
| | 205 | 42 U.S.C. 4345. |
| | 206 | 42 U.S.C. 4346. |
| | 207 | 42 U.S.C. 4346a. |
| | 208 | 42 U.S.C. 4346b. |
| | 209 | 42 U.S.C. 4347. |
| Environmental Quality Improvement Act of 1970 (Public Law 91–224) | 202 | 42 U.S.C. 4371. |
| | 203 | 42 U.S.C. 4372. |
| | 204 | 42 U.S.C. 4373. |
| | 205 | 42 U.S.C. 4374. |
| | 206 | 42 U.S.C. 4375. |
| Reorganization Plan No. 3 of 1970 | 1 | 42 U.S.C. 4321 note; 5 U.S.C. App. |
| | 2 | 42 U.S.C. 4321; 5 U.S.C. App. |
| | 3 | 42 U.S.C. 4321; 5 U.S.C. App. |
| | 4 | 42 U.S.C. 4321; 5 U.S.C. App. |
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| | 6 | 42 U.S.C. 4321; 5 U.S.C. App. |
| | 7 | 42 U.S.C. 4321; 5 U.S.C. App. |
| Public Law 95–95 | 203 | 42 U.S.C. 7551. |
| | 402 | 42 U.S.C. 4362. |
| | 403(b) | 42 U.S.C. 7401 note. |
| | 403(c) | 42 U.S.C. 7401 note. |
| | 403(d) | 42 U.S.C. 7501 note. |
| | 403(f) | 42 U.S.C. 7421 note. |
| | 404 | 42 U.S.C. 7401 note. |
| | 405 | 42 U.S.C. 7401 note. |
| | 406 | 42 U.S.C. 7401 note. |
| Public Law 95–134 | 502 | 42 U.S.C. 4368b. |
| Public Law 95–155 | 6 | 42 U.S.C. 4363 note. |
| | 7 | 42 U.S.C. 4364. |
| | 8 | 42 U.S.C. 4365. |
| | 9 | 42 U.S.C. 4366. |
| | 10 | 42 U.S.C. 4361b. |
| | 12 | 42 U.S.C. 4367. |
| Public Law 95–477 | 3(d) | 42 U.S.C. 4368. |
| | 5 | 42 U.S.C. 4369. |
| | 6 | 42 U.S.C. 4361c. |
| Public Law 95–623 | 9 | 42 U.S.C. 4362a. |
| Public Law 96–229 | 2(d) | 42 U.S.C. 4363a. |
| | 2(e) | 42 U.S.C. 4363 note. |
| | 4 | 42 U.S.C. 4369a. |
| | 5 | 42 U.S.C. 4370. |
| Acid Precipitation Act of 1980 (Public Law 96–294) | 702 | 42 U.S.C. 8901. |
| | 703 | 42 U.S.C. 8902. |
| | 704 | 42 U.S.C. 8903. |
| | 705 | 42 U.S.C. 8904. |
| | 706 | 42 U.S.C. 8905. |
| | 711 | 42 U.S.C. 8911. |
| | 712 | 42 U.S.C. 8912. |
| Public Law 96–569 | 2(f) | 42 U.S.C. 4363. |
| Public Law 98–80 | 1 | 42 U.S.C. 4370a. |
| Public Law 98–313 | 2 | 42 U.S.C. 4368a. |
| Public Law 99–499 | 118(k) | 42 U.S.C. 7401 note. |
| | 118(n) | 42 U.S.C. 7401 note. |
| | 401 | 42 U.S.C. 7401 note. |

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| | 402 | 42 U.S.C. 7401 note. |
| | 403 | 42 U.S.C. 7401 note. |
| | 404 | 42 U.S.C. 7401 note. |
| | 405 | 42 U.S.C. 7401 note. |
| Public Law 101–144 | title III, 1st paragraph under heading "ADMINISTRATIVE PROVISIONS", at 103 Stat. 858. | 42 U.S.C. 4370b. |
| Public Law 101–508 | 6501 | 42 U.S.C. 4370c. |
| Public Law 101–549 | 233 | 42 U.S.C. 7571 note. |
| | 305(c) | 42 U.S.C. 7429 note. |
| | 405 | 42 U.S.C. 7403 note. |
| | 406 | 42 U.S.C. 7651 note. |
| | 711(a) | 42 U.S.C. 7401 note. |
| | 711(b) | 42 U.S.C. 7401 note. |
| | 810 | 42 U.S.C. 7401 note. |
| | 821 | 42 U.S.C. 7651k note. |
| | 901(g) | 42 U.S.C. 7403 note. |
| | 1001 | 42 U.S.C. 7601 note. |
| | 1002 | 42 U.S.C. 7601 note. |
| Public Law 101–593 | 201 | 42 U.S.C. 4321 note. |
| | 202 | 42 U.S.C. 4321 note. |
| | 203 | 42 U.S.C. 4321 note. |
| | 204 | 42 U.S.C. 4321 note. |
| | 205 | 42 U.S.C. 4321 note. |
| Public Law 101–617 | 4 | 42 U.S.C. 4366a. |
| Public Law 102–389 | title III, 1st paragraph under heading "ADMINISTRATIVE PROVISIONS", at 106 Stat. 1602. | 42 U.S.C. 4370d. |
| Public Law 104–59 | 348 | 42 U.S.C. 7511a note. |
| Public Law 104–88 | 401 | 42 U.S.C. 4332 note. |
| Public Law 104–204 | title III, paragraph under heading "WORKING CAPITAL FUND (INCLUDING TRANSFER OF FUNDS)", at 110 Stat. 2912. | 42 U.S.C. 4370e. |
| Public Law 105–178 | 6101 | 42 U.S.C. 7407 note. |
| | 6102 | 42 U.S.C. 7407 note. |
| | 6103 | 42 U.S.C. 7407 note. |
| Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 (Public Law 106–377) | title III, 1st paragraph under heading "ADMINISTRATIVE PROVISIONS", at 114 Stat. 1441–A. | 42 U.S.C. 4370f. |
| Public Law 106–398 | 317 | 42 U.S.C. 4321 note. |
| Public Law 108–199 | 425(b) | 42 U.S.C. 7407 note. |
| | 428(a) | not classified. |
| | 428(b) | 42 U.S.C. 7547 note. |
| | 428(c) through (e) | not classified. |
| Public Law 109–58 | 1501(d) | 42 U.S.C. 7545 note. |
| | 1503 | 42 U.S.C. 7545 note. |

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| | 1504(d)(2) | 42 U.S.C. 7545 note. |
| Public Law 109–59 | 10211 | not classified. |
| Public Law 110–140 | 204(a) | 42 U.S.C. 7545 note. |
| Public Law 111–8 | div. E, title II (3d paragraph under heading ''ADMINISTRATIVE PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY (INCLUDING RESCISSION OF FUNDS)'' (1st sentence), at 123 Stat. 728. | 42 U.S.C. 4370g. |
| | div. E, title II (3d paragraph under heading ''ADMINISTRATIVE PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY (INCLUDING RESCISSION OF FUNDS)'' (last sentence), at 123 Stat. 728. | not classified. |
| | div. E, title II (last paragraph under heading ''ADMINISTRATIVE PROVISIONS, ENVIRONMENTAL PROTECTION AGENCY (INCLUDING RESCISSION OF FUNDS), AT 123 STAT. 729''. | 42 U.S.C. 4370h. |
| Public Law 112–141 | div. A, title XIII, § 1319 | 42 U.S.C. 4332a. |

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