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PROPOSED LEGISLATION—"CLEAN AIR ACT  
AMENDMENTS OF 1989"

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MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DRAFT OF PROPOSED LEGISLATION TO AMEND THE CLEAN AIR ACT TO PROVIDE FOR THE ATTAINMENT AND MAINTENANCE OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS, THE CONTROL OF TOXIC AIR POLLUTANTS, THE PREVENTION OF ACID DEPOSITION, AND OTHER IMPROVEMENTS IN THE QUALITY OF THE NATION'S AIR



JULY 24, 1989.—Message and accompanying papers referred to the Committee on Energy and Commerce and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1989



*To the Congress of the United States:*

Today I am pleased to transmit proposed legislation entitled the "Clean Air Act Amendments of 1989." This proposal reflects the first major clean air legislation proposed by the executive branch in a decade. It is designed to achieve consensus by complementing the important efforts of the Congress in recent years, so that we can move forward this year with a plan to protect our Nation's air.

On June 12, 1989, I outlined the highlights of my program to provide clean air for all Americans, the first sweeping revisions to the Clean Air Act since 1977. This legislation implements that program. While emissions of some pollutants—such as lead and carbon monoxide—have been reduced since the Clean Air Act was passed in 1970, progress has not come quickly enough and much remains to be done.

My proposal is designed to curb three major threats: acid rain, urban air pollution, and toxic air emissions. The seven-title proposal I am sending you today represents the actions that we believe the Congress should take in each of these areas. If this legislation is enacted, acid rain-related pollutants will be reduced by nearly one-half, all urban areas in the country will finally attain national air quality standards, and emissions of toxic air pollutants will be slashed.

My acid rain proposal would permanently cut sulfur dioxide (SO<sub>2</sub>) emissions by 10 million tons from 1980 levels and would result in a 2 million ton cut in nitrogen oxide (NO<sub>x</sub>) emissions from levels projected by the year 2000. All cities currently not meeting the health standards for ozone and carbon monoxide would be brought into attainment. Most cities would attain the standard by 1995, and the plan is designed to ensure attainment in all but the most severely impacted cities by the year 2000. New plants emitting toxic compounds into the air would be required to employ the best technology currently available so as to achieve a significant cut in pollutants suspected of causing cancer.

More important, this proposed legislation makes deep, early cuts in air pollution and continues that progress forward into the 21st century. During my campaign I promised the American people that my Administration would work to protect the environment and to ensure clean air for all Americans. Enactment of the proposal I present to you today will be a major step in fulfilling that promise. I urge these important proposals be promptly considered and enacted. We owe the people of our great Nation nothing less.

GEORGE BUSH.

THE WHITE HOUSE, *July 21, 1989.*

ERRATA  
July 21, 1989

(additions are underlined, [deletions, bracketed])

- o Page 136, lines 21, 22 and 23 should read as follows:

"...provide that such emissions from [50] 40 and 80 percent of each manufacturer's 1994 and 1995 model year light-duty trucks respectively, and 100 percent of [1995] 1996 and later model year light-duty trucks, may...

- o Page 151, lines 10 through 23 should read as follows:

"(C) to [50] 40 and 80 percent of each manufacturer's 1996 and 1997 model year Light-LDTs and Heavy-LDTs respectively,

"(i) standards of 0.41 gpm of HC and 4.20 gpm of CO in the case of Light-LDTs; and

"(ii) standards of 0.50 gpm of HC and 5.50 gpm of CO in the case of Heavy-LDTs;

"(D) to [50] 60 and 20 percent of each manufacturer's 1996 and 1997 model year Light-LDTs and Heavy-LDTs respectively,

"(i) the standards specified in subparagraph (A) to trucks with mileages of 50,000 or less; and

"(ii) the standards specified in subparagraph (B) to trucks with mileages greater than 50,000; and

"(E) to [1997] 1998 and later model year light-duty trucks, the standards specified in subparagraph (C).

- o Page 228, lines 30 and 31 should read:

|            |              |   |       |      |
|------------|--------------|---|-------|------|
| New Jersey | B.L. England | 1 | 9060  | 4350 |
|            |              | 2 | 11700 | 5630 |



A BILL

To amend the Clean Air Act to provide for the attainment and maintenance of the national ambient air quality standards, the control of toxic air pollutants, the prevention of acid deposition, and other improvements in the quality of the nation's air.

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

Section 1. SHORT TITLE AND TABLE OF CONTENTS

This Act may be cited as "The Clean Air Act Amendments of 1989".

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#### TITLE I -- PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

##### SEC. 101. GENERAL PLANNING REQUIREMENTS.

(a) Implementation Plan Elements.--

(1) Section 110 of the Clean Air Act is amended by striking paragraph 110(a)(1) through subparagraph 110(a)(3)(A) and inserting the following:

"SEC. 110. IMPLEMENTATION PLANS IN GENERAL.--

"(a) INITIAL PLANS.-- After promulgating a new or revised national ambient air quality standard under section 109, the Administrator may require any State to submit a plan that meets any of the requirements of subsection (d). The State must submit such plan within nine months of the notification by the Administrator of such requirement, or within such longer period as the Administrator may prescribe.

"(b) DESIGNATIONS.--

"(1) Designations generally.--

"(A) Initial Designations.-- By such date as the Administrator may reasonably require after promulgating a new or revised national ambient air quality standard for any pollutant under section 109, the Governor of each State shall (and at any other time the Governor of a State deems 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 national primary or secondary ambient air quality standard for the pollutant,

"(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

"(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised NAAQS.



"(B) State Submission and Effectiveness of Designations.

"(i)(I) Upon promulgation or revision of a national ambient air quality standard, 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 from the date of promulgation of the new or revised NAAQS. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

"(II) In making the promulgations required under subclause (I), the Administrator may make such modifications as he deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, he shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days prior to the date he

promulgates the designation, as may be modified. 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 he deems appropriate for any area (or portion thereof) not designated by the State.

"(III) If the Governor of any State, on his own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3)(B) (relating to redesignation).

"(ii) 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).

"(C) Current designations.-- Any area designated with respect to any air pollutant under the provisions of--

"(i) section 107(d)(1)(A), (B) or (C), as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989, is hereby designated, by operation of law, as a nonattainment

area for such pollutant within the meaning of clause (A)(i);

"(ii) section 107(d)(I)(E), as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989, is hereby designated, by operation of law, as an attainment area for such pollutant within the meaning of clause (A)(ii); and

"(iii) section 107(d)(1)(D), as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989, is hereby designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of clause (A)(iii).

"(2) Procedure.--

"(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1), 4(A), or 5, or announcing any designation under paragraph 4(B), or promulgating any redesignation under paragraph (3).

"(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of 5 U.S.C. §553 through 557 (concerning notice and comment).

"(3) Redesignation.--



"(A)(i) Subject to the requirements of subparagraph (C), and on the basis of air quality data, planning and control considerations, or any other considerations the Administrator deems appropriate, the Administrator may at any time 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 notification to the Governor, the Administrator shall provide such information as the Administrator may have available.

"(ii) No later than 120 days after receiving such notification, the Governor must 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.

"(iii) No later than 120 days after the date described under clause (ii), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with clause (ii), making such modifications as he may deem necessary, in the same manner and under the same procedure as under subclause (1)(B)(i)(II), except that the phrase "60

days" shall be substituted for the phrase "120 days" in that subclause. If the Governor does not submit, in accordance with clause (ii), a redesignation for an area (or portion thereof) identified by the Administrator under clause (i), the Administrator shall promulgate such redesignation, if any, that he deems appropriate.

"(B) The Governor of any State may, on his own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

"(C) Redesignation from 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 national ambient air quality standard;

"(ii) the Administrator has fully approved the applicable implementation plan for the area under subsection (e);

"(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 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 175; and

"(v) the State containing such area has met all requirements applicable to the area under sections 176 and 110(d)(4) and (8), and (e)(4).

"(D) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

"(4) New designations for ozone, carbon monoxide (CO) and particulate matter (PM-10).--

"(A) Requirement to designate.--

"(i) Within 120 days of the date of enactment of the Clean Air Act Amendments of 1989, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be) all areas (or portions thereof) of his State as attainment, nonattainment, or



unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

"(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i), the Administrator shall promulgate such designations, making such modifications as he may deem necessary, in the same manner, and under the same procedure, as under subclause (1)(B)(i)(II), except that the phrase "60 days" shall be substituted for the phrase "120 days" in that subclause. If the Governor does not submit, in accordance with clause (i), a designation for an area (or portion thereof), the Administrator shall promulgate the designation that he deems appropriate.

"(B) PM-10 designations.-- By operation of law, until redesignation by the Administrator pursuant to paragraph (3)--

"(i) areas identified in 52 Federal Register 29383 (Aug. 7, 1987) as Group I areas, except to the extent that such identification was modified by the Administrator prior to the date of enactment of the Clean Air Act Amendments of 1989, are hereby designated nonattainment for PM-10;

"(ii) any county containing a site for which air quality monitoring data show a violation of the

national ambient air quality standard for PM-10 before January 1, 1989, as determined under Part 50, Appendix K of title 40 of the Code of Federal Regulations, is hereby designated nonattainment for PM-10; and

"(iii) all areas of the country not described in clauses (i) or (ii) are hereby designated unclassifiable for PM-10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to section 107(d) (as in effect immediately before the date of enactment of the Clean Air Amendments of 1989) 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 163(d), until the Administrator determines that such designation is no longer necessary for that purpose.

"(5) Designations for lead.--The Administrator may, in his discretion at any time he deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead, in accordance with the procedures under paragraph (1)(A)-(B) except that the term "2 years" in subclause (B)(i)(I) shall be replaced by "1 year".

"(c) MAINTENANCE PLANS.--

"(1) Plan submission.--

"(A) Initial plan.-- For any area designated attainment or unclassifiable with respect to a national ambient air quality standard, the Administrator may require the State containing such area to submit an implementation plan (including such emissions inventories as he may prescribe) that provides for maintenance of such standard for such period as he may prescribe.

"(B) Subsequent plan.-- At any time before or after the expiration of the initial period for maintenance of a national ambient air quality standard prescribed pursuant to subparagraph (A), the Administrator may require the State to submit an additional plan or plans (including emissions inventories) providing for maintenance of such national ambient air quality standard for such additional periods as he may reasonably prescribe.

"(2) Plan requirements.-- Any plan required to be submitted pursuant to paragraph (1) shall meet the applicable requirements of subsection (d) (concerning general plan requirements).

"(3) Deadlines.-- Any plan required to be submitted pursuant to paragraph (1) shall be submitted by the State in accordance with such schedules as the Administrator may reasonably prescribe.

"(d) REQUIREMENTS FOR ALL IMPLEMENTATION PLAN SUBMITTALS.--



Each implementation plan (or revision thereof) submitted by a State under this Act shall be adopted by the State after reasonable notice and public hearing and, except as otherwise provided under subsection (a), shall --

"(1) include enforceable emission limitations or other control measures, means, or techniques, including economic incentives (including, but not limited to, fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act;

"(2) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to --

"(A) monitor, compile, and analyze data on ambient air quality, and

"(B) upon request, make such data available to the Administrator;

"(3) include a program to provide for the enforcement of the measures described in paragraph (1), and regulation of the modification, construction, and operation of any stationary source within such region as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D;

"(4) contain adequate provisions --

"(A) prohibiting any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will --

"(i) contribute significantly to nonattainment in, or interfere with maintenance by, any other State of any such national primary or secondary ambient air quality standard, or

"(ii) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility,

"(B) insuring compliance with the requirements of sections 126 and 115, relating to interstate and international pollution abatement;

"(5) provide --

"(A) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of federal law from carrying out such implementation plan), including a statement from the attorney general (or the

attorney for those relevant State (or, as appropriate, local) air pollution control agencies which have independent legal counsel) that the laws of such State (or locality) provide adequate authority to carry out such implementation plan,

"(B) requirements that the State comply with the requirements respecting State boards under section 128, and

"(C) 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 such plan provision;

"(6) require, as may be prescribed by the Administrator-

"(A) 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 such sources,

"(B) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

"(C) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this Act, which reports shall be available at reasonable times for public inspection;



"(7) provide for authority comparable to that in section 303, and adequate contingency plans to implement such authority;

"(8) provide for revision, after public hearing, of such plan --

"(A) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

"(B) except as provided in section 110(j)(2), whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this Act;

"(9) in the case of a plan or plan revision for an area designated as nonattainment under subsection (b), meet the applicable requirements of part D (relating to nonattainment areas);

"(10) meet the applicable requirements of section 121 (relating to consultation), section 127 (relating to public notification), and part C (relating to prevention of significant deterioration of air quality and visibility protection);

"(11) provide for--

"(A) 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 national ambient air quality standard, and

"(B) upon request, the submission of data related to such air quality modeling to the Administrator; and

"(12) 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 chapter, a fee sufficient to cover--

"(A) the reasonable costs of reviewing and acting upon any application for such a permit, and

"(B) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under section 402(b)(3).

"Compliance with the applicable requirements of Title IV (relating to operating permits) shall constitute compliance with the corresponding provisions of this subsection.

"(e) EPA ACTION ON PLAN SUBMISSIONS.--

"(1) Completeness of plan submissions.--

"(A) Completeness criteria.-- The Administrator shall promulgate minimum criteria that any plan submission, except as provided under subparagraph (D), must meet before the Administrator is required to act on such submission under this subsection.

"(B) Completeness finding.-- Except as provided under subparagraph (D), within sixty days of the Administrator's receipt of a plan or plan revision, but no later than six months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether each part of the plan or revision meets the minimum criteria established pursuant to subparagraph (A).

"(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 subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

"(D) Initial plan provisions.-- Notwithstanding any other provision of this paragraph, the Administrator may, but is not required to, make any determination under subparagraph (B) with respect to any plan or plan revision required to be submitted under subsection (a).



"(2) Deadline for action.-- Within 12 months of submission of 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 of submission of the plan or revision), the Administrator shall approve or disapprove the plan or plan revision (or such part thereof).

"(3) Full and partial approval and disapproval.-- In the case of any submittal that the Administrator is required to approve or disapprove under paragraph (2), the Administrator shall

"(A) approve such submittal as a whole if it meets all of the applicable requirements of this Act, or

"(B) disapprove the submittal in whole (or approve it in part and, simultaneously with such partial approval or subsequently within the 12-month period under paragraph (2), disapprove it in part) if it does not meet all of the applicable requirements of this Act.

"(4) Calls for plan revisions.--Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 176, or to otherwise comply with any requirement of this Act, the Administrator shall require the

State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines for the submission of such plan revisions. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this Act to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under Part D, unless such date has elapsed).

"(5) Corrections.-- Whenever the Administrator determines that his 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 revise such action as appropriate without requiring any further submission from the State.

"(f) PLAN REVISIONS.-- The Administrator shall approve a revision to a plan if, and only if, the revision (or portion thereof) will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 170), or any other applicable requirement of this Act.

"(g) SANCTIONS AND FEDERAL IMPLEMENTATION PLANS.-- The Administrator may apply any of the sanctions listed in section

179(b), or promulgate a federal implementation plan, at any time (or at any time after), he--

"(1) finds that a state has failed, for an area designated nonattainment under section 110(b), to submit one or more of the elements required by the provisions of this Act 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 110(e)(1)(A),

"(2) disapproves a submission in whole or in part, under section 110(e), for an area designated nonattainment under 110(b), based on the submission's failure to meet one or more of the elements required by the provisions of this Act applicable to such an area,

"(3) (A) determines that a State has failed to make any submission as may be required under this Act, other than one described under paragraph (1) or (2), including but not limited to an adequate maintenance plan, or has failed to make any submission, as may be required under this Act, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 110(e)(1)(A), or

"(B) disapproves, in whole or in part, a submission described under subparagraph (A), or



"(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented."

The Administrator may apply such sanction or sanctions, or promulgate a federal implementation plan, with respect to any portion of the State he determines reasonable and appropriate for the purpose of ensuring that the requirements of this Act relating to such plan or plan revision are met.

"(h) Savings Clauses.--

"(1) Plan provisions under existing standards.--

"(A) Retention of approved plan provisions.-- Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to section 110 as in effect prior to the date of enactment of the Clean Air Act Amendments of 1989 shall remain in effect as part of such applicable implementation plan, unless a revision to such provision is approved or promulgated by the Administrator pursuant to this Act.

"(B) Attainment dates.--For any area not designated nonattainment within the meaning of section 110(b), any plan or plan revision submitted or required to be submitted by a State--

"(i) in response to the promulgation or revision of a national primary ambient air quality standard, or

"(ii) in response to a finding of substantial inadequacy under section 110(a)(2)(H)(ii) as in

effect immediately prior to the date of enactment of the Clean Air Act Amendments of 1989, must provide for attainment of the primary NAAQS within three years of the date of enactment of the Clean Air Act Amendments of 1989 or within five years of issuance of such finding of substantial inadequacy, whichever is later.

"(2) Retention of construction moratorium in certain areas.-- In the case of an area to which, immediately prior to the date of enactment of the Clean Air Act Amendments of 1989, the prohibition on construction or modification of major stationary sources prescribed in section 110(a)(2)(I) (as in effect immediately prior to the date of enactment of the Clean Air Act Amendments of 1989) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of sections 172(b)(6) (relating to establishment of a permit program) or 172(a)(1) (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately prior to the date of enactment of the Clean Air Act Amendments of 1989, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 172(c)(5) (relating to permit

programs) or subpart 5 of part D (relating to attainment of the primary national ambient air quality standard for sulfur oxides), respectively."

(2) Section 110 of the Clean Air Act is amended in subparagraph (a)(3)(B) through paragraph (a)(6) by--

(A) redesignating subparagraph 110(a)(3)(B) as paragraph 110(j)(1) and, in this newly designated paragraph, striking the phrase "paragraph (2) of this subsection" and inserting "subsection (d)";

(B) redesignating subparagraph 110(a)(3)(C) as paragraph 110(j)(2) and, in this newly designated paragraph--

(i) striking the word "subsection" after the phrase "approved under this" and inserting "section",

(ii) striking the reference to "subsection (c)" and inserting "subsection (g) or section 180",

(iii) striking "section 110(f) or (g)" and inserting "section 110(o) or (p)";

(C) deleting subparagraph 110(a)(3)(D);

(D) deleting paragraph 110(a)(4);

(E) redesignating paragraph 110(a)(5) as subsection 110 (k) and, in this newly designated subsection--

(i) redesignating the subparagraphs and clauses therein accordingly,



(ii) in newly designated subparagraph 110(k)(1)(B), striking "subparagraph (B)" and inserting "paragraph (2)",

(iii) in newly designated subparagraph 110(k)(1)(C), striking "section 110(a)" and inserting "this section",

(iv) in newly designated paragraph 110(k)(2), striking "110(c)" and inserting "110(g) or section 180",

(v) in newly designated paragraph 110(k)(3), striking each reference to "this paragraph" and inserting "this subsection", and, striking "section 110(c)(2)(D)(ii)" and inserting "section 110(m)(2)(A)",

(vi) in newly designated paragraph 110(k)(4), striking "this paragraph" and inserting "this subsection", and

(vii) in newly designated paragraph 110(k)(5), striking "this paragraph and paragraph (2)(B)" and inserting "this subsection"; and,

(F) redesignating paragraph 110(a)(6) as subsection 110(l).

(3) Section 110 of the Clean Air Act is amended by deleting subsection (b).

(4) Subsection 110(c) of the Clean Air Act is amended by--

(A) deleting paragraph 110(c)(1);

(B) deleting subparagraph 110(c)(2)(A);

(C) redesignating subparagraph 110(c)(2)(B) as paragraph 110(m)(1), and, in this newly designated paragraph, striking "paragraph (1) of this subsection" and inserting "subsection (g) of this subsection or under section 180";

(D) deleting subparagraph 110(c)(2)(C);

(E) redesignating subparagraph 110(c)(2)(D) as paragraph 110(m)(2), redesignating the clauses therein accordingly, and, in this newly designated paragraph, striking "this paragraph" and inserting "this subsection";

(F) redesignating subparagraph 110(c)(2)(E) as paragraph 110(m)(3), and, in this newly designated paragraph, striking "this paragraph" and inserting "this subsection" and inserting "or section 180" after "this section";

(G) redesignating paragraph 110(c)(3) as paragraph 110(m)(4) and, in this newly designated paragraph, striking each reference to "under this subsection" and inserting in lieu thereof "under subsection (g) or section 180";

(H) deleting paragraph 110(c)(4); and

(I) redesignating paragraph 110(c)(5) as paragraph 110(m)(5) and, in that newly designated paragraph,

deleting "(including the written evidence required by Part D),".

(5) Section 110 of the Clean Air Act is amended by striking subsection 110(d) and inserting the following new paragraph:

"(n)(1) For purposes of this Act, an applicable implementation plan is the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under this section, promulgated under subsection (g) or section 180, or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the Act.".

(6) Section 110 of the Clean Air Act is amended by deleting subsection 110(e).

(7) Subsection 110(f) of the Clean Air Act is redesignated as subsection 110(o).

(8) Section 110 of the Clean Air Act is amended by redesignating subsection 110(g) as subsection 110(p), and, in this newly designated subsection, striking "the required four month period" and inserting "twelve months of submission of the proposed plan revision".

(9) Section 110 of the Clean Air Act is amended by redesignating subsection 110(h) as 110(q) and, in this newly designated subsection--

(A) striking "one year after the date of enactment of the Clean Air Act Amendments of 1977 and annually



thereafter" and inserting "five years after the date of enactment of the Clean Air Act Amendments of 1989, and every three years thereafter"; and

(B) striking the second sentence of paragraph (1).

(10) Section 110 of the Clean Air Act is amended by redesignating subsection 110(i) as subsection 110(r) and, in this newly designated subsection--

(A) striking "110(f) or (g)" and inserting "110(o) or (p)";

(B) striking "110(c)" and inserting "110(g) or section 180"; and

(C) striking "110(a)(3)" and inserting "110(f)".

(11) Subsection 110(j) of the Clean Air Act is redesignated as subsection 110(s).

(b) Federal Facilities.-- Section 118(a) of the Clean Air Act is amended by inserting ", including fees that meet the requirements of section 402(b)(3) or any other reasonable service charges that are equally applicable to and paid by facilities owned or operated by State, regional, or local governmental entities," immediately after the phrase "respecting the control and abatement of air pollution".

(c) Stack Heights and Dispersion Techniques.-- Section 123 of the Clean Air Act is amended by--

(1) revising the second sentence of subsection (a) to read as follows:

"The preceding sentence shall not apply with respect to stack heights in existence, or dispersion techniques implemented before, December 31, 1970, nor shall it apply to any source that is an 'affected source' under title V, or that is subject to the new source performance standards issued under section 111.";

(2) revising subsection (b) to read as follows:

"(b) For the purpose of this section, the term 'dispersion technique' includes any intermittent or supplemental control of air pollutants, by a major stationary source, varying with atmospheric conditions, but shall not include the use of a single stack for two or more units or sources if incorporated into the original design of the facility.";

(3) inserting "shall equal the height prescribed by formula as established by the Administrator, but" in subsection (c) immediately after "For the purposes of this section such height"; and

(4) inserting "and after pollutant emissions have been controlled to levels equivalent to section 111 standards applicable to the source category" immediately after "as provided under the preceding sentence" in section 123(c).

(d) Conformity of Projects with Plans.-- Section 176 of the Clean Air Act is amended by--

(1) redesignating subsection 176(c) as paragraph 110(i)(1); and

(2) redesignating subsection 176(d) as paragraph 110(i)(2) and, in this newly designated paragraph striking

"those portions of plans prepared under this section" in the first sentence, and inserting "the plan provisions developed, approved, or promulgated under this Act".

SEC. 102. GENERAL PROVISIONS FOR NONATTAINMENT AREAS.

(a) Definitions and Applicability.--

(1) Part D of Title I of the Clean Air Act is amended by inserting "SUBPART 1--NONATTAINMENT AREAS IN GENERAL" immediately after the heading "PART D--PLAN REQUIREMENTS FOR NONATTAINMENT AREAS".

(2) Section 171 of the Clean Air Act is amended by redesignating the section as 170, inserting it immediately after the heading "SUBPART 1 -- NONATTAINMENT AREAS IN GENERAL", and in this newly designated section--

(A) revising the introductory language to read as follows:

"For the purpose of this part and section 110(d)(9) and except as otherwise provided in this Part--";

(B) revising paragraph (1) to read as follows:

"(1) The term 'reasonable further progress' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date."; and

(C) revising paragraph (2) to read as follows:



"(2) The term 'nonattainment area' means, for any air pollutant, an area which is designated 'nonattainment' with respect to that pollutant within the meaning of section 110(b).".

(3) The Clean Air Act is amended by adding a new section 171 to read as follows:

"SEC. 171. APPLICABILITY.-- Each provision of this subpart applies as set forth herein, except to the extent it is inconsistent with a provision in another subpart, in which case the provision in such other subpart shall apply.".

(b) Nonattainment Plan Provisions in General.-- Section 172 of the Clean Air Act is amended to read as follows:

"SEC. 172. NONATTAINMENT PLAN PROVISIONS IN GENERAL.--

"(a) Classifications and Attainment Dates.--

"(1) Initial classification.--

"(A) Authority.--On or after the date the Administrator promulgates the designation of an area as nonattainment pursuant to section 110(b) with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on the date of enactment of the Clean Air Act Amendments of 1989), 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 such area and the availability and feasibility of the pollution control measures that he believes may be necessary to provide for attainment of such standard in such area.

"(B) The Administrator shall publish a notice in the Federal Register announcing such classification. Such classification shall not be subject to the provisions of 5 U.S.C. 553 through 557 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (e) or (f) (concerning action on plan submissions) or section 179 (concerning sanctions) with respect to any plan submissions required by virtue of such designation.

"(2) Attainment dates for nonattainment areas.--

"(A) Primary standards.--The attainment date for an area designated nonattainment with respect to a primary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than five years from the date such area was designated nonattainment under section 110(b), except that the Administrator may extend the attainment date to the extent he determines appropriate, for a period no greater than 20 years from the date of designation as nonattainment, considering the severity

of nonattainment and the availability and feasibility of pollution control measures.

"(B) Secondary standards.--The attainment date for an area designated nonattainment with respect to a secondary national ambient air quality standard shall be within a reasonable time after the date such area was designated nonattainment under section 110(b).

"(C) Upon application by any State, the Administrator may extend for 1 additional year (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 issued by the Administrator, no more than a minimal number of exceedances of the relevant NAAQS has occurred in the area in the year preceding the Extension Year.

"No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

"(b) Schedule For Plan Submissions.-- At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 110(b), he shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the



applicable requirements of subsection (c) and section 110(d). Such schedule must, at a minimum, include a date or dates, extending no later than three years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) and section 110[d].

"(c) Nonattainment Plan Provisions.--The plan provisions (including plan items) required to be submitted pursuant to subsection (b) shall--

"(1) provide for the implementation, by such dates as the Administrator may prescribe, of reasonably available control measures (including measures to apply reasonably available control technology) for such emission sources or categories of emission sources as the Administrator may identify;

"(2) require reasonable further progress;

"(3) include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met;

"(4) expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 173(a)(1)(B), 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 national ambient air quality standard by the applicable attainment date;

"(5) require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 173; and

"(6) include enforceable emission limitations, schedules and timetables for compliance, and such other measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights) as the Administrator may determine to be necessary or appropriate to provide for attainment of such standard in such area by the attainment date specified in subsection (a).

"(d) Plan Revisions Required in Response to Finding of Plan Inadequacy.-- Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 110(e)(4) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 110 and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates), to the extent necessary to achieve a consistent application of such requirements."

(c) New Source Permit Requirements.-- Section 173 of the Clean Air Act is amended by--

(1) inserting "(a)" at the beginning thereof, thereby redesignating section 173 as subsection 173(a), and, accordingly, redesignating section 173(1) as 173(a)(1), redesignating section 173(1)(A) as 173(a)(1)(A), redesignating section 173(1)(B) as 173(a)(1)(B), and redesignating section 173(4) as 173(a)(4);

(2) inserting at the beginning of newly designated paragraph 173(a)(1) the following: "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 110(e) and this part,";

(3) in newly designated subparagraph 173(a)(1)(A)--

(A) inserting "sufficient offsetting emissions reductions have been obtained, such that" immediately after the comma following "operation" in the first phrase,

(B) striking "allowed under the applicable implementation plan" and inserting "(as determined in accordance with the regulations described in this paragraph)", and

(C) striking "171" and inserting "170";

(4) in newly designated subparagraph 173(a)(1)(B)--



(A) inserting "in the case of a new or modified major stationary source which 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," at the beginning thereof, and

(B) striking "172(b)" and inserting "172(c)";

(5) in newly designated paragraph 173(a)(4)--

(A) inserting "The Administrator has not determined that" at the start thereof,

(B) striking "being carried out" and inserting "not being adequately implemented", and

(C) replacing the period at the end thereof with a semicolon;

(6) adding a new paragraph (5) to newly designated subsection 173(a), to read as follows:

"(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such 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.";

(7) striking "(1)(A) shall be legally binding" in the concluding sentence of newly designated section 173(a)

immediately following the phrase "a permit under paragraph", and inserting "(1) shall be federally enforceable"; and

(8) adding a new subsection (b) to read as follows:

"(b) Prohibition On Use Of Old Growth Allowances.-- Any growth allowance included in an applicable implementation plan to meet the requirements of section 172(b)(5) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989) shall not be valid for use in any area that received or receives a notice under section 110(a)(2)(H)(ii) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989) or under section 110(e)(4) that its applicable implementation plan containing such allowance is substantially inadequate.".

(d) Planning Procedures.-- Section 174 of the Clean Air Act is amended to read as follows:

"SEC. 174. PLANNING PROCEDURES.--

"(a) For any ozone or carbon monoxide nonattainment area, the State containing such area and elected officials of affected local governments shall, prior to the date required for submittal of the inventory described under sections 182(a)(1) and 187(a)(1), jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such 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. The implementation plan required by this part shall be prepared by an organization certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after enactment of the Clean Air Act Amendments of 1989, the Governor, after consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection, shall designate an organization to prepare such plan. Such organization shall include elected officials of local governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, the organization responsible for the air quality maintenance planning process under regulations implementing this Act, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part.

"(b) The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 108(e) shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title



23, United States Code, and such planning processes shall take into account the requirements of this part.

"(c) In the case of a nonattainment area that is included within more than one 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."

(e) Maintenance Plans.-- Section 175 of the Clean Air Act is amended to read as follows:

"SEC. 175. MAINTENANCE PLANS.-- The maintenance plan required under section 110(b)(3)(C) as a precondition to redesignation of an area shall provide for the maintenance of the national ambient air quality standard for the relevant air pollutant in such area for at least ten years after the date the redesignation petition is submitted to the Administrator."

(f) Interstate Transport Provisions.--

(1) Interstate transport commissions.-- Section 176 of the Clean Air Act is amended by striking subsections (a) and (b) and inserting the following:

"SECTION 176. INTERSTATE TRANSPORT COMMISSIONS.--

"(a) Authority To Establish Interstate Transport Regions.-- Whenever, on his 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 one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, he may establish a transport region for such pollutant that includes such States.

The Administrator, on his own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b), may--

"(1) add any State or portion of a State to any region established under this subsection whenever he has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

"(2) remove any State or portion of a State from the region whenever he 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 standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt.

"(b) Transport Commissions.--

"(1) Whenever the Administrator establishes a transport region under subsection (a), he shall establish a transport commission comprised of the following members:

"(A) An air pollution control official representing each State in the region, appointed by the Governor;

"(B) the Administrator or his designee; and

"(C) the Regional Administrator (or his designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned. Decisions of, and recommendations and

requests to the Administrator by, each transport commission may be made only by a majority vote of all members other than the Administrator and Regional Administrators (or designees thereof).

"(2) The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines, by majority vote, to be necessary to ensure that the plans for the relevant States meet the requirements of section 110(d)(4). Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. Appendix).

"(c) Commission Requests.-- A transport commission established under subsection (b) may request the Administrator to issue a finding under section 110(e)(4) that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 110(d)(4). The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent he approves such request, issue the finding under section 110(e)(4) to that extent at the time of such approval. In acting on such request, the Administrator shall address each specific recommendation made by the commission.



Approval or disapproval of such a request shall constitute final agency action within the meaning of section 307(b).".

(2) Amendments conforming to transport provisions.--  
Section 106 of the Clean Air Act is amended by--

(A) inserting "or of implementing section 176 (relating to control of interstate air pollution)" immediately following "section 107";

(B) inserting "any commission established under section 176 (relating to control of interstate ozone air pollution) or" immediately following "program costs of";

(C) inserting "or such commission" in the last sentence immediately following "such agency"; and

(D) inserting "or commission" at the end thereof, immediately before the period.

(g) Sanctions and Federal Plans.-- Subpart 1 of Part D of the Clean Air Act is amended by adding new sections 179 and 180 to the end thereof to read as follows:

"SEC. 179. SANCTIONS AND CONSEQUENCES OF FAILURE TO ATTAIN.--

"(a) INITIAL REASONABLE EFFORTS DETERMINATION.-- For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 110(e)(4)), at such time as the Administrator-

"(1) finds that a state has failed, for an area designated nonattainment under section 110(b), to submit one or more of the elements required by the provisions of this

Act 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 110(e)(1)(A),

"(2) disapproves a submission in whole or in part, under section 110(e), for an area designated nonattainment under 110(b), based on the submission's failure to meet one or more of the elements required by the provisions of this Act applicable to such an area,

"(3) (A) determines that a State has failed to make any submission as may be required under this Act, other than one described under paragraph (1) or (2), including but not limited to an adequate maintenance plan, or has failed to make any submission, as may be required under this Act, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 110(e)(1)(A), or

"(B) disapproves, in whole or in part, a submission described under subparagraph (A), or

"(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

"he shall (and at any other time the Administrator may) publish in the Federal Register a proposed determination of whether the State is making reasonable efforts to cure the relevant failure. If the Administrator proposes to determine that the State is not making

reasonable efforts to cure the failure, he shall simultaneously propose to apply, with respect to the relevant area within such State, at least one of the sanctions specified in subsection (b) (for the purposes of encouraging the State to undertake reasonable efforts and preventing further deterioration of the State's air quality) and describe why application of such sanction or sanctions is appropriate under the circumstances. The Administrator shall take final action on these proposals no later than six months after the date such proposals are published. If the Administrator makes a final determination that the State is not making reasonable efforts, he shall simultaneously apply at least one of the sanctions listed in subsection (b), to take effect no later than 60 days following final action. No sanction under subsection (b), imposed because of a failure by a State, may be applied, based on such failure, outside the borders of that State.

"(b) AVAILABLE SANCTIONS.--

"(1) A moratorium on the construction or modification of any major stationary source (as defined in section 302(j)) of the relevant pollutant or pollutants in the nonattainment area (or portion thereof, where the Administrator in his discretion determines that the State failure relates exclusively to such portion). Where the State failure relates to ozone, the moratorium is available with respect to both the nonattainment area and the area within 25 miles of the boundary of such area.



"(2) Upon a finding by the Administrator under section 110(g)(1) or (g)(2), or under section 179(a)(1) or (a)(2), where the Administrator believes that attainment and maintenance of a NAAQS cannot reasonably be achieved without the inclusion of transportation control measures in the applicable implementation plan, the Secretary of Transportation, upon selection by the Administrator of the sanction described in this paragraph, shall not approve any project or award any grant under Title 23, United States Code, other than for:

"(A) safety,

"(B) mass transit, or

"(C) transportation projects related to air quality improvement or maintenance.

The Secretary shall consult with the Administrator before approving any project under paragraph (C). This sanction may be imposed as to a particular nonattainment area (or portion thereof) located within a particular State, no more than once in each of the consecutive five-year periods beginning with the date of enactment of this section.

"(3) An order by the Administrator prohibiting any public water system regulated under title XIV of the Public Health Service Act from providing drinking water service in the nonattainment area (or portion thereof, where the State failure relates exclusively to such portion) to any structure to which such service was not provided before the

Administrator's determination under this section that the State is not making reasonable efforts, except that the Administrator may not prohibit any public water system from providing water service to any customer requiring such service to correct an existing public health hazard;

"(4) A withholding of all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 105.

"(c) SUBSEQUENT REASONABLE EFFORTS DETERMINATIONS.-- Except as provided under subsection (d), no later than twelve months after the Administrator takes final action on a reasonable efforts determination under subsection (a) or under this subsection, he shall publish in the Federal Register, in accordance with the procedures under subsection (a), a determination of --

"(1) in the case of a State that had previously been determined to be making reasonable efforts, whether the State still is making reasonable efforts. If the Administrator determines that the State no longer is making reasonable efforts, he shall follow the procedure under subsection (a) relating to a finding that a State is not making reasonable efforts (including applying at least one sanction);

"(2) in the case of a State that had previously been determined not to be making reasonable efforts, whether the State now is making reasonable efforts, and

"(A) if the Administrator determines that the State is making reasonable efforts, he shall lift any sanctions previously imposed, or

"(B) if the Administrator determines that the State still is not making reasonable efforts, he shall determine, in his discretion, whether it is necessary to apply one or more additional sanctions under subsection (b) to further encourage the State to cure its failure. In the event the Administrator decides to apply another sanction, he shall follow the procedure described in subsection (a). If he decides not to apply another sanction, he shall explain the basis for his decision in the Federal Register.

"(d) FAILURE TO SUBMIT REVIEWABLE PLAN WITHIN 18 MONTHS OF THE REQUIRED DATE.-- Notwithstanding any provision of subsection (c), if the Administrator has determined that a State has failed to submit, within 18 months following the date that it was due, an implementation plan or plan revision required under this part that meets the minimum criteria, if any, established under section 110(e)(1)(A), the Administrator shall, no later than six months after such 18-month period, take any final action necessary to assure that at least one of the sanctions under subsection (b) is in effect within 60 days of the date of such final action. Such sanction shall remain in effect until the Administrator determines that the State has made such submission.

"(e) NOTICE OF FAILURE TO ATTAIN.--



"(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, 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) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register identifying each area that he has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

"(f) CONSEQUENCES FOR FAILURE TO ATTAIN.--

"(1) At the time the Administrator publishes the notice under subsection (e)(2), he shall establish a schedule according to which the State containing the nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection. Such schedule must, at a minimum, include a date or dates, extending no later than three years from the date of the notice under subsection (e)(2), for the submission of the plan revision.

"(2) The revision required under paragraph (1) shall meet the requirements of section 110(d) and section 172(c). In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe (including all measures that can feasibly be implemented in the area in light of

technological achievability, costs, and any non-air quality and other air quality-related health and environmental impacts).

"(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in section 172(a)(2), except that the phrase 'from the date of the notice required under section 179(e)(2)' shall be substituted for the phrase 'such area was designated nonattainment under section 110(b)' and for the phrase 'designation of nonattainment'.

"(g) CONSTRUCTION BANS.--No major stationary source of any pollutant shall be constructed or modified in a nonattainment area for such pollutant after December 31, 1992, or forty-two months from the date such area was designated nonattainment for such pollutant, whichever is later, unless, as of the later of such dates, the Administrator has approved a plan submission for the area meeting the requirements of section 172(c)(5) with respect to such pollutant. Before the later of the dates set forth above, no State shall issue a permit for construction or modification of a major stationary source unless such permit meets the requirements of section 173.

"SEC. 180. FEDERAL IMPLEMENTATION PLANS.--

"(a) GENERAL AUTHORITY.-- The Administrator may promulgate a federal implementation plan at any time after he--

"(1) 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 section 110(e)(1)(A), or

"(2) disapproves a State implementation plan submission in whole or in part.

"(b) REQUIREMENT FOLLOWING REASONABLE EFFORTS DETERMINATION. -

At the time the Administrator proposes under section 179(c) to determine that a State is not making reasonable efforts, he shall also decide, in his discretion, whether to propose to promulgate a federal implementation plan. In determining whether to promulgate a federal implementation plan, the Administrator shall consider the practicality of issuing and implementing (including enforcing) such a plan, the severity of the nonattainment problem, the amount of time remaining before the attainment date, the amount of emissions reductions that would be achieved by the plan, costs, and the nature of the State's efforts to cure the relevant failure. He shall describe in the Federal Register each State failure and, for each failure, the reasons that he is proposing to promulgate or not to promulgate a federal implementation plan. The Administrator shall take final action on such proposal within six months. The Administrator may promulgate a plan only if such a plan results in significant additional progress toward meeting the requirements of this Act.

"(c) FIP OBLIGATIONS.--The Administrator shall not be required to promulgate any federal implementation plan initiated or required under section 110(c) as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989, regardless of whether the promulgation of such a plan was ordered (or was



required under a settlement agreement entered) by a court of law prior to the date of enactment of the Clean Air Act Amendments of 1989."

**SEC. 103. ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS.**

Part D of Title I of the Clean Air Act is amended by adding the following new subpart after subpart 1:

**"SUBPART 2--ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS**

- "Sec. 181.       Classifications and attainment dates.
- "Sec. 182.       Plan submissions and requirements.
- "Sec. 183.       Federal ozone measures.
- "Sec. 184.       Northeast transport region and commission.
- "Sec. 185.       Sanction for severe ozone nonattainment areas for failure to attain.

**"SEC. 181. CLASSIFICATIONS AND ATTAINMENT DATES.--**

**"(a) CLASSIFICATION       AND       ATTAINMENT       DATES       FOR       1988  
NONATTAINMENT AREAS.--**

"(1) Each area designated nonattainment for ozone pursuant to section 110(b)(4) is hereby classified under Table 1, by operation of law, as a marginal area, a moderate area, a serious area, or a severe area, based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the United States Environmental Protection Agency most recently before the date of enactment of this section. For each area classified under this subsection, the primary national ambient air quality

standard attainment date for ozone shall be as provided in Table 1.

TABLE 1

| <u>Area Classification</u> | <u>Design Value</u> | <u>Primary Standard Attainment Date</u>                              |
|----------------------------|---------------------|----------------------------------------------------------------------|
| Marginal                   | .13 ppm             | December 31, 1995                                                    |
| Moderate                   | .14-.15 ppm         | December 31, 1995                                                    |
| Serious                    | .16-.18 ppm         | December 31, 2000                                                    |
| Severe                     | .19 ppm and above   | As expeditiously as practicable, but no later than December 31, 2010 |

"(2) At the time of publication of the notice required under section 110(b)(4) (promulgating ozone area designations), the Administrator shall publish a notice announcing the classification (as may be adjusted under paragraph (4)) of each ozone nonattainment area. The provisions of section 172(a)(1)(B) (relating to lack of notice-and-comment and judicial review) shall apply to such classification.

"(3) An area designated nonattainment for ozone under section 110(b)(1)(C)(i), but the design value of which is less than .13 ppm, shall be classified as a marginal area.

"(4) Adjustment of classification for borderline areas.-  
- If an area classified under paragraph (1), Table 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 such classification was based, the Administrator may, in his discretion, by the procedure required under paragraph (2), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, and the mix of sources and air pollutants in the area.

"(5) Extensions of attainment dates.-- Upon application by any State, the Administrator may extend for 1 additional year (the "Extension Year") the date specified in Table 1 of subsection (a) if--

"(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(B) no more than one exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year. No 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 110(b)(4), and that is subsequently redesignated to nonattainment for ozone under section 110(b)(3), shall, at



the time of the redesignation, be classified by operation of law in accordance with Table 1 under subsections (a)(1) and (a)(4). Upon its classification, the area shall be subject to the same requirements under section 110, subpart 1 of this part, and this subpart 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 the date of enactment of this section and the date the area is classified.

"(2) Reclassification upon failure to attain.--

"(A) General rule.-- Within six months following the applicable attainment date 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 standard by that date. Except for any severe area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with Table 1 of subsection (a)(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 (B).

"(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that he has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

"(c) REFERENCES TO TERMS.--

"(1) Any reference in this subpart to a 'marginal area', a 'moderate area', a 'serious area', or a 'severe area' shall be considered a reference to a marginal ozone nonattainment area, a moderate ozone nonattainment area, a serious ozone nonattainment area, or a severe ozone nonattainment area as classified under this section.

"(2) Any reference in this subpart to 'next higher classification' or comparable terms shall be considered a reference to the classification related to the next higher set of design values in Table 1.

"SEC. 182. PLAN SUBMISSIONS AND REQUIREMENTS.--

"(a) MARGINAL AREAS.-- 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), submit to the Administrator the State implementation plan revisions (including the plan items) described under paragraphs (1), (2), and (3), except to the extent the State has made such submissions as of the date of enactment of this section.

"(1) Inventory.-- Within two years of the date of enactment of this section, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator.

"(2) Corrections to the State implementation plan.-- Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements--

"(A) Reasonably available control technology corrections.-- For any marginal area (or, within the Administrator's discretion, portion thereof) the State shall submit, within six months of the date of classification under section 181(a)(2), a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 172(b) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989), as interpreted in guidance issued by the United States Environmental Protection Agency prior to the date of enactment of this section.

"(B) Savings clause for vehicle inspection and maintenance.-- For any marginal area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section



172(b)(11)(B) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after the date of enactment of this section, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report No. 95-294, 95th Cong., 1st Sess. 281-291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 172(b)(11)(B) (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989) or the program already included in the plan, whichever is more stringent. No later than two years after the Administrator promulgates regulations under section 202(g)(3), the State shall submit a revision to such program to meet any requirements that the Administrator prescribes under that section.

"(C) New source review.-- Within two years of the date of enactment of this section, the State shall submit a revision that includes--

"(i) provisions to require permits, in accordance with sections 172(c)(5) and 173, for the construction and operation of each new or modified

major stationary source (with respect to ozone) to be located in the area;

"(ii) provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 172(b)(6) (as in effect immediately before the date of enactment of this section), as interpreted in regulations of the Administrator promulgated as of the date of enactment of this section.

"(3) Periodic Inventory.--

"(A) General requirement.-- By September 30, 1996, and no later than the end of each 3-year period thereafter, until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1).

"(B) Emissions statements.--

"(i) Within two years of the date of enactment of this section, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or the State may prescribe, if the Administrator does not) for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic

compounds from that source during the previous calendar year. The first such statement shall be submitted within 2 years of the date of enactment of this section. Subsequent statements shall be submitted at least every year thereafter.

"(ii) The State may waive the application of subparagraph (A) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

"The Administrator may, in his discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. 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.

"(b) MODERATE AREAS.--Each State in which all or part of a moderate area is located shall, with respect to the moderate area, make the submissions described under subsection (a) (relating to



marginal areas), and submit the revisions to the applicable implementation plan described under this subsection.

"(1) Plan provisions for reasonable further progress.

"(A) General rule.-- By no later than 3 years from the date of enactment of this section, the State shall submit a revision to the applicable implementation plan to provide, and a demonstration that the plan as revised will provide, for emission reductions, by December 31, 1995, of at least 15 percent from baseline emissions, accounting for any growth in emissions after the year of enactment of this section.

"(B) Baseline emissions.-- For purposes of subparagraph (A), the term 'baseline emissions' is defined as the total amount of actual VOC emissions from all sources in the moderate area during the calendar year of enactment of this section, excluding emissions that would be eliminated under the regulations described in subparagraph (D)(i) and (ii).

"(C) General rule for creditability of reductions.-- Except as provided under subparagraph (D), emissions reductions are creditable towards the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of December 31, 1995, from the implementation of measures required under either the applicable implementation plan or rules promulgated by the Administrator.

"(D) Limits on Creditability of Reductions.--  
Emission reductions from the following measures are not creditable towards the 15-percent reductions required under subparagraph (A)--

"(i) Any measures relating to motor vehicle tailpipe or evaporative emissions promulgated by the Administrator by the date of enactment of this section;

"(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by the date of enactment of this section or required to be promulgated under section 211(h);

"(iii) Measures required under subsection (a)(2)(A) (concerning corrections to implementation plans prescribed under guidance by the Administrator); and

"(iv) Measures required under subsection (a)(2)(B) to be submitted immediately after the date of enactment of this section (concerning motor vehicle inspection and maintenance).

"(E) Exemption from certain other requirements.--  
The requirement to submit a revision under subparagraph (A) shall apply in lieu of--

"(i) the requirement under section 172(c)(2) and 170(1) (concerning reasonable further progress),  
and

"(ii) 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 moderate area.

"(2) Reasonably available control technology.--The State shall submit a revision or revisions to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology, under section 172(b)(1), with respect to --

"(A) each category of VOC sources in the area covered by a Control Techniques Guideline (CTG) document issued by the Administrator between the date of enactment of this section and the date of attainment;

"(B) all VOC sources in the area covered by any CTG issued before the date of enactment of this section;

"(C) all other stationary sources with the potential to emit at least 100 tons per year of VOCs and that are located in the area.

"Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions described in subparagraphs (B) and (C) shall be submitted by 2 years after the date of enactment of this section, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.



"(3) Gasoline Vapor Recovery.

"(A) General Rule.--Notwithstanding any other provision of this Act, not later than 2 years after the date of enactment of this section, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems (except as the Administrator may, in his discretion, otherwise provide with respect to owners or operators of gasoline dispensing systems at small gasoline dispensing facilities) to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system.

"(B) Effective Date.-- The date required under subparagraph (A) shall be--

"(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after the date of enactment of this section;

"(ii) 1 year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the two-year period prior to the adoption date; or

"(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities. Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

"(C) Nothing in this paragraph shall be construed to prohibit any State from adopting or enforcing any regulations related to any system for gasoline vapor recovery of emissions from the fueling of motor vehicles that are more stringent than the requirements of this paragraph.

"(D) Reference to Terms.-- For purposes of this paragraph, any reference to the term 'adoption date' shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

"(c) SERIOUS AREAS.-- Except as otherwise specified in paragraph (3), 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), make the submissions described under subsection (b) (relating to moderate areas), and submit the revisions to the applicable implementation plan (including the plan items) described under this subsection.

"(1) Attainment and reasonable further progress demonstrations.-- By December 31, 1995, the State shall submit

a revision to the applicable implementation plan that includes--

"(A) Attainment demonstration.-- A demonstration that the plan, as revised, will provide for attainment of the ozone NAAQS by the applicable attainment date. This attainment demonstration must be based on photochemical grid modelling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective;

"(B) Reasonable further progress demonstration.-- Except as provided under subparagraph (C), a demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) equal to the following amount, averaged over each consecutive 3-year period beginning January 1, 1996 until the attainment date--

"(i) at least 3 percent of such baseline emissions each year;

"(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability, costs, and any non-air quality and



other air quality-related health and environmental impacts; or

"(iii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that no greater than such amount is necessary to provide for attainment by the attainment date.

The emission reductions described in clauses (i), (ii), and (iii) shall be calculated in accordance with subsection (b)(1)(C) and (D) (concerning creditability of reductions). The reductions creditable for the year beginning January 1, 1996, may include reductions that occurred by December 31, 1995, computed in accordance with paragraph (b)(1), that exceed the 15-percent amount of reductions required under subparagraph (b)(1)(A). The requirements of this subparagraph apply in lieu of the requirements under section 172(c)(2) and 170(1) (concerning reasonable further progress).

"(C) NOx control.-- The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOCs and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and

(D)), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B)."

"(2) Enhanced vehicle inspection and maintenance program.--

"(A) Requirement for submission.-- Within two years from the date of enactment of this section, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon 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) Guidance.-- The State program required under subparagraph (A) shall take effect no later than two years from the date of enactment of this section and shall comply in all respects with guidance published (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include--

"(i) a performance standard achievable by a program combining 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

202. Compliance with this performance standard shall be determined using a method to be established by the Administrator; and

"(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

"(C) State program.-- The State program required under subparagraph (A) shall include at a minimum each of the following elements--

"(i) computerized emission analyzers;

"(ii) no waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 207(b) unless a warranty remedy has been denied in writing, or for tampering-related repairs;

"(iii) if waivers are permitted for emissions-related repairs not covered by warranty, a required expenditure, to qualify for the waiver, on pre-1981 model year vehicles of not less than \$75, and on 1981 and subsequent model year vehicles of not less than \$200 for the initial waiver period and \$75 in an immediately subsequent period. The dollar amounts in this clause shall be adjusted, beginning in the fifth year beginning after the year of



enactment of this section, and each fifth year beginning thereafter, in accordance with section 402(b)(3)(B)(v) (relating to inflation adjustment), except that the phrase 'each fifth year' shall be substituted for the phrase 'each year' therein. Each dollar amount, so adjusted, shall be rounded upward to the nearest whole dollar;

"(iv) enforcement through denial of vehicle registration (except for any program in operation prior to the effective date of this section whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that non-complying vehicles are not operated on public roads); and

"(v) any requirements that the Administrator may prescribe under section 202(g)(3).

"(3) Clean-fuel vehicle programs.--

"(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of enactment of this section, a revision to the applicable implementation plan for each area described under section 212(b)(2)(C)(i) to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-

fuel vehicle program prescribed under section 212(b)(2), including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in section 216) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area included in the clean fuel vehicle program under section 212(b)(2)(C)(ii).

"(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under section 212(b)(2), any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to the applicable performance standard prescribed under section 212(b)(1), or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under the Act for the area. Any State seeking approval of such a revision must submit the revision to the Administrator within 24 months of enactment of this section. The Administrator must approve or disapprove any such revision within 30 months of enactment of this section. (The Administrator shall publish the revision submitted by a State in the Federal Register upon

receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in Sections 553 through 557 of Title 5 of the United States Code (related to notice and comment).) Where the Administrator approves such revision for any area, the State need not submit the revision 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 revision as a substitute.

"(C) Where the Administrator approves under section 214 any market-based alternative emissions reduction plan applicable in an area, the Administrator may approve a plan revision for the area providing for changes to the plan provisions otherwise required by this paragraph, to ensure consistency with such alternative emissions reduction plan.

"(D) If the Administrator determines, under section 179, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 179, the State may not receive credit, in any demonstrations 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 section 212(b)(2).

"(4) Transportation control.-- Within one year after any determination by the Administrator that the levels of vehicle miles traveled or congestion levels in the area exceed the levels projected for purposes of the area's demonstration of attainment or reasonable further progress (or, where applicable, maintenance), the State shall submit a revision to the applicable implementation plan that includes a transportation demand management program for the area. Such program shall consist of measures selected from section 108(f) as necessary to reduce vehicle mile and congestion levels to levels consistent with the plan, and shall be developed consistent with guidance issued by the Administrator pursuant to section 108. In the alternative, the State may offset the impact of increased vehicle miles traveled and congestion levels by implementing other transportation control measures, other mobile source controls, or controls on other source categories that will produce reductions comparable to those that would be achieved by implementation of such transportation demand management program, consistent with the emission reduction schedules in the plan.

Any reference to "attainment date" in subsection (b), which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

"(d) SEVERE AREAS.-- Each State in which all or part of a severe area is located shall, with respect to the severe area, make the submissions described under subsection (c) (relating to serious areas), and shall submit by December 31, 2000, an attainment demonstration that meets the requirements of subsection (c)(1), and that includes the provisions required under section 185 (relating to sanctions). Any reference to the term 'attainment date' in subsection (b) or (c), which is incorporated by reference into this subsection (d), shall refer to the attainment date for severe areas.

"(e) CERTAIN NON-SELF-GENERATING (NON-MSA) AREAS.

"(1) Notwithstanding any other provision of section 181 or this section, 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 U.S. Office of Management and Budget), which area is treated by the Administrator, in his discretion, as non-self-generating within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

"(2) The Administrator may treat an ozone nonattainment area as non-self-generating if he finds that sources of VOC (and, where the Administrator determines relevant, NOx) emissions within the area do not make a significant

contribution to the ozone concentrations measured in the area or in other areas.

"(f) RECLASSIFIED AREAS.--

"(1) General rule.-- Except as provided under paragraph (2), each State containing an ozone nonattainment area reclassified under section 181(b)(2) shall meet such requirements of subsections (b)-(d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (except for attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

"(2) Exception for areas reclassified as moderate.-- The requirements of paragraph (1) shall apply to areas reclassified under section 181(b)(1) as moderate areas, except that--

"(A) the attainment date for such reclassified areas shall be December 31, 2000;

"(B) the requirements of subsection (c)(1)(B)-(C) (relating to reasonable further progress for serious areas) shall apply to such reclassified areas in lieu of the requirements of subsection (b)(1); and

"(C) the date for submittal of the provisions required by subparagraph (B) shall be no later than two years from the date of such reclassification.



"SEC. 183. FEDERAL OZONE MEASURES.--

"(a) CONTROL TECHNIQUES GUIDELINES FOR VOC SOURCES.-- Within 3 years after the date of enactment of this section, the Administrator shall issue control techniques guidelines, in accordance with section 108(c), for 7 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of the date of enactment.

"(b) ALTERNATIVE CONTROL TECHNIQUES DOCUMENT FOR NO<sub>x</sub> SOURCES.-  
- Within 3 years after the date of enactment of this section, the Administrator shall issue a document analyzing alternative control techniques for stationary sources of oxides of nitrogen.

"(c) CONSUMER OR COMMERCIAL PRODUCTS.--

"(1) Definitions.-- For the purposes of this subsection:

"(A) The term 'reasonably available controls' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is reasonably achievable through the application of any equipment, measures, processes, methods, systems or techniques, including, but not limited to, chemical reformulation, product or feedstock substitution, repackaging, or directions for use, consumption, storage, or disposal.

"(B) The term 'consumer or commercial products' means any substance, product, 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. The term does not include fuels or fuel additives regulated under section 211, or motor vehicles, non-road vehicles, and non-road engines as defined under section 216.

"(C) The term 'regulated entities' means--

"(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products; or

"(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i).

"(2) Report.-- Within 2 years after the date of enactment of this section, the Administrator shall submit to the Congress a final report on emissions of volatile organic compounds from consumer or commercial products. The report shall list classes or categories of commercial and consumer products which emit significant quantities of volatile organic compounds. The report should consider alternative regulatory approaches for those products, including fees, marketable permits and auctions.

"(3) Regulations.--

"(A) Following submission of the report required under paragraph (2), the Administrator may promulgate such regulations as he deems necessary to aid in the

attainment of the ozone NAAQS by decreasing emissions of volatile organic compounds from classes or categories of consumer or commercial products. Such regulations shall be designed to achieve reductions from the selected product categories to a level equal to the level that would be achieved by the application of reasonably available controls to each such class or category of consumer or commercial products.

"(B) Such regulations may be imposed only with respect to regulated entities.

"(C) Such regulations may include any system or systems of regulation as the Administrator may deem appropriate, including but not limited to requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or fees and other economic incentives (including but not limited to marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

"(D) The regulations may exempt health use products for which the Administrator determines there are no suitable substitutes.

"(E) Any fees, charges, or other funds established and collected under such regulations shall be deposited in a special fund in the U.S. Treasury for licensing and other services, which thereafter shall be available for



appropriation, to remain available until expended, to carry out the activities of the U.S. Environmental Protection Agency for which such fees, charges, or collections are made.

"(4) Enforcement.-- Any regulation established under this subsection shall be treated, for purposes of enforcement of this Act, as a regulation under section 111.

"(5) 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 the State procedure is adequate, he shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

"(d) MARINE VESSEL STANDARDS.--

"(1) Schedule for Standards.--

"(A) Within 4 years after the date of enactment of this Act, the Administrator shall promulgate standards applicable to the emission of any air pollutant from loading and unloading of marine tank vessels which he finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. In setting such standards, the Administrator shall consider costs, any non-air quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques.

"(B) Any regulation prescribed under this section (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 such period.

"(2) Within six months from the date of enactment, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of marine tank vessels, under Section 3703 of Title 46 of the United States Code and Section 1225 of Title 33 of the United States Code.

"(3) Compliance Provisions.--

"(A) The Administrator shall ensure compliance with the vessel emission standards prescribed under paragraph (1)(A).

"(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

"(4) Until the Administrator promulgates standards under this section, no State or political subdivisions thereof may adopt or attempt to enforce any standard respecting emissions from marine vessels.

"(5) 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 marine vessels subject to regulation under subparagraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

"(6) ENFORCEMENT.-- Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this Act, as a standard under section 111.

"(e) OZONE DESIGN VALUE STUDY.-- The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of the date of enactment of this section for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The study shall be completed and a report submitted to Congress not later than 3 years after the date of enactment of this section. The results of the study shall be subject to peer review.

"SEC. 184. NORTHEAST TRANSPORT REGION AND COMMISSION.-- A single transport region (within the meaning of section 176(a)), 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, is hereby established by operation of law. The provisions of section 176(a)(1)-(2) shall apply with respect to the transport region established under this



section. The Administrator shall convene the commission required (under section 176(b)) as a result of the establishment of such region within 6 months of the date of enactment of this section.

"SEC. 185. SANCTION FOR SEVERE OZONE NONATTAINMENT AREAS FOR FAILURE TO ATTAIN.--

"(a) GENERAL RULE.-- The revision to the applicable implementation plan required under section 182(d) (relating to the attainment plan for severe ozone nonattainment areas) shall provide that, if the Administrator determines, under section 181(b)(2), that the area has failed to attain by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c), pay a fee, computed in accordance with subsection (b), for each calendar year beginning after the attainment year, until the area is redesignated attainment.

"(b) COMPUTATION OF FEE.--

"(1) The fee shall equal \$5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

"(2) For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions ("actuals") or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of

VOC emissions allowed under the applicable implementation plan ("allowables")) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year.

"(3) The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after the year of enactment, in accordance with section 402(b)(3)(B)(v) (relating to inflation adjustment).

"(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 181(b)(5).

"(d) FEE COLLECTION BY THE ADMINISTRATOR.-- If the Administrator has determined, under section 179(a)(1)(A) or (B) (related to disapproval of an implementation plan) that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a determination, under section 179(a)(1)(C) (related to failure to implement or enforce an applicable implementation plan) 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 Title, collect the fees required under subsection (a). If the Administrator makes such a determination under section 179(a)(1)(C), he may collect fees for periods prior to the

determination, plus interest computed in accordance with section 6621(a)(2) of title 26 of the United States Code (relating to computation of interest on underpayment of federal taxes), to the extent he finds such fees have not been paid to the State. The provisions of section 402(b)(3)(C)(ii)-(iii) (and the flush language following clause (iii)) (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

"(e) EXEMPTIONS FOR CERTAIN SMALL AREAS.-- For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this or any other section of the Act shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. This prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this act."

#### SEC. 104. ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS.

Part D of Title I of the Clean Air Act is amended by adding the following new subpart:

##### "SUBPART 3--ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT REQUIREMENTS

"Sec. 186. Classifications and attainment dates.

"Sec. 187. Plan submissions and requirements.

"SEC. 186. CLASSIFICATIONS AND ATTAINMENT DATES.--

"(a) CLASSIFICATION BY OPERATION OF LAW AND ATTAINMENT DATES  
FOR 1988 NONATTAINMENT AREAS.

"(1) Each area designated nonattainment for carbon monoxide pursuant to section 110(b)(4) is hereby classified under Table 1, by operation of law, as a moderate area or a serious area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the United States Environmental Protection Agency most recently before the date of enactment of this section. For each area classified under this subsection, the primary standard attainment date for carbon monoxide shall be as provided in Table 1.

TABLE 1

| <u>Area Class-<br/>ification</u> | <u>Design<br/>Value</u> | <u>Primary Standard<br/>Attainment Date</u> |
|----------------------------------|-------------------------|---------------------------------------------|
| Moderate                         | 9.5-16.4 ppm            | December 31, 1995                           |
| Serious                          | 16.5 ppm<br>above       | and December 31, 2000                       |

"(2) At the time of publication of the notice required under section 110(b)(4) (promulgating carbon monoxide area designations), the Administrator shall publish a notice announcing the classification (as may be adjusted under paragraph (4)) of each carbon monoxide nonattainment area. The provisions of section 172(a)(1)(B) (relating to lack of



notice-and-comment and judicial review) shall apply with respect to such classification.

"(3) An area designated nonattainment for carbon monoxide under section 110(b)(1)(C)(i), but the design value of which is less than 9.5 ppm, shall be classified as a moderate area.

"(4) Adjustment of classification for borderline areas.-  
- If an area classified under paragraph (1), Table 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 such classification was based, the Administrator may, in his discretion, by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area.

"(5) Extensions of attainment dates.-- Upon application by any State, the Administrator may extend for 1 additional year (the "Extension Year") the date specified in Table 1 of subsection (a) if--

"(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(B) no more than one exceedance of the national ambient air quality standard level for carbon monoxide has occurred in the area in the year preceding the Extension Year.

No 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 110(b)(4), and that is subsequently redesignated to nonattainment for carbon monoxide under section 110(b)(3), shall, at the time of the redesignation, be classified by operation of law in accordance with Table 1 under subsections (a)(1) and (a)(4). Upon its classification, the area shall be subject to the same requirements under section 110, subpart 1 of this part, and this subpart 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 the date of enactment and the date the area is classified.

"(2) Reclassification of moderate areas upon failure to attain.--

"(A) General Rule.-- Within six months following 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 attained the standard by that date. Any moderate area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with Table 1 of subsection (a)(1) as a serious area.

"(B) Publication of Notice.-- The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that he has determined, under subparagraph (A), as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

"(c) REFERENCES TO TERMS.--

"Any reference in this subpart to a 'moderate area' or a 'serious area' shall be considered a reference to a moderate carbon monoxide nonattainment area or a serious carbon monoxide nonattainment area, as classified under this section.

"SEC. 187. PLAN SUBMISSIONS AND REQUIREMENTS.--

"(a) MODERATE AREAS.-- 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 United States Environmental Protection Agency issued before the date of enactment of this section), submit to the Administrator the State implementation plan revisions (including the plan items)

described under paragraphs (1), (2) and (3) within such periods prescribed under those paragraphs, except to the extent the State has made such submissions as of the date of enactment of this section.

"(1) Inventory.-- No later than 2 years from the date of enactment of this section, a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 172(c)(3), in accordance with guidance provided by the Administrator.

"(2) Savings clause for vehicle inspection and maintenance provisions of the State implementation plan.-- Immediately after the date of enactment of this section, for any moderate area (or, within the Administrator's discretion, portion thereof) the plan for which is of the type described in section 182(a)(2)(B), any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 182(a)(2)(B).

"(3) Periodic inventory.-- No later than September 30, 1996, and no later than the end of each 3-year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1).

"The Administrator may, in his discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. 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 in any moderate area.

"(b) SERIOUS AREAS.-- Each State in which all or part of a serious area is located shall, with respect to the serious area, make the submissions described under subsection (a) (relating to moderate areas), and submit the revision and other items described under this subsection.

"(1) Attainment demonstration.-- By December 31, 1995, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date.

"(2) Enhanced vehicle inspection and maintenance.-- Within two years of the date of enactment of this section, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 182(c)(2) (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

"(3) Transportation control measures.-- Provisions to comply with the requirements for transportation control measures as provided under section 182(c)(4) (concerning serious ozone nonattainment areas), within the period prescribed in that paragraph.

"(4) Oxygenated fuels.-- Within 2 years from the date of enactment of this section, a revision 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 U.S. Office of Management and Budget)(CMSA) in which the area is located or,

"(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the U.S. 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 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 revision shall provide that such requirement shall take effect no later than October 1, 1993 and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator. Notwithstanding the preceding sentences in this paragraph, the revision described in this paragraph shall not be required for an

area if the State demonstrates to the satisfaction of the Administrator that the revision 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) RECLASSIFIED AREAS.-- Each State containing a carbon monoxide nonattainment area reclassified under section 186(b)(2) shall meet the requirements of subsection (b) of this section, as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

"(d) SERIOUS AREAS THAT FAIL TO ATTAIN.-- Within 3 years following publication of a notice under subsection (b)(2)(B) identifying any serious area as having failed to attain the standard, the State within which such area is located shall submit a revision to the applicable implementation plan that includes such additional measures as the Administrator may prescribe (considering all measures that can feasibly be implemented in the area, in light of technological achievability, costs, and any non-air quality and other air quality related health and environmental impacts).".

**SEC. 105. ADDITIONAL PROVISIONS FOR PARTICULATE MATTER (PM-10) NONATTAINMENT AREAS.**



Part D of Title I of the Clean Air Act is amended by adding the following new subpart after subpart 3:

"SUBPART 4--ADDITIONAL PROVISIONS FOR PARTICULATE MATTER  
NONATTAINMENT AREAS

"SEC. 188. Classifications and attainment dates.

"SEC. 189. Plan provisions and schedules for plan submissions.

"SEC. 190. Issuance of RACM guidance.

"SEC. 188. CLASSIFICATIONS AND ATTAINMENT DATES.--

"(a) INITIAL CLASSIFICATIONS.-- Every area designated nonattainment for PM-10 shall be classified by operation of law as a moderate PM-10 nonattainment area (identified in this subpart also as a "moderate area") at the time of such designation. The Administrator must publish in the Federal Register a notice announcing the classification of each PM-10 nonattainment area within 60 days of such designation. The provisions of section 172(a)(1)(B) (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

"(b) RECLASSIFICATION AS SERIOUS.--

"(1) Reclassification before attainment date.-- The Administrator may reclassify as a serious PM-10 nonattainment area (identified in this subpart also as a "serious area") any area that he determines cannot practicably attain the national ambient air quality standard for PM-10 by the attainment date (as prescribed in subsection (c)) for moderate areas. The Administrator shall reclassify appropriate areas as serious by the following dates--



"(A) For areas designated nonattainment for PM-10 under section 110(b)(4), EPA shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991; and

"(B) For areas subsequently designated nonattainment, EPA shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the moderate area.

"(2) Reclassification upon failure to attain.-- 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 no 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--

"(1) for a moderate area, as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 110(b)(4), the attainment date shall not extend beyond December 31, 1994;

"(2) for a serious area, as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM-10 under section 110(b)(4), the date shall not extend beyond December 31, 2001.

"(d) EXTENSION OF ATTAINMENT DATE FOR MODERATE AREAS.-- Upon application by any State, the Administrator may extend for 1 additional year (the "Extension Year") the date specified in paragraph (c)(1) if--

"(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

"(2) no more than one exceedance of the 24-hour national ambient air quality standard 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 such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

"(e) EXTENSION OF ATTAINMENT DATE FOR SERIOUS AREAS.-- Upon application by any State, the Administrator may extend the attainment date for a serious area beyond the date specified under subsection (c), if attainment by the date established under subsection (c) would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction

of the Administrator that the plan for that area includes the most stringent measures that are included in the implementation plan of any State or are achieved in practice in any State, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than five years.

"(f) WAIVERS FOR CERTAIN AREAS.-- The Administrator may, on a case-by-case basis, waive any requirement applicable to any serious area under this subpart where he 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



he determines that nonanthropogenic sources of PM-10 contribute significantly to the violation of the PM-10 standard in the area.

"SEC. 189. PLAN PROVISIONS AND SCHEDULES FOR PLAN SUBMISSIONS.--

"(a) MODERATE AREAS.--

"(1) Plan Provisions.-- Each State in which all or part of a moderate area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes--

"(A) for the purpose of meeting the requirements of section 172(c)(5), a program providing that permits meeting the requirements of section 173 are required for the construction and operation of new and modified major stationary sources of PM-10; and

"(B) either--

"(i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or

"(ii) a demonstration that attainment by such date is impracticable.

"(2) Schedule for plan submissions.-- A State shall submit the plan required under subparagraph (1) no later than-

"(A) June 30, 1990, for areas designated nonattainment under section 110(b)(4), except that the provision required under subparagraph (1)(A) (concerning



application of the section 173 permit requirements) shall be submitted no later than June 30, 1992;

"(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 110(b)(4).

"(b) SERIOUS AREAS.--

"(1) Plan provisions.-- In addition to the provisions submitted to meet the requirements of paragraph (a)(1) (relating to moderate areas), each State in which all or part of a serious area is located shall submit an implementation plan for such area that includes--

"(A) a demonstration (including air quality modeling)--

"(i) that the plan provides for attainment of the PM-10 NAAQS by the applicable attainment date, or

"(ii) for any area for which the State is seeking, pursuant to section 188(d), an extension of the attainment date beyond the date set forth in section 188(c), that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable; and

"(B) provisions requiring that such reasonably available control measures as the Administrator has

determined necessary (including the adoption of reasonably available control technology by all major stationary sources) be implemented within five years of reclassification of the area to serious, or within three years of issuance by the Administrator of guidance concerning such measures, whichever is later.

"(2) Schedule for Plan Submissions.-- A State shall submit the demonstration required for an area under paragraph (1)(A) no later than five years after reclassification of the area to serious, except that for areas reclassified under section 188(b)(2), the State shall submit the attainment demonstration within 18 months after reclassification to serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a serious area.

"SEC. 190. ISSUANCE OF RACM GUIDANCE.-- The Administrator shall issue technical guidance on reasonably available control measures for urban fugitive dust, and emissions from residential wood combustion and prescribed silvicultural and agricultural burning, no later than 18 months following the date of enactment of this section. He shall also examine other categories of sources contributing to nonattainment of the PM-10 standard, and determine whether additional guidance on reasonably available control measures is needed, and issue any such guidance no later than five years after enactment of this section."

SEC. 106. ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, AND LEAD.

Part D of Title I of the Clean Air Act is amended by adding a new subpart after subpart 4, to read as follows:

"SUBPART 5--ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE OR LEAD

"SEC. 191. Plan Submission deadlines.

"SEC. 192. Attainment dates.

"SEC. 191. PLAN SUBMISSION DEADLINES.--

"(a) Any State containing an area designated or redesignated under section 110(b) as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to the date of enactment of this section shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

"(b) Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides or nitrogen dioxide under section 110(b)(1)(C)(i), but lacking a fully approved implementation plan complying with the requirements of this Act (including part D) as in effect immediately prior to the date of enactment of this section, shall submit to the Administrator, within 18 months of enactment of this section, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 192).

"SEC. 192. ATTAINMENT DATES.--



"(a) Implementation plans required under section 191(a) shall provide for attainment of the relevant primary standard as expeditiously as practicable but, subject to subsection (d), no later than 5 years from the date of the nonattainment designation.

"(b) Implementation plans required under section 191(b) shall provide for attainment of the relevant primary NAAQS within 5 years from the date of enactment.

"(c) Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before the date of enactment of this subpart but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding."

#### SEC. 107. PROVISIONS RELATED TO INDIAN TRIBES.

(a) Section 105(a)(1)(B) of the Clean Air Act is amended by striking "or (4)" and inserting in lieu thereof "(4), or (5)".

(b) Section 302(b) of the Clean Air Act is amended by--

- (1) deleting "or" at the end of paragraph (3);
- (2) striking the period at the end of paragraph (4) and inserting in lieu thereof a semicolon and "or"; and
- (3) adding at the end thereof the following new paragraph to read as follows:

"(5) An agency of an Indian tribe."



(c) Section 302 of the Clean Air Act is amended by adding new subsection (q) to read as follows:

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

(d) Section 110 of the Clean Air Act is amended by adding the following new subsection (t) at the end thereof:

"(t) Indian Tribes.-- If an Indian tribe submits an implementation plan to the Administrator pursuant to section 301(d), the plan shall be reviewed in accordance with the provisions for review set forth in subsections (d), (e), and (f) of this section for State plans except as otherwise provided by regulation promulgated pursuant to section 301(d)(2). When such plan becomes effective in accordance with the regulations promulgated under section 301(d), 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."

(e) Section 301 of the Clean Air Act is amended by adding at the end thereof the following new subsection:

"(d) TRIBAL AUTHORITY.--

"(1) Subject to the provisions of paragraph (2), the Administrator--

"(A) is authorized to treat Indian tribes as States under this Act except for purposes of the requirement that makes available for application by each State no less than one-half of one percent of annual appropriations under section 105; and

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

"(2) The Administrator may promulgate regulations specifying those provisions of this Act for which it is appropriate to treat Indian tribes as States. Such treatment shall be authorized only if--

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

"(B) 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; and

"(C) 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 Act and all applicable regulations.

"(3) The Administrator may promulgate regulations

which establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions thereof.

"(4) 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 such provisions so as to achieve the appropriate purpose.

"(5) Until such time as the Administrator promulgates regulations pursuant to this subsection, the Administrator may continue to provide financial assistance to eligible Indian tribes under section 105."

**SEC. 108. MISCELLANEOUS.**

(a) Transportation Planning Guidance.-- Section 108 of the Clean Air Act is amended by--

(1) revising the first sentence of subsection 108(e) to read as follows:

"(e) Within nine months after the date of enactment of the Clean Air Act Amendments of 1989 and periodically thereafter as necessary to maintain a continuous process of transportation and air quality planning, including emissions inventory development, the Administrator shall, after consultation with the Secretary of Transportation and State and local officials, update the June 1978 Transportation-Air Quality Planning Guidelines; and

(2) amending the introductory language and subparagraph (A) of paragraph 108(f)(1) to read as follows:

"(f)(1) The Administrator shall, from time to time, publish and make available to appropriate Federal, State, and local environmental and transportation agencies--

"(A) information, prepared as appropriate after consultation with the Secretary of Transportation, regarding the emission reduction potential of transportation control measures, including but not limited to--

"(i) trip-reduction ordinances;

"(ii) employer-based transportation management plans;

"(iii) transit improvements;

"(iv) traffic-flow improvements;

"(v) area-wide rideshare programs;

"(vi) no-drive days;

"(vii) parking-management programs;

"(viii) park-and-ride and fringe parking programs;

"(ix) work-schedule changes; and

"(x) road-pricing and tolls;"

(b) State Reports on Emissions-related Data.-- Section 110 of the Clean Air Act is amended by adding a new subsection (u) at the end thereof, to read as follows:



"(u) Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles travelled, congestion levels, and any other information the Administrator may deem necessary to assess the development, effectiveness, need for revision, or implementation of any plan or plan revision required under this Act."

(c) New Source Standards of Performance.--

(1) Section 111(b)(1)(B) of the Clean Air Act is amended by--

(A) striking "120 days" and inserting "one year";

(B) striking "90 days" and inserting "one year";

(C) striking "four years" and inserting "eight years";

(D) inserting "Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if he determines that such review is not appropriate in light of readily available information on the efficacy of such standard." immediately before the sentence beginning "Standards of performance or revisions thereof..."; and

(E) adding a new sentence at the end thereof, to read as follows: "When implementation and enforcement of any requirement of this Act indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are

achieved in practice, the Administrator shall, when revising those standards, consider the emission limitations and percent reductions achieved in practice.

(2) Section 111(f)(1) of the Clean Air Act is amended to read as follows:

"(f)(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) prior to the date of enactment of the Clean Air Act Amendments of 1989 and for which regulations had not been proposed by the Administrator by such date, the Administrator shall:

"(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within two years of the date of enactment of the Clean Air Act Amendments of 1989;

"(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within four years of the date of enactment of the Clean Air Act Amendments of 1989; and

"(C) propose regulations for the remaining categories of sources within six years of the date of enactment of the Clean Air Act Amendments of 1989;"

(d) Regulation of Existing Sources.-- Section 111(d)(1)(A)(i) of the Clean Air Act is amended by striking "or 112(b)(1)(A)" and inserting "or emitted from a source category which is regulated under section 112".

(e) Authority to Obtain Information.-- Section 114(a)(1) of the Clean Air Act is amended by--

(1) striking the term "or" and inserting a comma immediately after the phrase "any emission source"; and

(2) inserting "or who manufactures emission control equipment or process equipment, or who the Administrator believes may have information necessary for the purposes set forth in this subsection" immediately after "any person who owns or operates an emission source".

(f) Consultation.-- The second-to-last sentence of Section 121 of the Clean Air Act is amended to read as follows:

"The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before the date of enactment of the Clean Air Act Amendments of 1989) to ensure adequate consultation.".

(g) Permit Process for Addressing Interstate Effects.-- Section 126 of Clean Air Act is amended by adding a new subsection (d), to read as follows:

"(d) The provisions of this section shall not apply to any source or implementation plan in a State with a permit program fully approved under title IV.".

(h) Increment Exemptions.-- Section 163(c)(1) of the Clean Air Act is amended by--

(1) replacing the comma and "and" at the end of subparagraph (C) with a period;

(2) replacing the period at the end of subparagraph (D) with a comma and "and"; and

(3) adding a new subparagraph (E), to read as follows:

"(E) except for purposes of determining compliance with the maximum allowable increases in ambient concentrations in any area designated as class I under this part, concentrations of particulate matter attributable to the increase in fugitive emissions resulting directly or indirectly from surface coal mines."

(i) PM-10 Increments.--

(1) Part C of the Clean Air Act is amended, in section 163, by --

(A) striking the table contained in paragraph

(b)(1) and inserting the following table:

| "Pollutant | Maximum allowable increase<br>(micrograms per cubic meter) |
|------------|------------------------------------------------------------|
|------------|------------------------------------------------------------|

Particulate matter (measured by PM-10):

|                               |   |
|-------------------------------|---|
| Annual arithmetic mean-----   | 4 |
| Twenty-four-hour maximum----- | 8 |

Sulfur dioxide:

|                               |      |
|-------------------------------|------|
| Annual arithmetic mean-----   | 2    |
| Twenty-four-hour maximum----- | 5    |
| Three-hour maximum-----       | 25"; |

(B) striking the table contained in paragraph

(b)(2) and inserting the following table:



| "Pollutant"                             | Maximum allowable increase<br>(micrograms per cubic meter) |
|-----------------------------------------|------------------------------------------------------------|
| Particulate matter (measured by PM-10): |                                                            |
| Annual arithmetic mean-----             | 17                                                         |
| Twenty-four-hour maximum-----           | 30                                                         |

## Sulfur dioxide:

|                               |       |
|-------------------------------|-------|
| Annual arithmetic mean-----   | 20    |
| Twenty-four-hour maximum----- | 91    |
| Three-hour maximum-----       | 512"; |

(C) striking the table in paragraph (b)(3) and inserting the following table:

| "Pollutant"                             | Maximum allowable increase<br>(micrograms per cubic meter) |
|-----------------------------------------|------------------------------------------------------------|
| Particulate matter (measured by PM-10): |                                                            |
| Annual arithmetic mean-----             | 34                                                         |
| Twenty-four-hour maximum-----           | 60                                                         |

## Sulfur dioxide:

|                               |       |
|-------------------------------|-------|
| Annual arithmetic mean-----   | 40    |
| Twenty-four-hour maximum----- | 182   |
| Three-hour maximum-----       | 700"; |

(D) adding a new paragraph (b)(5) immediately after paragraph (b)(4) to read as follows:

"(5) For determining compliance with the maximum allowable increases in concentrations of particulate matter specified in this subsection and section 165, the baseline areas and baseline dates (for measuring increases over the baseline concentration) in effect with respect to particulate matter prior to the enactment of the Clean Air Act Amendments of 1989 shall remain in effect."; and

(E) adding a new subsection (d) immediately after subsection (c) to read as follows:

"(d) Notwithstanding the amendments to the maximum allowable increases in concentrations of particulate matter in section 163(b) made pursuant to the Clean Air Act Amendments of 1989, or any subsequent revisions to regulations promulgated by the Administrator implementing the maximum allowable increases for particulate matter in section 163(b) as in effect prior to the date of enactment of such Amendments, the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) in an applicable implementation plan, and the provisions in such a plan concerning implementation of those maximum allowable increases, shall remain in effect as to an area until plan provisions with respect to sources of PM-10 meeting the requirements of either Part C or section 172(c)(5) (as applicable) have been approved by the Administrator and made effective in the applicable implementation plan for that area."

(2) Section 165 of the Clean Air Act is amended by striking the table contained in subclause (d)(2)(C)(iv) and inserting the following table:

| "Pollutant                              | Maximum allowable increase<br>(micrograms per cubic meter) |
|-----------------------------------------|------------------------------------------------------------|
| Particulate matter (measured by PM-10): |                                                            |
| Annual arithmetic mean-----             | 17                                                         |
| Twenty-four-hour maximum-----           | 30                                                         |
| Sulfur dioxide:                         |                                                            |
| Annual arithmetic mean-----             | 20                                                         |
| Twenty-four-hour maximum-----           | 91                                                         |

Three-hour maximum-----325".

(3) Subsection 166(a) of the Clean Air Act is amended to read as follows:

"(a)(1) In the case of any pollutant other than sulfur dioxide or particulate matter for which a national ambient air quality standard is promulgated or revised, the Administrator may promulgate or revise air quality increments or other regulations to prevent the significant deterioration of air quality which would result from emissions of such pollutant.

"(2) If, after the date of enactment of the Clean Air Act Amendments of 1989, the Administrator changes the indicator for the particulate matter NAAQS, he may also, in his discretion, modify the maximum allowable increases in concentrations for particulate matter specified in sections 163 and 165. Any new maximum allowable increases shall be comparable in terms of stringency to the maximum allowable increases in effect at the time of such change in the NAAQS. Nothing in this subsection shall be construed to require the Administrator to promulgate new maximum allowable increases if he promulgates a new particulate matter NAAQS."

(j) Delegation.-- The second sentence of section 301(a)(1) of the Clean Air Act is amended by inserting the phrase "subject to section 307(d) of the Act" immediately following the word "regulations".

(k) Definitions.-- Section 302 of the Clean Air Act is amended by--



(1) inserting a new subsection (r) immediately after new subsection (q) to read as follows:

"(r) The term 'Federal implementation plan' means a plan (or portion thereof) 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, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as fees, marketable permits, or auctions of emissions allowances), but does not necessarily provide for attainment of the relevant national ambient air quality standard.";

(2) inserting a new subsection (s) at the end thereof to read as follows:

"(s) The term--

"(1) 'VOC' means volatile organic compound, as defined by the Administrator;

"(2) 'PM-10' means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine;

"(3) 'NAAQS' means national ambient air quality standard;

"(4) 'NO<sub>x</sub>' means oxides of nitrogen; and,

"(5) 'CO' means carbon monoxide."; and

(3) Adding a new sentence at the end of subsection (g) to read as follows:

"Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such



precursor or precursors for the particular purpose for which the term 'air pollutant' is used."

(1) Preenforcement Review.--

(1) Section 304(e) is amended by striking the phrase "the Administrator or".

(2) Section 307(e) is amended to read as follows:

"(e) judicial review of regulations, or other actions of the Administrator under color of this Act, is not authorized, except as provided in this section."

(m) Interpretation of State Implementation Plan.-- Section 307 of the Clean Air Act is amended by adding at the end thereof the following new subsection:

"(h) INTERPRETATION OF STATE IMPLEMENTATION PLAN.--

An interpretation of an applicable implementation plan by the Administrator issued or presented before or after the date of enactment of the Clean Air Act Amendments of 1989 (including an interpretation presented in a judicial proceeding before or after such date) shall, if contested by a State or other party, be given deference by a court if the interpretation concerns the extent to which the applicable implementation plan complies with the requirements of the Clean Air Act, and if the Administrator's interpretation is rational."

(n) Ethics, Financial Disclosure, and Conflicts of Interest.

--

The Clean Air Act is amended by repealing section 318.

(o) Pollution Prevention.-- Section 101 is amended by--

(1) amending section (a)(3) to read as follows:

"(3) that 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 is the primary responsibility of States and local governments; and"

(2) amending subsection (b)(4) by inserting "prevention and" immediately after "pollution".

(3) adding a new subsection (c) to read as follows:

"(c) A primary goal of this subchapter is to require or otherwise promote federal, State and local governmental actions for pollution prevention."

(p) Title I of the Clean Air Act is amended to add new section 193, not to be codified, to read as follows:

"SEC. 193. GENERAL SAVINGS CLAUSE. All regulations, standards, rules, notices, orders or guidance promulgated or issued by the Administrator under this Act as in effect before the date of enactment of the Clean Air Act Amendments of 1989 shall remain in effect, except to the extent provided otherwise under this Act, inconsistent with any provision of this Act, or revised by the Administrator."

(q) Section 162(a) of the Clean Air Act is amended by adding at the end thereof the following:

"The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to the enactment of the Clean Air Act

Amendments of 1977, or which may occur subsequent to the enactment of the Clean Air Act Amendments of 1989."

(r) Section 164(a) of the Clean Air Act is amended by inserting immediately before the sentence beginning "Any area (other than an area referred to in paragraph (1) or (2))" the following:

"The extent of the areas referred to in paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to the enactment of the Clean Air Act Amendments of 1977, or which may occur subsequent to the enactment of the Clean Air Act Amendments of 1989."

(s) Research.-- Section 108 of the Clean Air Act is amended by adding at the end thereof a new subsection (g) to read as follows:

"(g) Research on Risks to Ecosystems.--The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in his sole discretion)."

(t) Section 307 of the Clean Air Act is amended by adding new subsection (i) to read as follows:

"(i) No report required by this Act to be submitted to Congress shall be subject to judicial review."

#### SEC. 109. CONFORMING AMENDMENTS

(a) Part A of title I of the Clean Air Act is amended by --

(1) striking, in section 106, the reference to "section 107" and inserting "section 110";

(2) striking section 107(d) and redesignating the succeeding subsections accordingly;

(3) striking, in section 111(d)(2)(A), the reference to "section 110(c)" and inserting "section 110(g) and section 180";

(4) striking, in section 113(a)(5), "section 110(a)(2)(I) and";

(5) inserting, in section 114(d)(1) after "section 110(c)", "(as in effect before the date of enactment of the Clean Air Act Amendments of 1989), section 110(g) or section 180";

(6) striking, in section 115(b), the reference to "section 110(a)(2)(H)" and inserting "section 110(e)(4)";

(7) striking, in section 120(a)(2)(B)(v), the reference to "section 110(f) or (g)" and inserting "section 110(o) or (p)";

(8) inserting, in section 125(f) after "section 110(c)", "(as in effect before the date of enactment of the Clean Air Act Amendments of 1989), section 110(g) or section 180"; and

(9) striking, in section 126, each reference to "section 110(a)(2)(E)(i)" and inserting "section 111(d)(4)(A)".

(b) Part C of title I of the Clean Air Act is amended by --

(1) striking, in section 161, "identified pursuant to



section (d)(1)(D) or (E)" and inserting "designated pursuant to section 110(b) as attainment or unclassifiable within the meaning of sections 110(b)(1)(A)(ii) or (iii) respectively";

(2) striking, in section 162(b), "identified pursuant to section 107(d)(1)(D) or (E)" and inserting "designated pursuant to section 110(b) as attainment or unclassifiable within the meaning of section 110(b)(1)(A)(ii) or (iii) respectively";

(3) striking, in section 165(a)(3), the reference to "section 110(j)" and inserting "section 110(s)";

(4) striking, in section 166(e), the reference to "section 110(c)" and inserting "section 110(g)";

(5) striking, in section 167, the reference to "included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 107 of this Act" and inserting "designated pursuant to section 110(b) as attainment or unclassifiable within the meaning of section 110(b)(1)(A)(ii) or (iii) respectively"; and

(6) striking, in section 169A, all references to "section 110(c)" and inserting "section 110(g)".

(c) Part D of title I of the Clean Air Act is amended by striking sections 176(a) and (b);

(d) Title III of the Clean Air Act is amended by --

(1) striking, in section 307(a)(1), the reference to "section 110(f)" and inserting "section 110(o)"; and

(2) striking, in section 313, the reference to "section 110(a)(2)(F)(v)" and inserting "section 110(d)(7)".

## TITLE II--PROVISIONS RELATING TO MOBILE SOURCES

## SEC. 201. CLEAN FUEL REQUIREMENTS.--

(a) Section 216 of the Clean Air Act is amended by adding the following new subsections:

"(7) The term 'urban bus' has the meaning provided under regulations of the Administrator promulgated under section 202(a).

"(8) The term 'clean alternative fuel' means methanol, ethanol, natural gas, propane, electricity, or other motor vehicle fuel or power source such as reformulated gasoline if such other fuel or power source has comparably low emissions, as determined under regulations of the Administrator.

"(9) The term 'clean-fuel vehicle' means any light-duty vehicle or light-duty truck that (A) can operate on clean alternative fuel, and (B), when operated on clean alternative fuel, complies with emissions standards (as prescribed by regulations of the Administrator) that require substantially lower (i) ozone-producing hydrocarbon emissions and (ii) total air toxic emissions, than are emitted from conventional gasoline-fueled vehicles in compliance with applicable standards prescribed under the Act.

"(10) The term 'light-duty truck' has the meaning provided under regulations of the Administrator promulgated under section 202(a)."

(b) The Clean Air Act is amended by striking section 212 and inserting the following new section:

"SEC. 212. CLEAN FUEL REQUIREMENTS.

"(a) URBAN BUSES.--

"(1)(A) Not later than 12 months after the enactment of this section, the Administrator shall promulgate regulations requiring the use of clean alternative fuel in new urban buses operated primarily in a Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) with a 1980 population of one million or more. The regulations shall provide that all new urban buses purchased or placed into service by owners or operators of urban buses in such areas must be capable of operating, and must be exclusively operated, on clean alternative fuel. The Administrator shall prescribe a schedule phasing in the applicability of the requirements established by this paragraph over the 1991 through 1994 model years as follows: 10 percent of new urban buses purchased or placed into service in model year 1991; 25 percent of new urban buses purchased or placed into service in model year 1992; 60 percent of new urban buses purchased or placed into service in model year 1993; 100 percent of new urban buses purchased or placed into service in 1994 and later model years. Emissions of particulate matter from buses purchased or



placed into service as required by this paragraph shall not exceed 0.10 grams per brake horsepower-hour.

"(B) Application of the requirements prescribed under this paragraph may be delayed by up to two years if the Administrator determines that such a delay will substantially advance the technology, improve the benefits, or lower the costs of the urban bus program established by this subsection.

"(2) The regulations under section 202(a)(1) applicable to emissions of particulate matter from 1991 through 1993 model year urban buses capable of operating on diesel fuel shall contain a standard which provides that emissions of particulate matter from such buses may not exceed 0.25 grams per brake horsepower-hour. The emission standard shall be prescribed by regulation within 180 days after enactment of this section.

"(b) CLEAN-FUEL VEHICLE PROGRAM.-- The Administrator shall establish a program to significantly increase the number of clean-fuel vehicles in the most serious ozone nonattainment areas.

"(1) PERFORMANCE STANDARDS.-- Not later than 12 months after enactment of this section, the Administrator shall promulgate regulations establishing performance standards for the clean-fuel vehicle program required under this subsection. The Administrator shall base the performance standards on the long-term reductions in ozone-producing and toxic air emissions that, in his judgment, may reasonably be anticipated

to result from the use of clean alternative fuels formulated to provide maximum reductions of such emissions. Such performance standards shall be the measure of the emissions reductions that programs submitted as substitutes for the clean-fuel vehicle program by States under section 182(c)(3)(B), or by motor vehicle manufacturers or fuel refiners under section 214, must achieve to receive the Administrator's approval under those sections.

"(2) PROGRAM REQUIREMENTS.-- Not later than 18 months after the enactment of this section, the Administrator shall promulgate regulations establishing initial requirements, and subsequently may revise such regulations as necessary, for attainment of the performance standards prescribed under paragraph (1). The regulations shall provide for the following:

"(A) CLEAN-FUEL VEHICLES.-- Clean-fuel vehicles shall be produced, sold, and distributed to ultimate purchasers in numbers that meet or exceed the following schedule (as may be revised under subparagraph (D)): 500,000 vehicles in model year 1995, 750,000 vehicles in model year 1996, and 1,000,000 vehicles per year in model years 1997 through 2004. The Administrator may by regulation grant a manufacturer an appropriate amount of credits toward (i) compliance with applicable emission standards prescribed under 202(a) for selling clean-fuel vehicles that achieve emission reductions greater than

those required of such vehicles; and (ii) fulfillment of the requirements prescribed under this subparagraph for selling more clean-fuel vehicles than regulations under this subparagraph require or heavy-duty truck engines capable of operating on clean alternative fuel. A manufacturer granted credits may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with emission standards prescribed under section 202(a) or the requirements prescribed under this subparagraph. The Administrator may make the credits available for use after consideration of enforceability, environmental and economic factors and upon such terms and conditions as he finds appropriate.

"(B) CLEAN FUELS.-- The clean alternative fuels on which the vehicles required under subparagraph (A) can operate shall be made available in the areas where the vehicles are to be sold and operated in a manner to be specified by the Administrator. At a minimum, one such fuel shall be offered for retail sale at service stations dispensing at least 50,000 gallons of motor vehicle fuel per month, on average. The Administrator shall determine the clean alternative fuels to be made available based on motor vehicle manufacturers' projections of future sales of clean-fuel vehicles and consultations with the affected State and local governments. If the



Administrator determines that the sale of clean-fuel vehicles has created a demand for clean alternative fuels outside of the areas in which such vehicles are required to be sold, or motor vehicle manufacturers are prepared to make vehicles designed to operate exclusively on clean alternative fuel available on a broad basis, he may require that the clean alternative fuels on which the vehicles sold under subparagraph (A) can operate also be made available in major nationwide transportation corridors. The Administrator may by regulation grant persons subject to the requirements prescribed under this subparagraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The Administrator may make the credits available for use after consideration of enforceability, environmental and economic factors and upon such terms and conditions as he finds appropriate. The Administrator may also by regulation establish specifications for any clean alternative fuel made available under this subparagraph as he finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.



"(C) PROGRAM SCOPE.-- The clean-fuel vehicles required under subparagraph (A) shall be sold in--

"(i) areas designated nonattainment for ozone under section 110(b)(5), having a 1988 ozone design value at or above 0.18 parts per million (as calculated according to the most recent interpretation methodology issued prior to the enactment of this section by the United States Environmental Protection Agency), having a 1980 population of 250,000 or more, and for which the Administrator has not approved, under section 182(c)(3)(B), State provisions wholly replacing the clean-fuel vehicle program, and

"(ii) any other area at the request of the Governor of the State in which the area is located, upon the approval of the Administrator. The Administrator shall approve any such request where the Governor of the State has made a determination that inclusions of the area in the clean fuel vehicle program is appropriate and would result in progress toward attainment of any national ambient air quality standard and the Administrator finds that such determination is not arbitrary or capricious.

Sales of the clean-fuel vehicles shall be allocated among such areas based on population, vehicles sales and such

other factors as the Administrator finds appropriate (including State provisions approved under section 182(c)(3)(B) partly replacing the clean-fuel vehicle program and requests under subparagraph (D) for an increase in the number of clean-fuel vehicles required to be sold under this subsection).

"(D) ADJUSTMENTS TO PROGRAM.--

"(i) Except as provided under clause (ii), if one or more areas are exempted in whole or in part from the clean-fuel vehicle program under section 182(c)(3)(B), or included in the clean-fuel vehicle program under subparagraph (C)(ii), the Administrator, by regulation, shall--

"(I) revise the total number of clean-fuel vehicles that must be produced, sold, and distributed under subparagraph (A) by an amount proportional to the change in the total population covered by the program as a result of such area or areas being exempted in whole or in part from or included in the program, and

"(II) revise as appropriate the requirements prescribed under subparagraph (B) regarding the availability of clean alternative fuels in such area or areas.

"(ii) The Governor of any State containing an area included in the clean-fuel vehicle program

under subparagraph (C)(ii) may submit to the Administrator a request to increase the number of clean-fuel vehicles required to be sold in the area under the program. The Administrator shall approve any such request where the Governor of the State has made a determination that the requested increase is appropriate and would result in progress toward attainment of any national ambient air quality standard and the Administrator finds that such determination is not arbitrary or capricious. If the Administrator approves one or more such requests, he shall, by regulation--

"(I) increase the total number of clean-fuel vehicles that must be produced, sold, and distributed to ultimate purchasers under subparagraph (A) by the amount requested, and

"(II) revise as appropriate the requirements prescribed under subparagraph (B) regarding the availability of clean alternative fuels in the areas affected.

"(iii) The requirements prescribed under subparagraphs (A) and (B) may be delayed by up to two years or decreased if the Administrator determines

"(I) within 18 months of enactment of this section that a delay will substantially advance

the technology, improve the benefits, or lower the costs of the clean-fuel vehicle program, or

"(II) that a delay or decrease is appropriate due to the likelihood of a national economic recession.

In the event the Administrator makes such a determination, he may revise as appropriate the number of clean-fuel vehicles required to be sold in a particular year.

"(iv) Any additional requirements prescribed under this subparagraph shall become applicable after such period as the Administrator finds necessary for the requisite vehicles and fuels to be made available, giving appropriate consideration to model availability and the cost of compliance within such period.

In developing the regulations to implement and enforce the clean-fuel vehicle program prescribed by this subsection, the Administrator shall hold at least one public hearing and shall consider the ozone, toxic and global warming benefits of the program; safety and public health issues and measures necessary to avoid any risks involved; ways to ensure customer acceptance; the expected cold start performance, serviceability, durability, and reliability of the vehicles likely to be produced; other environmental, economic, energy,



national security, and safety implications of the program; along with the results of ongoing programs demonstrating the use of motor vehicles operated on clean alternative fuels.

"(c) INFORMATION COLLECTION.--

"(1) For purposes of enforcing regulations implementing this section, the Administrator may by regulation require manufacturers, distributors, and retailers of motor vehicles or motor vehicle fuels to establish and maintain records, make reports, and provide information concerning the sales of (A) motor vehicles capable of operating on clean alternative fuel, and (B) clean alternative fuels. Nothing in this subsection shall be construed to limit the Administrator's authority under sections 114, 206, or 208.

"(2) Any records, reports or information obtained under this subsection shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular portions thereof (other than emission data), to which the Administrator has access under this subsection would, if made public, divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the

Administrator) shall be considered an employee of the United States for purposes of section 1905 of title 18. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports, or information to other officers, employees, or authorized representatives of the United States (including any authorized contractor acting as a representative of the Administrator) concerned with carrying out this Act or, when relevant, in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control (including any authorized contractor acting as a representative of the Administrator) from the duly authorized committees of the Congress.

"(d) CONSULTATION WITH DOE AND DOT.-- The Administrator shall consult with the Secretaries of the Department of Energy and the Department of Transportation in carrying out his duties under this section."

(c) Section 202(a)(4) of the Clean Air Act is amended by striking the phrase "standards prescribed under this subsection" every place it occurs and inserting the phrase "requirements prescribed under this title".

**SEC. 202. EMISSIONS OF HYDROCARBONS, CARBON MONOXIDE AND OXIDES OF NITROGEN FROM PASSENGER CARS.**

(a) Sections 202(b)(1)(A) and (B) of the Clean Air Act are amended to read as follows:

"(1)(A) The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from 1980 and later model year light-duty vehicles and engines shall contain standards which provide that emissions of total hydrocarbons from such vehicles may not exceed 0.41 gram per vehicle mile. The regulations under subsection (a) applicable to emissions of hydrocarbons from 1993 and later model year light-duty vehicles and engines also shall contain standards which provide that emissions of nonmethane hydrocarbons from 40 and 80 percent of each manufacturer's 1993 and 1994 model year vehicles and engines respectively, and 100 percent of 1995 and later model year vehicles and engines, may not exceed 0.25 gram per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1981 and later model year light-duty vehicles and engines shall contain standards which provide that emissions of carbon monoxide from such vehicles may not exceed 3.4 grams per vehicle mile.

"(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from 1981 through 1992 model year light-duty vehicles and engines shall contain standards which provide that such emissions from such vehicles and engines may not

exceed 1.0 gram per vehicle mile. The regulations under subsection (a) of this section applicable to 1993 and later model year light-duty vehicles and engines shall contain standards which provide that such emissions from each manufacturer's vehicles and engines may not exceed the levels specified in Table 1:



"TABLE 1

EMISSIONS OF NO<sub>x</sub> FROM 1993 AND LATER MODEL YEAR

## LIGHT-DUTY VEHICLES

| Model Year                       | Standard                                | Percentage of Each<br>Manufacturer's Fleet<br>Subject to Standard |
|----------------------------------|-----------------------------------------|-------------------------------------------------------------------|
| 1993                             | 1.0 gram per<br>vehicle-mile<br>("gpm") | 60 percent                                                        |
|                                  | 0.7 gpm                                 | 40 percent                                                        |
| 1994                             | 1.0 gpm                                 | 20 percent                                                        |
|                                  | 0.7 gpm                                 | 80 percent                                                        |
| 1995 and<br>later<br>model years | 0.7 gpm                                 | 100 percent                                                       |

(b) Section 202(b)(1) is amended by striking subparagraph (C) and inserting the following new subparagraph:

"(C) 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 into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable."

(c) Section 202(b)(2) of the Clean Air Act is amended to read as follows:

"(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to the enactment of paragraph (1)), shall be prescribed by regulations within 180 days after such date."

**SEC. 203. EMISSIONS OF HYDROCARBONS AND CARBON MONOXIDE FROM LIGHT-DUTY TRUCKS.**

(a) Section 202 of the Clean Air Act is amended by striking subsection (c) and inserting the following new subsection:

"(c) EMISSIONS OF HC AND CO FROM LIGHT-DUTY TRUCKS.--

"(1) The regulations under subsection (a) applicable to emissions of hydrocarbons and carbon monoxide from the light-duty trucks specified in Table 2 shall contain standards which provide that such emissions from 50 percent of each manufacturer's 1994 model year light-duty trucks and 100 percent of 1995 and later model year light-duty trucks, may not exceed the levels specified in the table:

"TABLE 2

## EMISSIONS OF HC AND CO FROM LIGHT-DUTY TRUCKS

| Light-duty truck ("LDT")<br>class                                               | Pollutant | Standard |
|---------------------------------------------------------------------------------|-----------|----------|
| LDTs with loaded vehicle<br>weight of 3,750 lbs.<br>and less ("Light-LDTs")     | Total HC  | 0.41 gpm |
| LDTs with loaded vehicle<br>weight of greater than<br>3,750 lbs. ("Heavy-LDTs") | Total HC  | 0.50 gpm |
| Light-LDTs                                                                      | CO        | 4.20 gpm |
| Heavy-LDTs                                                                      | CO        | 5.50 gpm |

"(2) Emission standards under paragraph (1) and measurement techniques on which the standards are based (if not promulgated prior to the enactment of paragraph (1)), shall be prescribed by regulations within 180 days after such date.

"(3) 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 and welfare, taking costs into account. Any revised standard shall require a reduction of emissions from the standard which was previously applicable."

(b) Section 206(f)(1) of the Clean Air Act is amended by inserting "and light-duty trucks" immediately after "light-duty vehicles and engines".

**SEC. 204. CARBON MONOXIDE EMISSIONS AT COLD TEMPERATURES.**

Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(h) COLD CO STANDARD.--

"(1) Not later than 12 months after the enactment of this subsection, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1993 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that, on average, emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards also shall provide that each manufacturer's light-duty vehicle and light-duty truck fleets shall comply with applicable standards according to the following schedule: at least 40 percent of 1993 model year vehicles; at least 80 percent of 1994 model year vehicles; and 100 percent of 1995 and later model year vehicles. The regulations shall provide that such standards be met by averaging emission levels established for every engine family subject to the standards at the time the engine family is certified under section 206.



"(2)(A) Not later than December 31, 1993, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from 1998 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

"(B) The Administrator may promulgate (and from time to time revise) regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from 1998 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit, as needed to protect public health and welfare, taking costs into account.

"(3) The Administrator also may promulgate regulations under subsection (a)(1) applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures."

#### SEC. 205. EVAPORATIVE EMISSIONS.

Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(i) CONTROL OF EVAPORATIVE EMISSIONS.-- The Administrator may promulgate (and from time to time revise) regulations applicable to evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles (1) during operation and (2) over two or more days of nonuse, under ozone-prone summertime conditions

(as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and 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 cost, energy and safety factors associated with the application of the technology."

**SEC. 206. MOBILE SOURCE-RELATED AIR TOXICS.**

Section 202 of the Clean Air Act is amended by adding a new subsection to read as follows:

"(j) MOBILE SOURCE-RELATED AIR TOXICS.--

"(1) Not later than eighteen months after the enactment of this subsection, the Administrator shall complete a study of the need for and feasibility of controlling emissions of toxic air pollutants which are unregulated under title II and associated with motor vehicles and motor vehicle fuels, and the need for and feasibility of controlling such emissions. The Administrator may focus the study on those categories of emissions that in his judgment pose the greatest risk to human health or about which significant uncertainties remain.

"(2) After completing the study prescribed under paragraph (1), the Administrator may promulgate (and from time to time revise) regulations under subsection (a)(1) of this section or section 211(c)(1) containing such requirements as the Administrator in his discretion deems appropriate based

on the study prescribed under subparagraph (1) and such other information as is available to him."

**SEC. 207. EMISSION CONTROL DIAGNOSTICS SYSTEMS.**

(a) Section 202 of the Clean Air Act is amended by adding the following new subsection:

"(g) EMISSIONS CONTROL DIAGNOSTICS.--

"(1) RULEMAKING.-- The Administrator, after consideration of environmental benefits and economic factors, may promulgate (and from time to time revise) regulations requiring manufacturers to install on all new motor vehicles and motor vehicle engines diagnostics systems capable of

"(A) accurately identifying emission-related systems deterioration or malfunction which could cause or result in failure of the 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) EFFECTIVE DATE.-- The regulations prescribing emission control diagnostics systems under paragraph (1) of this subsection (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 such period.

"(3) STATE INSPECTION.-- The Administrator, by regulation, may require States that have implementation plans under section 110 containing motor vehicle inspection and maintenance programs to amend their plans within two years of promulgation of the regulations to provide for inspection of emission control diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

"(4) INFORMATION AVAILABILITY.-- The Administrator, by regulation, may require manufacturers to provide any person engaged in the business of repairing or servicing motor vehicles or motor vehicle engines with any information needed to make use of the emission control diagnostics systems prescribed under this subsection, including instructions for making emissions-related repairs."

(b) Section 207(a)(3) of the Clean Air Act is amended by striking the last sentence and inserting the following new sentence:

"The term 'designed for emission control' as used in the preceding sentence means a catalytic converter, a thermal reactor, an emission control diagnostics system, or other



component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).".

(c) Section 207(b) is amended by striking the second to last sentence and inserting the following new sentence:

"For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, a thermal reactor, an emission control diagnostics system, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions.".

#### SEC. 208. HEAVY-DUTY TRUCKS.

Section 202(a)(3) of the Clean Air Act is amended by--

(a) striking subparagraphs (A), (B), (C), (D), and (E) and adding the following new subparagraphs:

"(A)(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen and particulate matter from classes and categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall

contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

"(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

"(B) On the basis of information available to him 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) of this subsection revising any standard promulgated under or prior to the enactment of subparagraph (A) (or previously revised under this subparagraph).";

- (b) redesignating subparagraph (F) as subparagraph (C); and
- (c) adding a new subparagraph (D) to read as follows:

"(D) 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 him, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engine (whether or not the engine is past its statutory useful life), which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare, taking costs into account. Any regulations shall take effect after a period 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."

**SEC. 209. NON-ROAD ENGINES AND VEHICLES.**

(a) Section 216 of the Clean Air Act is amended by adding the following new subsections:

"(11) The term 'non-road engine' means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202.

"(12) The term 'non-road vehicle' means a vehicle that is powered by a non-road engine and that is not a motor vehicle or a vehicle used solely for competition."



(b) Subsection (1) of section 216 of the Clean Air Act is amended by striking the phrase "new motor vehicles or new motor vehicle engines" every place it occurs and inserting "new motor vehicles, new motor vehicle engines, new non-road vehicles or new non-road engines".

(c) The Clean Air Act is amended by striking section 213 and inserting the following new section:

"SEC. 213. NON-ROAD ENGINES AND VEHICLES"

"(a) EMISSION STANDARDS.-- The Administrator may promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of non-road engines and non-road vehicles which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare, taking costs into account. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

"(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 such period.

"(c) SAFE CONTROLS.-- Effective with respect to 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 non-road engine or new non-road vehicle for purposes of complying with such standards if such 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. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 202(a)(4)(B).

"(d) ENFORCEMENT.--The standards under this section shall be subject to sections 206, 207, and 208, with such modifications as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 202. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with and enforce standards in effect under this section."

#### SEC. 210. VEHICLE CERTIFICATION.

(a) Section 206(a) is amended by adding the following new paragraphs:

"(4)(A) Not later than 12 months after the enactment of this paragraph, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether 1993 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 207(b) for that model year, 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, but not necessarily be limited to, 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 1993 or later model year vehicle or engine that he concludes cannot pass the test procedures established under this paragraph.

"(B) From time to time, the Administrator may revise the regulations promulgated under paragraph (A), as he deems appropriate."

"(5) To the maximum extent feasible, considering costs, environmental benefits and technology, the Administrator shall prescribe regulations permitting manufacturers to demonstrate compliance with section 202(a) emission standards through averaging of emissions of vehicle or engine families, within a manufacturer's fleet or among manufacturers' fleets and over time, upon such terms and conditions as he finds appropriate. In devising any program under this paragraph, the Administrator shall consider factors such as the enforceability of any such program and the potential for adverse environmental impacts."

(b) Section 206(a)(1) is amended by striking the third sentence and inserting the following new sentence:

"In the case of any original equipment manufacturer (as defined by the Administrator in regulations promulgated before the enactment of the Clean Air Amendments of 1989) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the Administrator shall not require, for purposes of determining compliance with regulations under section 202 for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, unless the Administrator by regulation prescribes otherwise. The Administrator shall apply any adjustment factors he deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 202(d)) with the regulations prescribed under section 202."

**SEC. 211. IN-USE COMPLIANCE--RECALL.**

Section 207(c) of the Clean Air Act is amended by redesignating paragraph (3) as paragraph (7) and adding new paragraphs (3), (4), (5), and (6) to read as follows:

"(3) With respect to any determination of nonconformity applicable to emissions of nonmethane hydrocarbons ("NMHC") from 1993 and later model year light-duty vehicles or engines conforming at the time of certification to the 0.25 gram per

mile ("gpm") NMHC standard prescribed under section 202(b)(1)(A), the Administrator shall apply--

"(A) to 1993 and 1994 model year vehicles, a standard of 0.32 gpm;

"(B) to 1995 model year vehicles, a standard of 0.25 gpm to 40 percent, and a standard of 0.32 gpm to 60 percent, of each manufacturer's vehicles and engines;

"(C) to 1996 model year vehicles, a standard of 0.25 gpm to 80 percent, and a standard of 0.32 gpm to 20 percent, of each manufacturer's vehicles and engines;

"(D) to 1997 and later model year vehicles, a standard of 0.25 gpm to 100 percent of each manufacturer's vehicles and engines.

In the case of each manufacturer's 1995 and later model year vehicles, the Administrator shall apply the more stringent of the standards applicable under this paragraph to those engine families which the manufacturer shall designate at the time of certification.

"(4) With respect to any determination of nonconformity applicable to emissions of total hydrocarbons ("HC") and carbon monoxide ("CO") from 1994 and later model year light-duty trucks conforming at the time of certification to the standards prescribed under section 202(c)(1), the Administrator shall apply--

"(A) to 1994 and 1995 model year light-duty trucks with mileages of 50,000 or less,



"(i) standards of 0.41 gpm of HC and 5.20 gpm of CO in the case of trucks with a loaded vehicle weight of 3,750 pounds or less ("Light-LDTs"); and

"(ii) standards of 0.50 gpm of HC and 6.70 gpm of CO in the case of trucks with a loaded vehicle weight of greater than 3,750 pounds ("Heavy-LDTs");

"(B) to 1994 and 1995 model year light-duty trucks with mileages greater than 50,000, standards of 0.80 gpm of HC and 10.0 gpm of CO;

"(C) to 50 percent of each manufacturer's 1996 model year Light-LDTs and Heavy-LDTs,

"(i) standards of 0.41 gpm of HC and 4.20 gpm of CO in the case of Light-LDTs; and

"(ii) standards of 0.50 gpm of HC and 5.50 gpm of CO in the case of Heavy-LDTs;

"(D) to 50 percent of each manufacturer's 1996 model year Light-LDTs and Heavy-LDTs,

"(i) the standards specified in subparagraph (A) to trucks with mileages of 50,000 or less; and

"(ii) standards specified in subparagraph (B) to trucks with mileages greater than 50,000; and

"(E) to 1997 and later model year light-duty trucks, the standards specified in subparagraph (C).

In the case of each manufacturer's 1995 and later model year light-duty trucks, the Administrator shall apply the more stringent of the HC and CO standards applicable under this

paragraph to those engine families which the manufacturer shall designate at the time of certification.

"(5) The Administrator may require a manufacturer to audit the effectiveness of repairs performed on its vehicles under a remedial plan ordered under this subsection or undertaken by the manufacturer on its own initiative.

"(6) For the purpose of determining whether a notice of nonconformity or failure should be issued under this subsection, the Administrator may require a manufacturer to procure and test, or have procured and tested at the manufacturer's expense, in-use vehicles or engines in a manner the Administrator considers appropriate."

#### SEC. 212. COMPLIANCE PROGRAM FEES.

Part A of title II of the Clean Air Act is amended by adding the following new section at the end thereof:

##### "SEC. 217. MOTOR VEHICLE COMPLIANCE PROGRAM FEES.

"(a) FEE COLLECTION.-- The Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all costs to the Government associated with--

"(1) new vehicle or engine certification under section 206(a),

"(2) new vehicle or engine compliance monitoring and testing under section 206(b),

"(3) in-use vehicle or engine compliance monitoring and testing under section 207(c), and

"(4) vehicle fuel economy programs under sections 2003(d) and 2006 of the Motor Vehicle Information and Costs Savings Act.

The Administrator may establish a fee schedule based on such factors as he finds appropriate and equitable, including the number of vehicles or engines produced under a certificate of conformity.

"(b) SPECIAL TREASURY FUND.-- Any fees collected under this section shall be deposited in a special fund in the U.S. Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

"(c) LIMITATION ON FUND USE.-- Moneys in this fund shall not be used until after the first fiscal year after the first July 1 when fees are paid into the fund.

"(d) ADMINISTRATOR'S TESTING AUTHORITY.-- Nothing in this subsection shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in this part."

#### SEC. 213. INFORMATION COLLECTION.

Section 208 of the Clean Air Act is amended by striking subsections (a) and (b) and adding the following new subsections:

"(a) MANUFACTURER'S RESPONSIBILITY.-- Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components,

shall establish and maintain records, perform tests, make reports and provide information the Administrator may reasonably require to determine whether the manufacturer has acted or is acting in compliance with this part and regulations thereunder, or to assist in the development of regulations authorized by this part, and shall, upon request of an officer or employee duly designated by the Administrator (including an authorized contractor acting as a representative of the Administrator), permit such officer or employee (including an authorized contractor acting as a representative of the Administrator) at reasonable times to have access to and copy such records.

"(b) ENFORCEMENT AUTHORITY.-- For the purposes of enforcement of this section and section 207(c), officers or employees duly designated by the Administrator (including authorized contractors acting as representatives of the Administrator), upon presenting appropriate credentials to the manufacturer or person in charge, are authorized--

"(1) to enter, at reasonable times, any establishment of the manufacturer, or of any person whom the 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) to inspect records, files, papers, processes, controls, and facilities used in performing any activity required by subsection (a), by such manufacturer or by any



person whom the manufacturer engages to perform any such activity.

"(c) AVAILABILITY TO THE PUBLIC; TRADE SECRETS.-- Any records, reports or information obtained this section shall be available to the public, except that upon 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 the purposes of section 1905 of title 18 of the United States Code. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) shall be considered an employee of the United States for purposes of section 1905 of title 18. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports or information to other officers, employees or authorized representatives of the United States (including any authorized contractor acting as a representative of the Administrator) concerned with carrying out this Act or when relevant in any proceeding under this Act. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under

his control (including any authorized contractor acting as a representative of the Administrator) from the duly authorized committees of the Congress."

SEC. 214. FUEL VOLATILITY.

Section 211 of the Clean Air Act is amended by adding the following new subsection (h):

"(h) REID VAPOR PRESSURE REQUIREMENTS.--

"(1) Not later than six months after enactment of this subsection, 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 whose Reid vapor pressure exceeds 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid vapor pressure standards as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) nationwide, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

"(2) Such regulations shall provide that the requirements of this subsection shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.



"(3) In establishing standards for fuel volatility under this subsection, the Administrator may permit gasoline containing at least 9 but not more than 10 percent ethanol (by volume) to exceed the applicable Reid vapor pressure requirements by up to 1.0 psi."

#### SEC. 215. DIESEL FUEL SULFUR CONTENT.

Section 211 of the Clean Air Act is amended by adding the following new subsection to read as follows:

"(i) SULFUR CONTENT REQUIREMENTS FOR DIESEL FUEL.--

"(1) Effective October 1, 1993, no person shall manufacture, sell, supply, offer for sale or supply; dispense, transport or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

"(2) Not later than 12 months after the enactment of this subsection, 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 such fuel in a particular manner in order to segregate it from motor vehicle diesel fuel.

"(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall be 0.10 percent (by weight).

The sulfur content and cetane index minimum of fuel required to be used in the certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).".

#### SEC. 216. NON-ROAD FUELS.

(a) Section 211(a) of the Clean Air Act is amended by inserting the phrase "(including any fuel or fuel additive used exclusively in non-road engines or non-road vehicles)" immediately after "fuel or fuel additive", the first time that it appears.

(b) Section 211(b)(2)(B) is amended by striking "or" after "vehicle" and inserting in lieu thereof a comma, and by inserting immediately after "vehicle engine," the phrase "non-road engine or non-road vehicle,".

(c) Section 211(c)(1) is amended by striking "or" after "motor vehicle" and inserting in lieu thereof a comma, and by inserting immediately after "motor vehicle engine" a comma followed by the phrase "non-road engine or non-road vehicle".

#### SEC. 217. FUEL WAIVERS.

(a) Section 211(f)(1) of the Clean Air Act is amended by inserting "(A)" immediately after "(1)" and by adding the following new subparagraph:

"(B) Effective upon the date of this subparagraph's enactment, 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 which 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 206."

(b) Section 211(f)(3) is amended by inserting "(A)" immediately after "(1)".

#### SEC. 218. MARKET-BASED ALTERNATIVE CONTROLS.

The Clean Air Act is amended by striking section 214 and inserting a new section to read as follows:

"SEC. 214. MARKET-BASED ALTERNATIVE CONTROLS.

"(a) ALTERNATIVE CONTROLS IN SOME OZONE NONATTAINMENT AREAS.--

"(1) Not later than 12 months after the enactment of this section, the Administrator shall promulgate regulations that, to the maximum extent feasible and notwithstanding any other section of this title, allow any manufacturer or fuel refiner to control emissions from motor vehicles and motor vehicle fuels by one or more means different in type or degree from, and instead of, emission control measures prescribed under this title and section 182(b)(3) (relating to refueling vapor recovery), so long as the alternative control measures achieve at least the same emissions reductions (as determined by the

Administrator) over the same time period as the control measures that they would replace. The regulations shall establish performance standards for motor vehicles and motor vehicle fuels marketed in areas described under section 212(b)(2)(C)(i). The Administrator shall base such performance standards on the emission reductions that, in his judgment, may reasonably be anticipated to result from implementation of the control measures for which motor vehicle manufacturers or fuel refiners may substitute alternative controls under this subsection. (For purposes of this subsection, the emissions reductions to be attributed to the requirements prescribed under section 212(b)(2)(A) and (B) shall be the same as those determined by the Administrator under section 212(b)(1).) The regulations shall provide that any manufacturer or fuel refiner may substitute alternative control measures if it demonstrates, and the Administrator finds, that the combination of control measures that it would employ (including any prescribed control measures) would meet or exceed the performance standard applicable to it. Any manufacturer or fuel refiner seeking approval of alternative control measures must submit a proposal to the Administrator within 24 months of enactment of this section. The Administrator must approve or disapprove any such proposal within 30 months of enactment of this section. The Administrator shall publish any proposal to employ alternative control measures submitted by a manufacturer or fuel refiner



in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether to approve or disapprove the proposal and be deemed to comply with the requirements concerning notice of proposed rulemaking contained in sections 553 through 557 of title 5 of the United States Code (relating to notice and comment).) Until the Administrator finds that the manufacturer or refiner has succeeded in demonstrating that it would meet or exceed the performance standard, the manufacturer or refiner shall remain subject to all of the applicable requirements prescribed under this title. The regulations also shall provide for enforcement of alternative control measures approved under this subsection.

"(2) The regulations promulgated under this subsection shall allow to the maximum extent feasible manufacturers and fuel refiners to demonstrate compliance with the performance standards prescribed under paragraph (1) through averaging of reductions in ozone-producing emissions among manufacturers and fuel refiners, and over time, so long as averaging would achieve at least the same emissions reductions (as determined by the Administrator) as would be achieved by compliance with such performance standards in the absence of such averaging.

"(b) NATIONWIDE ALTERNATIVE CONTROLS.-- The Administrator may promulgate regulations that, notwithstanding any other section of this title, allow any manufacturer or fuel refiner to control emissions from motor vehicles or motor vehicles fuels by one or



more means different in type or degree from, and instead of, emission control measures prescribed under this title or section 182(b)(3) of title I (relating to refueling vapor recovery), if first it demonstrates, and the Administrator finds, that the alternative control measures it would employ would achieve at least the same emissions reductions (as determined by the Administrator) over the same time period as the control measures that they would replace. The regulations promulgated under this subsection may also permit manufacturers, fuel refiners, and fuel marketers to demonstrate compliance with applicable control measures through averaging of reductions of ozone-producing emissions among manufacturers, fuel refiners, and fuel marketers, and over time, so long as such averaging would achieve at least the same emissions reductions (as determined by the Administrator) as would be achieved by compliance with such performance standards in the absence of such averaging. The regulations shall also provide for enforcement of alternative control measures approved under this section."

#### SEC. 219. PREEMPTION OF STATE FUEL REGULATION.

Section 211(c)(4)(A) of the Clean Air Act is amended to read as follows:

"(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision) may prescribe or attempt to enforce, for the purposes of motor vehicle emission control, any control or

prohibition respecting any characteristic 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 his finding in the Federal Register, or

"(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless the State prohibition or control of such characteristic or component of a fuel or fuel additive is identical to the prohibition or control prescribed by the Administrator."

(2) Section 211(c)(4)(C) is amended by adding the following new language at the end:

"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."



SEC. 220. ENFORCEMENT.

(a) INSPECTIONS AND TESTING.-- Section 203(a)(2) of the Clean Air Act is amended to read as follows:

"(2)(A) 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 208;

"(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 206(c) or section 208;

"(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 207(c) or section 208;".

(b) TAMPERING WITH VEHICLE EMISSION CONTROLS.-- Section 203(a)(3) is amended to read as follows:

"(3)(A) 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 title prior to its sale and delivery to the ultimate purchaser, or for any person to remove or render inoperative any device or element of design after sale and delivery to the ultimate purchaser; or

"(B) for any person to manufacture or sell, or offer to sell, 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 title, and where the person knows or should know that the part or component is being offered for sale for such use or put to such use; or".

(c) DEFINITION.-- Section 216 is amended by adding the following new subsection:

"(13) The term 'motor vehicle or engine part manufacturer' as used in sections 207 and 208 means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines."

(d) CIVIL AND ADMINISTRATIVE PENALTIES.-- Section 205 of the Clean Air Act is amended to read as follows:

"Sec. 205. (a) CIVIL PENALTIES.-- Any person who violates sections 203(a)(1) or 203(a)(4), any manufacturer or dealer who violates section 203(a)(3)(A), or any person who violates regulations prescribed under sections 212(a)(1) or 212(b)(2) shall be subject to a civil penalty of not more than \$25,000. Any person other than a manufacturer or dealer who violates section 203(a)(3)(A) or any person who violates section 203(a)(3)(B) shall be subject to a civil penalty of not more than \$2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 203(a) shall constitute a separate offense with respect to each motor vehicle

or motor vehicle engine. Any such violation with respect to section 203(a)(3)(B) shall constitute a separate offense with respect to each part or component. Any person who violates section 203(a)(2), or regulations prescribed under section 212(c), shall be subject to a civil penalty of not more than \$25,000 per day of violation.

"(b) CIVIL ACTIONS.-- The Administrator may commence a civil action to assess and recover any civil penalty prescribed in subsection (a) of this section, section 211(d), or section 213(d). Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has his principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this title, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

"(c) ADMINISTRATIVE ASSESSMENT OF CERTAIN PENALTIES.--

"(1) ADMINISTRATIVE PENALTY AUTHORITY.-- The Administrator may assess any civil penalty prescribed in



subsection (a) of this section, section 211(d), or section 213(d), provided that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed \$200,000, except where 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. 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 554 of title 5 of the United States Code. The Administrator may issue 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 such order and provide such person an opportunity to request such a hearing on the order, within 15 days of the date the notice is received by such person. The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

"(2) DETERMINING AMOUNT.-- In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting



from the violation, the size of the violator's business, the violator's history of compliance with this title, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

"(3) EFFECT OF ADMINISTRATOR'S ACTION.--

"(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this Act; 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) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this Act.

"(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.-- Any person against whom 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 such person resides, or where such person's principal place of business is located, within the 30 day period beginning on the date a civil penalty order is issued and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. 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. The court shall not set aside or remand the order 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 impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall assess the penalty in any proceedings, the United States may see fit to bring.

"(6) COLLECTION.-- If any person assessed of a civil penalty imposed under this section fails to pay the penalty within the time prescribed in the order, the Administrator may seek a writ of habeas corpus to enforce the order."

"(A) after the order becomes final, or

"(B) after a period of 30 days after the order becomes final, or

paragraph (5) of this section shall apply to 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 26 U.S.C. 6621(a)(2) from the date of the final order of the final judgment, amount, and appropriate penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessed civil penalty as described in the first sentence of paragraph shall be required to pay, in addition to the interest, the United States' enforcement proceedings, and a quarterly nonpayment penalty shall be in an amount equal to the aggregate amount of that nonpayment penalties which are unpaid of the quarter.",

(e) ENFORCEMENT OF FUELS REGULATIONS

(d) PENALTIES AND INJUNCTIONS

"(1) CIVIL PENALTIES  
 (a), (f), or (g) or regulations prescribed subsection 212, shall furnish any information or conduct any tests.

(f) MISFUELING.-- Section 211 is amended by deleting subsection (g) and inserting the following new subsection:  
 "(g) MISFUELING.-- No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled 'unleaded gasoline only,' which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which that person knows or should know is a vehicle designed solely for the use of unleaded gasoline. Nothing in this section shall limit the applicability of section 211(d)(1).

#### SEC. 221. TECHNICAL AMENDMENTS.

The Clean Air Act is amended by--

- (a) deleting section 202(a)(6);
- (b) in section 202(b)(3), deleting "(3) part --" and redesignating subparagraphs section 202(b)(3) as paragraphs (14), (15), and (16);
- (c) deleting section 202(b)(4);
- deleting section 202(b)(6);
- section 202(b)(6)
- deleting "(A)"
- ing sub



Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30 day period beginning on the date a civil penalty order is issued and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. 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. The court shall not set aside or remand the order 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. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

"(6) COLLECTION.-- If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection--

"(A) after the order making the assessment has become final, or

"(B) 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 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). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including but not limited to attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter."

(e) ENFORCEMENT OF FUELS REGULATIONS.-- Section 211(d) is amended to read as follows:

"(d) PENALTIES AND INJUNCTIONS.--

"(1) CIVIL PENALTIES.-- Any person who violates subsection (a), (f), or (g) of this section or the regulations prescribed under subsection (c), (h), or (i) of this section or the regulations prescribed subsection 212(b)(2)(B) or who fails to furnish any information or conduct any tests required



by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of \$25,000 for each and every day of each such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c) of this section or subsection 212(b)(2)(B) which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with the provisions of subsections 205(b) and (c).

"(2) INJUNCTIVE AUTHORITY.-- The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), and (g) of this section and of the regulations prescribed under subsection (c), (h), or (i) of this section or paragraph (2)(B) of section 212(b), to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court any in any district may run into any other district.



(f) MISFUELING.-- Section 211 is amended by deleting subsection (g) and inserting the following new subsection:

"(g) MISFUELING.-- No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled 'unleaded gasoline only,' which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which that person knows or should know is a vehicle designed solely for the use of unleaded gasoline. Nothing in this section shall limit the applicability of section 211(d)(3).".

#### SEC. 221. TECHNICAL AMENDMENTS.

The Clean Air Act is amended by--

- (a) deleting section 202(a)(6);
- (b) in section 202(b)(3), deleting "(3) For purposes of this part --" and redesignating subparagraphs (A), (B) and (C) of section 202(b)(3) as paragraphs (14), (15), and (16) of section 216;
- (c) deleting section 202(b)(4);
- (d) deleting section 202(b)(5);
- (e) in section 202(b)(6)
  - (1) deleting "(A)" after "(6)",
  - (2) deleting subparagraph (B), and
  - (3) redesignating paragraph (6) as paragraph (3);
- (f) deleting section 202(b)(7);
- (g) deleting section 203(c);

TITLE III--HAZARDOUS AIR POLLUTANTS

SEC. 301. TECHNOLOGY-BASED STANDARDS FOR HAZARDOUS AIR POLLUTANTS.

Section 112 of the Clean Air Act is amended to read as follows:

"Sec. 112. Hazardous Air Pollutants.--

"(a) Definitions.-- For the purposes of this section --

"(1) The term 'major source'

"(A) for pollutants other than radionuclides, 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, ten metric tons per year or more of any hazardous air pollutant or twenty-five metric tons per year or more of any combination of hazardous air pollutants which have been listed pursuant to subsection (b). The Administrator may establish a lesser quantity for a major source other than specified in the previous sentence, on the basis of the potency, characteristics of the air pollutant, or other relevant factors.

"(B) for radionuclides, shall have the meaning specified by the Administrator by rule, considering radiation dose.



(h) deleting "announce in the Federal Register and" in section 206(e);

(i) in section 206(f)

(1) deleting "(1)" after "(f)", and

(2) deleting section 206(f)(2);

(j) striking, in section 207(g), "(but not designed for emission control under the terms of the last three sentences of subsection 207(a)(1)" and inserting "(but not designed for emission control under the terms of the last sentence of section 207(a)(3))";and

(k) deleting, in section 231(a), paragraph (1) and redesignating paragraphs (2) and (3) as paragraphs (1) and (2) respectively.



"(2) The term 'area source' means any source that is not a major source but that is a member of a source category listed under this section based on aggregate emissions, or potential aggregate emissions, of a listed pollutant or pollutants in an area.

"(3) The term 'new source' means a stationary source the construction or reconstruction of which is commenced after the Administrator proposes regulations under this section establishing an emission standard applicable to such source category or subcategory pursuant to subsection (d) or (f).

"(4) The terms 'stationary source', 'owner or operator', and 'existing' source shall have the same meaning as such terms have under section 111(a).

"(5) The term 'electric utility steam generating unit' means any fossil fuel fired steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the facility.

"(b) Hazardous Air Pollutant List.--

"(1) The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

| CAS<br>NUMBER | CHEMICAL<br>NAME                            |
|---------------|---------------------------------------------|
| 75070         | Acetaldehyde                                |
| 60355         | Acetamide                                   |
| 75058         | Acetonitrile                                |
| 98862         | Acetophenone                                |
| 53963         | 2-Acetylaminofluorine                       |
| 107028        | Acrolein                                    |
| 79061         | Acrylamide                                  |
| 79107         | Acrylic acid                                |
| 107131        | Acrylonitrile                               |
| 107051        | Allyl chloride                              |
| 92671         | 4-Aminobiphenyl                             |
| 7664417       | Ammonia                                     |
| 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         | Cresols/Cresylic acid (isomers and mixture) |



| CAS<br>NUMBER | CHEMICAL<br>NAME                              |
|---------------|-----------------------------------------------|
| 108394        | Cresols/Cresylic acid (isomers and mixture)   |
| 106445        | Cresols/Cresylic acid (isomers and mixture)   |
| 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-Dichlorobenzidine                         |
| 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                               |
| 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 (1-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                             |



| CAS<br>NUMBER | CHEMICAL<br>NAME                          |
|---------------|-------------------------------------------|
| 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)     |
| 7783064       | Hydrogen sulfide                          |
| 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 tert 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                                |

| CAS<br>NUMBER | CHEMICAL<br>NAME                               |
|---------------|------------------------------------------------|
| 85449         | Phthalic anhydride                             |
| 1336363       | Polychlorinated biphenyls (Aroclors)           |
| 1120714       | 1,3-Propane sultone                            |
| 57578         | beta-Propiolactone                             |
| 123386        | Propionaldehyde                                |
| 114261        | Propoxur (Baygon)                              |
| 78875         | Propylene dichloride (1,2-Dichloropropane)     |
| 75569         | Propylene oxide                                |
| 75558         | 1,2-Propylenimine (2-Methyl aziridine)         |
| 91255         | 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         | Xylenes (isomers and mixture)                  |
| 108383        | Xylenes (isomers and mixture)                  |
| 106423        | Xylenes (isomers and mixture)                  |
| 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                              |



| CAS<br>NUMBER | CHEMICAL<br>NAME |
|---------------|------------------|
|---------------|------------------|

- |   |                                              |
|---|----------------------------------------------|
| 0 | Glycol ethers <sup>2</sup>                   |
| 0 | Lead Compounds                               |
| 0 | Manganese Compounds                          |
| 0 | Mercury Compounds                            |
| 0 | Mineral fibers <sup>3</sup>                  |
| 0 | Nickel Compounds                             |
| 0 | Polycyclic Organic Matter <sup>4</sup>       |
| 0 | Radionuclides (including radon) <sup>5</sup> |
| 0 | Selenium Compounds                           |

NOTE: For all listings above which 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.

<sup>1</sup> X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>

<sup>2</sup> includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR' where  
 n = 1, 2, or 3  
 R = alkyl or aryl groups  
 R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OH  
 Polymers are excluded from the glycol category

<sup>3</sup> includes glass microfibers, glass wool fibers, rock wool fibers, and slag wool fibers, each characterized as "respirable" (fiber diameter less than 3.5 micrometers) and possessing an aspect ratio (fiber length divided by fiber diameter) greater than 3.

includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C

a type of atom which spontaneously undergoes radioactive decay



"(2) In general -- The Administrator may add or delete a substance from the list under this subsection.

"(A) Additions -- A substance may be added if the Administrator determines in his judgment that the substance is an air pollutant and that there is sufficient evidence to establish that the pollutant is known to cause or can reasonably be anticipated to cause in humans any one of the following:

"(i) cancer or developmental effects, or

"(ii) serious or irreversible --

"(I) reproductive dysfunctions, or

"(II) neurological disorders, or

"(III) heritable gene mutations, or

"(IV) other chronic health effects, or

"(V) adverse acute human health effects.

"(B) Deletions -- The Administrator may delete a pollutant if he determines there is not sufficient evidence to establish any of the criteria described in paragraph (A).

"(C) Further Information -- If the Administrator determines that information on the health effects of a substance is not sufficient to make a determination required by this paragraph the Administrator may use any authority available to him to acquire such information.

"(3) Petitions -- Any person may petition the Administrator to modify the list by adding or deleting a substance. Within eighteen months after receipt of a petition the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for his decision. Any air pollutant which is listed under section 108(a) may not be added to the list under this section.

"(c) Source Category List.--

"(1) Not later than twelve months after the date of enactment, the Administrator shall publish, and may from time to time revise in response to public comment or new information, a list of all categories and subcategories of major sources and area sources designated under paragraph (4) of the air pollutants listed pursuant to subsection (b).

"(2) For the categories and subcategories he designates, he shall establish emission standards under subsection (d), according to the schedule in subsection (e).

"(3) The Administrator may decide not to list a source category or subcategory because its emissions into the air are, in his judgment, already adequately controlled under this Act or any other Federal statute or regulation.

"(4) The Administrator may designate a category or subcategory of area sources that he finds, based on actual or estimated aggregate emissions of a listed pollutant or pollutants in an area, warrants regulation under this section.



"(5) The Administrator may, in his discretion, list any category or subcategory previously regulated under this section as in effect prior to the date of enactment.

"(6) The Administrator may withdraw a source category or subcategory from the list published under this subsection if he finds, in his discretion, that the sources in the category present a negligible risk to public health.

"(d) Maximum Achievable Control Technology Emission Standards.--

"(1) The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources in accordance with the schedule provided in subsection (e). The Administrator may distinguish among classes, types and sizes of sources within a category or subcategory in establishing such standards. The Administrator may set standards for emissions of radionuclides from a category or subcategory separately from regulating other listed pollutants emitted by that category or subcategory.

"(2) Emission standards promulgated under this subsection shall be applicable to new and existing major sources and area sources in each category or subcategory, and shall require the maximum degree of reduction in emissions of the air pollutants subject to this section (including a prohibition of such emissions, if achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction,



and any non-air quality and other air quality-related health and environmental impacts, and energy requirements, determines is achievable through application of measures, processes, methods, systems or techniques including, but not limited to, measures which--

"(A) reduce the volume of, or eliminate emissions of such pollutants through process changes, substitution of materials or other modifications such as reuse or recycling; or

"(B) enclose systems or processes to eliminate emissions; or

"(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point; or

"(D) are design, equipment, work practice or operational methods, or radiation dose standards; or

"(E) requirements for operator training or certification; or

"(F) are a combination of the above.

If the Administrator finds that it is not feasible to prescribe or enforce an emission standard, he may instead issue regulations requiring any of the measures identified in subparagraphs (D) through (E) of this paragraph, or any combination of such measures.

"(3) The maximum degree of reduction in emissions that is deemed 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. Emissions standards promulgated under this subsection for existing sources of a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall be at least as stringent as the emissions controls achieved in practice by the best controlled similar sources. These determinations, for new and existing sources, shall take into account energy, environmental, economic impacts and other costs, as well as any other factors the Administrator deems appropriate. If the Administrator finds that no similar source employs controls reflecting the maximum available control technology, he may establish emissions standards or regulations meeting the requirements of this section without regard to the performance of similar sources. Emission standards under this section for radionuclides shall be set based upon radiation dose.

"(4) Emission standards promulgated under this subsection shall be effective upon promulgation.

"(5) In promulgating emission standards for a source category under this subsection, the Administrator shall prescribe a date for compliance with the standards for existing sources. In no event shall such date be later than three years after promulgation of the standards."



"(6) 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 such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of listed air pollutants.

"(7) The Administrator shall from time to time review, and, if appropriate, revise emissions standards promulgated under this subsection.

"(e) Schedule for Standards.--

"(1) The Administrator shall promulgate standards for categories and subcategories listed under subsection (c) of this section according to the following schedule:

"(A) Emission standards for not less than ten categories or subcategories shall be promulgated not later than two years after the date of enactment.

"(B) Emission standards for 25 per centum of the listed categories or subcategories shall be promulgated not later than four years after the date of enactment.

"(C) Emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than seven years after such date.



"(D) For the remaining categories or subcategories listed under subsection (c) for which regulatory action has not been initiated, the Administrator shall, within 7 years after enactment, review and designate the additional categories and subcategories he finds, in his discretion, warrant regulation under this section. Emission standards for the designated categories and subcategories shall be promulgated not later than ten years after enactment.

"(2) In determining priorities for promulgating standards under subsection (d), the Administrator shall consider--

"(A) the quantity and location of emissions or reasonably anticipated emissions of air pollutants subject to this section that each category or subcategory will emit;

"(B) the known or anticipated adverse effects of such pollutants on public health; and

"(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

"(f) Unreasonable Risk Evaluation.--

"(1) Within seven years after promulgation of emission standards for a category of sources pursuant to subsection (d), the Administrator shall evaluate the risks to the public health remaining after application of such standards.

"(2) If the Administrator finds after such evaluation, that the category or subcategory, or portion thereof, after application of the prescribed standards, presents an unreasonable risk to public health taking into account the cost and technical feasibility as well as the health risks of such standards, he shall, within two years after completion of such evaluation, promulgate standards to protect adequately against such risk.

"(3) Any standards promulgated under this subsection shall be effective upon the date of promulgation.

"(4) In promulgating emission standards for a source category under this subsection, the Administrator shall prescribe a date for compliance with the standards by existing sources. In no event shall such date be later than six years after promulgation of the standards."

"(g) Alternative Emissions Limitations.--

"(1) Notwithstanding the requirements of subsection (d), a State with a program approved under Title IV, may issue a permit that authorizes--

"(A) a major source to comply with alternative emission limitations in lieu of standards under this section, if the owner or operator presents evidence sufficient to demonstrate that emissions from the source in compliance with such limitations present a negligible risk to public health under criteria issued by the Administrator under subparagraph (F);

"(B)(i) any existing source, for which the owner or operator demonstrates that it has achieved a voluntary reduction of 90 per centum or more in emissions of listed pollutants (95 per centum or more in the case of listed particulate pollutants) from the source within five years prior to proposal of an applicable standard promulgated pursuant to subsection (d), to meet emission limitations based on such voluntary reduction in lieu of such standard. The reduction shall be determined with respect to verifiable and actual emissions on an annual average basis and in a base year not earlier than five years prior to proposal (but in any case no earlier than calendar year 1987), unless emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures.

"(ii) any existing source to extend its compliance date for a standard under subsection (d) for five years if the permit requires the source, within five years prior to proposal of the standard under subsection (d), to achieve a level of emission rate or emission reduction which complies (or would comply if the source is not subject to such standards) with the most stringent of any relevant



section 111 standard, best available control technology determination (as defined in section 169(3)), or reasonably available control technology determination (as approved by the Administrator) which is applicable to the source category and prevailing at the time the reduction is achieved;

"(iii) any existing source to extend its compliance date for a standard under subsection (d) for five years if the source, within five years prior to proposal of the standard under subsection (d), has achieved a level of emission rate or emission reduction which complies (or would comply if the source is not subject to such standard) with the lowest achievable emissions rate (as defined by section 171) which is applicable to the source category and prevailing at the time the reduction is achieved.

"(iv) The Administrator shall review emissions from sources subject to emissions limitations under this subparagraph according to the provisions of subsection (f) at the same time that other sources in the category or subcategory are reviewed.

"(C) For purposes of this paragraph, the term 'voluntary' means not otherwise required by a Federal, State, or local law or regulation.

"(D) The Administrator shall promulgate regulations to carry out the provisions of this paragraph as expeditiously as practicable, but not later than twenty-four months after the date of enactment.

"(E) Rules published pursuant to this paragraph may identify categories or subcategories of sources listed under subsection (c) for which no alternative emission limitations may be established, including categories or subcategories of area sources for which emission standards are promulgated to control combined emissions from sources, rather than emissions of individual sources.

"(F) The Administrator shall also publish regulations establishing methods for assessing the significance of public health risks and methods for evaluating evidence presented by an owner or operator applying for alternative emission limitations under this subsection. Any modeling demonstration performed to support a showing of negligible risk shall comply with such regulations. Any stack height credit used in a modeling demonstration shall be based on the lesser of actual stack height of the source as it existed on January 1, 1989, or the stack height credit as provided in regulations issued by the Administrator.

"(2) Any State with a program approved under Title IV may issue a permit that grants an extension permitting an

existing source up to two additional years to comply with standards under subsection (d), if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added if the five year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b).

"(3) No alternative emission limitation under this paragraph shall take effect until it is approved by the Administrator.

"(4) If the State in which a source is located does not have a program approved under title IV, the Administrator may grant any extensions authorized under this subsection for such source.

"(h) Pre-construction and Operating Requirements.-- After the effective date of any emission standard under paragraph (d)(4) or (f)(3) of this section, or an alternative emission limitation under subsection (g)--

"(1) no person may construct any new major source subject to such emission standard, limitation or regulation under this section unless the Administrator, or a State with a permit program approved under Title IV, determines that such source, if properly constructed and operated, will comply with the standard or limitation; and

"(2) no person may operate any new or existing source subject to an emission standard or limitation except in



compliance with such standard or limitation and any applicable schedule under paragraph (d)(5) or (f)(4).

"(i) Technical Assistance.-- The Administrator shall establish and maintain an air toxics clearinghouse and centers to provide technical information and assistance to State and local agencies on control technology, risk analysis, ambient monitoring and modelling, and emissions measurement and monitoring. The Administrator may conduct research on methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks.

"(j) Presidential Exemption.-- The President may exempt any source from compliance with standards or requirements under this section for a period of not more than two years if the President determines it to be in the national security interests of the United States to do so. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

"(k) Savings Provision.--

(1) Any standards promulgated under this section as in effect prior to the enactment shall remain in force, as promulgated, unless modified in accordance with this section. If a timely petition for review of any such standard under Section 307 is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect

prior to that date. If any such standard is remanded to the Administrator, he may in his discretion apply either the requirements of this section, or those of this section as in effect prior to the date of enactment.

"(2) Notwithstanding section 307 of this Act, no action of the Administrator adding a pollutant to the list under subsection (b) of this section, listing a source category under subsection (c), designating a category of area sources under paragraph (c)(4), or determining that a category of sources presents a significant risk of serious or widespread adverse effects on public health under paragraph (f)(2), shall be final agency action subject to judicial review, except that any such listing decision may be reviewed, if otherwise final, when the Administrator issues emission standards for such pollutant or category.

"(1) Appropriations.-- There are authorized to be appropriated such amounts as are necessary to carry out the requirements of this section.

"(m) Electric Utilities.-- 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 Act. The Administrator shall report the results of this study to the Congress within three years after the date of enactment. The Administrator shall develop and describe in his report to Congress alternative control strategies

for emissions which may warrant regulation under this section. The Administrator may not regulate electric utility steam generating units under this section unless he finds such regulation is appropriate and necessary after considering the results of the study required in this subsection."



TITLE IV--PERMITS

SEC. 401. PERMITS.--

The Clean Air Act is amended by adding a new title IV, to read as follows:

"TITLE IV--PERMITS

"Sec. 401. Definitions.

As used in this title--

"(a) the term 'affected source' shall have the meaning given in title V.

"(b) the term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that--

"(1) is a major source as defined under section 112 of this Act; or

"(2) is a major stationary source as defined in section 302.

"(c) for sources subject to standards issued under section 112 of this Act, the terms 'new source', 'stationary source', and 'area source' shall have the meaning given in that section.

"(d) for sources subject to standards issued under section 111 of this Act, the terms 'new source', 'modification', 'existing source', 'stationary source', and 'owner or operator' shall have the meaning given in that section.

"(e) 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.

"(f) the term 'permitting authority' means the Administrator, or the air pollution control agency authorized by the Administrator to carry out a permit program under this title.

"Sec. 402. Permit Programs.

"(a) After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate a major source, any other source (including an area source) subject to standards or regulations under sections 111 or 112, any source required to have a permit under parts C or D of this Act, or any other source designated by regulations promulgated by the Administrator, except in compliance with a permit issued by a permitting authority under this title. Nothing in this subsection shall be construed to alter the requirements of section 165, 172, and 173 regarding the requirement that a permit be obtained prior to construction. The Administrator may, in his discretion, promulgate regulations to exempt one or more source categories from the requirements of this subsection if he finds that such an exemption would be consistent with the purposes of this Act.

"(b) The Administrator shall promulgate within twelve months after the date of enactment of this title regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include:

"(1) requirements for permit applications, including a standard application form;

"(2) monitoring and reporting requirements;

"(3) (A) a requirement under State law that the owner or operator of each source subject to the requirement to obtain a permit under this title pay an annual fee, or the equivalent over some other period, sufficient to cover all direct and indirect costs of developing and administering the permit program, including, but not limited to, the reasonable costs of--

"(i) Reviewing and acting upon any application for such a permit,

"(ii) If the owner or operator receives a permit for such source, whether before or after the date of enactment of this section, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

"(iii) Emissions and ambient monitoring,

"(iv) Preparing generally applicable regulations or guidance,



"(v) Modeling, analyses, and demonstrations,  
and

"(vi) Preparing inventories and tracking  
emissions.

"(B) The total amount of fees collected by the  
permitting authority shall conform to the following  
requirements:

"(i) The Administrator shall not approve a  
program as meeting the requirements of this  
paragraph unless the State demonstrates that, except  
as otherwise provided in subparagraphs (ii) through  
(v) of this subparagraph, the program will result  
in the collection, in the aggregate, from all  
sources subject to subparagraph (A), 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 costs of the  
program.

"(ii) As used in this subparagraph, the term  
'regulated pollutant' shall mean (I) volatile  
organic compounds; (II) each pollutant regulated  
under section 111 or 112; and (III) each pollutant  
for which a national primary ambient air quality  
standard has been promulgated (except that carbon  
monoxide shall be excluded from this reference).

"(iii) In determining the amount under clause (i), the 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 that regulated pollutant.

"(iv) 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 subparagraph (A).

"(v) The fee calculated under clause (i) shall be increased in each year beginning after the year of enactment of this section by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause

"(I) 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

"(II) the revision of the Consumer Price Index which is most consistent with the

Consumer Price Index for calendar year 1989 shall be used.

"(C)(i) If the Administrator determines, under section 402(d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under section 402(i), that the 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 title, collect reasonable fees from the sources identified under subparagraph (A) without regard to the requirements of paragraph (B).

(ii) Any source that fails to pay fees 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 title 26 of the United States Code (relating to computation of interest on underpayment of federal taxes).

"(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the U.S. Treasury for licensing and other services, which thereafter shall be



available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected.

Any fee required to be collected by a State or interstate agency under this subsection shall be utilized to support the air pollution control program of such State or interstate agency.

"(4) requirements for adequate personnel and funding to administer the program;

"(5) a requirement that the permitting authority have adequate authority to:

"(A) issue permits that apply, and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

"(B) issue permits for a fixed term, not to exceed five years;

"(C) assure that permits incorporate emission limitations and other requirements in an applicable implementation plan;

"(D) terminate, modify, or revoke and reissue permits for cause;

"(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in an amount not less than

\$10,000 per day for each violation, and appropriate criminal penalties; and

"(F) ensure that no permit will be issued if the Administrator timely objects to its issuance under section 405;

"(6) adequate procedures for public notice, including offering an opportunity for public comment and a hearing, on any permit application; and

"(7) authority to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 403(e).

"(c) A single permit may be issued for a facility with multiple sources.

"(d) Not later than three years after the enactment of this title, the Governor of each State shall develop and submit to the Administrator a permit program under State law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than one year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a

program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b) of this section. 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. If the Governor fails within such period to resubmit an approvable program, the Administrator:

"(1) shall, to the extent the permit program would implement an applicable implementation plan, withhold final action on plan revisions affecting one, or a small group of, major sources; and

"(2) may in his discretion take either or both of the following actions:

"(A) apply any of the sanctions specified in section 179(b) of this Act other than the sanction specified in section 179(b)(2); or

"(B) promulgate a program, or partial program, under this title.

"(e) The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may in such notice retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally



issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this provision should be construed to limit the Administrator's ability to enforce permits issued by a State.

"(f) . The Governor of a State may submit, and the Administrator may approve, a partial permit program. No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and:

"(1) all requirements established under title V applicable to 'affected sources';

"(2) all requirements established under section 112 applicable to 'major sources', 'area sources,' and 'new sources'; or

"(3) all requirements of title I (other than section 112) applicable to sources required to have a permit under this title.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

"(g) Interim approval. If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full

approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than two years after such approval, and may not be renewed.

"(h) Effective date. The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator.

"(i) Whenever the Administrator makes a preliminary determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, he shall notify the permitting authority of such determination and the reasons therefor. If the permitting authority fails to take action to assure adequate administration and enforcement, the Administrator may in his discretion, but not before ninety days after issuing such notice, take one or more of the following actions:

"(1) withdraw approval of the program or portion by rule;

"(2) propose to apply any of the sanctions specified in section 179(b) of this Act other than the sanction specified in section 179(b)(2); or

"(3) promulgate a program, or portion of a program, under this title.

"Section 403. Permit Applications.

"(a) Any source specified in section 402(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates:

"(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

"(2) the date such source becomes subject to section 402(a).

"(b) The regulations required by section 402(b)(1) shall include a requirement that the owner or operator submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which the owner or operator will submit progress reports to the permitting authority no less frequently than every six months. The regulations shall further require any owner or operator submitting a compliance plan to periodically certify that the facility is in compliance with any applicable requirements under this Act, and to promptly report any violations of such requirements to the permitting authority.

"(c) The owner or operator of any source required to have a permit shall, not later than six months after the date on which the source becomes subject to a permit program approved or promulgated under this title, 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 corporate official, who shall certify the accuracy of the information submitted.

"(d) Except for sources required to have a permit prior to construction under sections 165, 172, or 173, if an owner or



operator has submitted a timely and complete application for a permit required by this title, 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 Act, 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 title shall be in violation of section 402(a) before the date on which the source is required to submit an application under subsection (c) of this section.

"(e) A copy of each permit application, compliance plan, emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant may submit such information separately from the application. The requirements of section 114(c) shall apply to such information. The contents of a permit or of a compliance plan shall not be entitled to protection under section 114(c).

"Sec. 404. Permit Requirements and Conditions

"(a) Each permit issued under this title shall include emission limitations and standards, a schedule of compliance, and such other conditions as are necessary to assure compliance with applicable requirements.

"(b) The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act.

"(c) Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulations under subsection (b) of this section. Any report required to be submitted by a permit under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

"(d) The 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 title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 403.

"(e) Temporary sources. The permitting authority may issue a single permit to an owner or operator authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I. Any such permit shall in addition 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)(1) A permit may not be reissued or modified to contain emission limitations or other requirements that are less stringent than the comparable emission limitations or requirements in the previous permit or that applied to the source under an applicable implementation plan.

"(2) Notwithstanding paragraph (1) of this subsection, a permit may be reissued or modified, in accordance with section 405 of this title, to contain a less stringent emission limitation or other requirement (other than standards established under section 111 or 112) if the applicant shows that the revised emission limitation or requirement is consistent with any demonstration of attainment and any progress requirement in an approved implementation plan, the requirements of Part C or section 173 of the Act, and will not otherwise interfere with attainment of the ambient air quality standards, progress requirements, and any other requirements of this Act and that--

"(A) the increased emissions authorized by the permit are compensated for by emissions reductions from another permitted facility, as determined under rules prescribed by the Administrator;

"(B) material and substantial alterations or additions to the permitted source occurred after permit issuance;

"(C) information is available that was not available at the time of permit issuance (other than



revised regulations, guidance, or test methods) and that, if known, would have justified the application of a less stringent emission limitation or requirement at that time;

"(D) technical mistakes or mistaken interpretations of law were made in issuing the permit; or

"(E) the permittee demonstrates, in accordance with procedures prescribed by the Administrator, that it has installed the controls required to meet the emission limitations and requirements in the permit and has properly constructed and tested the facility, but has nevertheless been unable to achieve the emission limitations specified in the permit, in which case the limitations in the revised, reissued, or modified permit may reflect the level of emission control actually achieved.

"(3) No permit may be reissued to contain emission standards less stringent than those established under sections 111 or 112 unless the applicable standard has been revised, or, for a standard under section 112, an alternative emission limitation has been established under section 112(g).

"(g) Compliance with a permit issued under this title shall be deemed compliance with sections 110, 111, 112, 165, 169A, 172, 173, and 402 of this Act and (except as provided by the Administrator by rule) any requirement under title V. The preceding sentence shall not apply to a standard issued under

section 112(f). Compliance with a permit issued under a partial program under section 402(f) shall be deemed compliance only with those requirements for which the program was approved.

"Section 405. Notification to Administrator and Contiguous States.

"(a)(1) Each permitting authority shall transmit to the Administrator a copy of each permit application, including any compliance plan and any application for alternative emission limitations under section 112(g), or for a permit modification, submitted under this title, and shall provide notice, in accordance with regulations promulgated by the Administrator, of every action related to the consideration of the application, including each permit proposed to be issued by the authority.

(2) the permitting authority shall notify all States contiguous to the State in which the emission originates of each permit application, and each draft permit or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

"(b) No permit shall be issued if the Administrator (1) within ninety days after receipt of the proposed permit under subsection (a)(1) of this section, or (2) within ninety days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with the requirements of this Act, including the requirements of section 110(d)(4)(A). The Administrator shall provide with the objection a statement of the reasons for the objection.

"(c) If the permitting authority fails within 90 days after the date of the objection, to submit a permit revised to meet the objection, the Administrator may issue or deny the permit in accordance with the requirements of this title. 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 requirement.

"(1) The Administrator may waive the requirements of subsections (a) and (b) of this section at the time of approval of a permit program under this title for any category (including any class, type, or size within such category) of sources covered by the program.

"(2) The Administrator may by regulation establish categories of sources (including any class, type, or size within such category) to which the requirements of subsection (a) and (b) of this section shall not apply.

"(3) The Administrator may exclude from any waiver under this subsection notification under paragraph (a)(2). Any



waiver granted under this subsection may be revoked or modified by the Administrator by rule.

"(e) Refusal of Permitting Authority to Terminate, Modify, or Revoke and Reissue. If the Administrator finds that cause exists under section 402(b)(5)(D) to terminate, modify, or revoke and reissue a State permit under this title, he shall notify the permitting authority of his finding. The permitting authority shall, within ninety days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such ninety day period for an additional ninety days if he 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 such proposed determination under the provisions of subsections (a) and (b) of this section. 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 the period prescribed in subsection (c) of this section, the Administrator may terminate, modify, or revoke and reissue the permit.

"Sec. 406.       Relation to Other Authority.

"(a) Nothing in this title shall prevent a State or interstate permitting authority from establishing additional permitting requirements not inconsistent with this Act.

"(b) Acid Deposition Program--Nothing in this title shall be construed to authorize the Administrator, or a State, to modify or revoke any allowance granted under title V, or to alter or amend any provision of title V."

## TITLE V--ACID DEPOSITION CONTROL

## SEC. 501. ACID DEPOSITION CONTROL.--

The Clean Air Act is amended by adding the following new title:

## "TITLE V--ACID DEPOSITION CONTROL

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## "Section 501. Findings and Purposes.

"(a) FINDINGS.-- The 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 and cannot be addressed adequately without effective State-Federal cooperation;

"(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

"(5) current and future generations of Americans will 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;

"(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay.

"(b) PURPOSES.-- The purpose of this title is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of approximately ten million tons from 1980 emission levels, and of nitrogen oxides emissions of approximately two million tons relative to their levels in 2000, in the forty-eight contiguous States and the District of Columbia. It is also the purpose of this title to encourage energy conservation and pollution prevention as a long range strategy for reducing air pollution and other adverse impacts of energy production and use.

"Section 502. Definitions.

"As used in this title--

"(a) The term 'affected source' means a source that includes one or more affected units.

"(b) The term 'affected unit' means a unit that is subject to emission limitation requirements under section 504, 505, 507, or 509.

"(c) The term 'allowance' means an authorization, issued by the Administrator under this title, to emit, during a specified calendar year, a ton of sulfur dioxide or nitrogen oxides.

"(d) The term 'baseline' means the annual quantity of fossil fuel consumed, measured in millions of British Thermal Units ("mmBTUs"), by an affected unit, calculated as follows:

"(1) For each steam-electric unit in operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBTU consumed in fuel during calendar years 1985, 1986, and 1987, as recorded pursuant to Department of Energy Form 767. For any unit for which these forms were not filed, the baseline shall be the level specified for that unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2. The Administrator may exclude periods during which a unit is shutdown for a continuous period of four months or longer.

"(2) For each steam-electric unit that entered operation on or after January 1, 1985, the baseline shall be an annual

average quantity of mmBTU, as calculated pursuant to a method which the Administrator shall, by regulation, prescribe;

"(3) For any other unit, the baseline shall be the annual average quantity, in mmBTU consumed in fuel by that unit, as established by regulation.

"(e) The term 'compliance plan' shall have the meaning given in section 403(b) of title IV.

"(f) The term 'continuous emission monitoring system' ("CEMS") means the equipment used to sample, measure, analyze, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs./mmBTU) and pounds per hour (lbs./hr.)) or such other forms as the Administrator may prescribe by regulations under section 511(a) or this title.

"(g) The term 'existing unit' means a unit (including units subject to section 111) that is operating prior to the date of enactment. Any unit modified, reconstructed or repowered after the date of enactment shall continue to be an existing unit for purposes of this title.

"(h) The term 'new unit' means a unit that commences operation on or after the date of enactment.

"(i) The term 'permitting authority' shall have the meaning given in title IV.

"(j) The term 'repowering' means replacement of an existing pulverized coal boiler with one of the following clean coal technologies: Atmospheric or Pressurized Fluidized Bed Combustion,



Integrated Gasification Combined Cycle, Magnetohydrodynamics, Direct and Indirect Coal-Fired Turbines, Integrated Gasification Fuel Cells, or a derivative of one of these technologies, as determined by the Administrator, in consultation with the Secretary of Energy.

"(k) The term 'State' means one of the forty-eight contiguous States or the District of Columbia.

"(l) The term 'unit' means a fossil fuel-fired steam production device such as a boiler or furnace used to combust fuel to produce steam.

"(m) The term 'actual 1985 emission rate' means the annual average sulfur dioxide or nitrogen oxides emission rate in units of pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2.

"Section 503. Allowance Program for Existing Units.

"(a) ALLOCATION OF ANNUAL ALLOWANCES FOR EXISTING UNITS.-- For the emission limitation programs under this title, the Administrator shall allocate annual allowances to the owner or operator of the affected units at an affected source in an amount equal to the annual tonnage emission limitation calculated under section 504, 505, 507, or 509 except as otherwise specifically provided in this title. The Administrator shall issue allowances for each affected unit at an affected source at the time the permit is issued for the source, as provided in section 507. If an existing affected unit is removed from commercial operation, the

annual allocation of allowances shall continue to be issued to the owner or operator.

"(b) ALLOWANCE SYSTEM.-- Allowances issued under this title may be transferred among the owners or operators of affected sources under this title, as provided by regulation. In phase I, transfers of allowances shall be limited to affected sources within a single State, except that an owner or operator of two or more affected sources may transfer allowances among those sources, irrespective of State boundaries. In phase II, allowances may be transferred among affected sources within each of the geographic regions of the country, as prescribed by regulation. 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. The Administrator shall promulgate regulations, not later than 18 months after enactment, to establish the allowance system prescribed under this section, including, but not limited to, requirements for the issuance, transfer, and use of allowances under this title. Such regulations shall provide, consistent with the purposes of this title, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years.

"(c) INTERPOLLUTANT TRADING.-- The regulations under subsection (b) shall provide for trading of sulfur dioxide and nitrogen oxide allowances, including the banking of nitrogen oxide reductions in Phase I to be credited against reductions required



in Phase II. Such rules shall provide that, for trading purposes, 1.5 pounds of nitrogen oxides shall be equivalent to 1.0 pound of sulfur dioxide. Interpollutant trades of these pollutants in non-attainment areas shall be subject to approval by the Administrator.

"(d) ALLOWANCE TRACKING SYSTEM.-- The Administrator shall establish a system for issuing, recording, and tracking allowances, and shall specify by regulation the procedures and requirements for that system. All allowance allocations and transfers shall upon recordation by the Administrator be deemed a part of each unit's permit requirements for purposes of section 507.

"(e) NEW UNITS.-- The owner or operator of each new unit must hold allowances equal to the annual tonnage of sulfur dioxide emitted by the unit, after December 31, 2000. New units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a). Notwithstanding the geographic limitations on transfers of allowances in subsection (b), new units may obtain allowances from any unit allocated allowances under this title.

"(f) NATURE OF ALLOWANCES.-- An allowance issued under this title is a limited authorization to emit sulfur dioxide or nitrogen oxides in accordance with the provisions of the Act. Such allowances may be limited, revoked or otherwise modified in accordance with the provisions of the Act, or future amendments to it.

"(g) PROHIBITION.-- It shall be unlawful for any person to hold or transfer any allowance issued under this title, except in accordance with regulations issued by the Administrator.



"Section 504. First Phase Sulfur Dioxide Emission Reduction Program.

"(a)(1) After December 31, 1995, each source that includes one or more affected units listed in Table A is an affected source under this section.

(2) Any existing steam-electric unit with nameplate capacity of 100 MWe or greater, not included in Table A, that emits sulfur dioxide at an annual rate of 2.50 lbs./mmBTU or greater, for any calendar year after the date of enactment and prior to 2001, shall also be an affected unit for purposes of this section.

"(b) EMISSION LIMITATION.-- After December 31, 1995, each unit described in subsection (a)(1) shall be subject to the annual sulfur dioxide tonnage emission limitation listed in Table A. The annual limitation for any unit described in subsection (a)(2) shall equal the product of each unit's baseline multiplied by an emission rate of 2.50 lbs/mmBTU, divided by 2,000.

"(c) AFFECTED UNIT AUTHORITY.-- The owner or operator of an affected unit under subsection (a) may submit a proposal to reassign the sulfur dioxide requirements to any other unit(s) under the control of the same owner or operator. In order to reassign the requirements, the owner or operator shall submit an alternative proposal to the Administrator for approval in conjunction with submission of a permit application and compliance plan under section 507(c)(1). Any proposal must include--

"(1) designation of the substitute affected units to which the obligations under subsection (a) shall apply, in addition to, or in lieu of, the original affected units designated under that subsection;

"(2) specification of the baseline, the actual 1985 sulfur dioxide emission rate, and the authorized annual tonnage limitation for the original affected unit;

"(3) calculation of the calendar year 1985 annual tonnage emitted by the substitute units, based on the baseline for each unit, as defined in section 502(d), multiplied by the unit's actual 1985 emission rate;

"(4) specification of the emission rates, and the annual tonnage limitations that would be applicable to the original and substitute affected units;

"(5) documentation, satisfactory to the Administrator, that the reassigned tonnage limits will, in total, achieve the same or a greater reduction than would have been achieved by the requirements of subsection (a); and

"(6) such other information as the Administrator may require.

The Administrator shall review and act on any proposal in accordance with subsection (d).

"(d) ADMINISTRATOR'S ACTION ON A PROPOSAL.--

"(1) The Administrator shall review, and approve any proposal meeting the requirements of subsection (c). If a proposal does not meet the requirements of subsection (c),



the Administrator shall disapprove it. The Administrator shall act on a proposal within six months after receipt of a complete submission.

"(2) For an approved proposal, each substitute unit and source shall be deemed affected under this title, and the Administrator shall act on the submission in accordance with section 507(c). The Administrator shall also allocate allowances to the affected units in accordance with the approved proposal. For a disapproved proposal, the Administrator shall issue allowances in accordance with subsection (a). The Administrator's action on any proposal submitted under subsection (c) shall not require a hearing or opportunity for public comment, and shall not be subject to judicial review.

TABLE A

Affected Sources and Units in Phase 1  
and Their Sulfur Dioxide Allowances (tons)

| <u>State</u> | <u>Plant Name</u> | <u>Unit</u> | <u>Phase 1<br/>Allowances</u> | <u>Phase 2<br/>Allowances</u> |
|--------------|-------------------|-------------|-------------------------------|-------------------------------|
| Alabama      | Colbert           | 1           | 13600                         | 6520                          |
|              |                   | 2           | 15300                         | 7350                          |
|              |                   | 3           | 15400                         | 7390                          |
|              |                   | 4           | 15400                         | 7400                          |
|              |                   | 5           | 37200                         | 17800                         |
|              | E. C. Gaston      | 1           | 18100                         | 8690                          |
|              |                   | 2           | 18500                         | 8900                          |
|              |                   | 3           | 18300                         | 8790                          |
|              |                   | 4           | 19300                         | 9250                          |
|              |                   | 5           | 59800                         | 28700                         |
| Florida      | Big Bend          | 1           | 28400                         | 13600                         |
|              |                   | 2           | 27100                         | 13000                         |
|              |                   | 3           | 26700                         | 12800                         |
|              | Crist             | 6           | 19200                         | 9200                          |



|          |                |   |       |       |
|----------|----------------|---|-------|-------|
|          |                | 7 | 28100 | 13500 |
| Georgia  | Bowen          | 1 | 54800 | 26300 |
|          |                | 2 | 56300 | 27000 |
|          |                | 3 | 71800 | 34400 |
|          |                | 4 | 71700 | 34400 |
|          | Hammond        | 1 | 8780  | 4220  |
|          |                | 2 | 9220  | 4420  |
|          |                | 3 | 8910  | 4280  |
|          |                | 4 | 37600 | 18100 |
|          | Jack McDonough | 1 | 19900 | 9550  |
|          |                | 2 | 20600 | 9880  |
|          | Wansley        | 1 | 70800 | 34000 |
|          |                | 2 | 65400 | 31400 |
|          | Yates          | 1 | 7200  | 3460  |
|          |                | 2 | 7040  | 3380  |
|          |                | 3 | 6950  | 3340  |
|          |                | 4 | 8910  | 4280  |
|          |                | 5 | 9410  | 4520  |
|          |                | 6 | 24800 | 11900 |
|          |                | 7 | 21500 | 10300 |
| Illinois | Baldwin        | 1 | 42000 | 20200 |
|          |                | 2 | 44400 | 21300 |
|          |                | 3 | 42600 | 20400 |
|          | Coffeen        | 1 | 11800 | 5660  |
|          |                | 2 | 35700 | 17100 |
|          | Grand Tower    | 4 | 5910  | 2840  |
|          | Hennepin       | 2 | 18400 | 8820  |
|          | Joppa Steam    | 1 | 12600 | 6040  |
|          |                | 2 | 10800 | 5170  |
|          |                | 3 | 12300 | 5890  |
|          |                | 4 | 11400 | 5450  |
|          |                | 5 | 11400 | 5480  |
|          |                | 6 | 10600 | 5100  |
|          |                | 1 | 31500 | 15100 |
|          | Kincaid        | 2 | 29100 | 14000 |
|          |                | 3 | 13900 | 6670  |
|          | Meredosia      | 3 | 13900 | 6670  |
|          | Vemillion      | 2 | 8880  | 4260  |
| Indiana  | Bailly         | 7 | 11100 | 5320  |
|          |                | 8 | 12400 | 5970  |
|          | Breed          | 1 | 18500 | 8880  |
|          | Cayuga         | 1 | 33400 | 16000 |
|          |                | 2 | 34100 | 16400 |
|          | Clifty Creek   | 1 | 20200 | 9670  |
|          |                | 2 | 19800 | 9510  |
|          |                | 3 | 20400 | 9800  |
|          |                | 4 | 20100 | 9640  |
|          |                | 5 | 19400 | 9290  |
|          |                | 6 | 20400 | 9780  |
|          |                | 5 | 3880  | 1860  |
|          | Elmer W. Stout | 5 | 3880  | 1860  |

|          |                 |    |       |       |    |
|----------|-----------------|----|-------|-------|----|
|          |                 | 6  | 4770  | 2290  |    |
|          |                 | 7  | 23600 | 11300 | 1  |
|          | F. B. Culley    | 2  | 3100  | 1490  | 2  |
|          |                 | 3  | 17000 | 8140  | 3  |
|          | Frank E. Ratts  | 1  | 8330  | 4000  | 4  |
|          |                 | 2  | 8480  | 4070  | 5  |
|          | Gibson          | 1  | 40400 | 19400 | 6  |
|          |                 | 2  | 41000 | 19700 | 7  |
|          |                 | 3  | 41100 | 19700 | 8  |
|          |                 | 4  | 40300 | 19400 | 9  |
|          | H. T. Pritchard | 6  | 5770  | 2770  | 10 |
|          | Michigan City   | 12 | 23000 | 11100 | 11 |
|          | Petersburg      | 1  | 16400 | 7890  | 12 |
|          |                 | 2  | 32400 | 15500 | 13 |
|          | R. Gallagher    | 1  | 4690  | 2250  | 14 |
|          |                 | 2  | 7280  | 3490  | 15 |
|          |                 | 3  | 6530  | 3130  | 16 |
|          |                 | 4  | 6800  | 3270  | 17 |
|          | Tanners Creek   | 4  | 24800 | 11900 | 18 |
|          | Wabash River    | 1  | 3400  | 1920  | 19 |
|          |                 | 2  | 2860  | 1370  | 20 |
|          |                 | 3  | 3750  | 1800  | 21 |
|          |                 | 5  | 3670  | 1760  | 22 |
|          |                 | 6  | 12300 | 5890  | 23 |
|          | Warrick         | 4  | 27000 | 12900 | 24 |
|          |                 |    |       |       | 25 |
| Iowa     | Burlington      | 1  | 10700 | 5140  | 26 |
|          | Des Moines      | 7  | 1680  | 805   | 27 |
|          | Milton L. Kapp  | 2  | 13800 | 6610  | 28 |
|          | Prairie Creek   | 4  | 8180  | 3920  | 29 |
|          | Riverside       | 5  | 3300  | 1590  | 30 |
|          |                 |    |       |       | 31 |
| Kansas   | Quindaro        | 2  | 4130  | 1980  | 32 |
| Kentucky | Coleman         | 1  | 11200 | 5390  | 33 |
|          |                 | 2  | 12800 | 6160  | 34 |
|          |                 | 3  | 12300 | 5930  | 35 |
|          | Cooper          | 1  | 7450  | 3570  | 36 |
|          |                 | 2  | 15300 | 7360  | 37 |
|          | E. W. Brown     | 1  | 7110  | 3410  | 38 |
|          |                 | 2  | 10900 | 5240  | 39 |
|          |                 | 3  | 26100 | 12500 | 40 |
|          | Elmer Smith     | 1  | 5440  | 2610  | 41 |
|          |                 | 2  | 14400 | 6920  | 42 |
|          | Ghent           | 1  | 28400 | 13600 | 43 |
|          | Green River     | 4  | 7820  | 3750  | 44 |
|          | H. L. Spurlock  | 1  | 22800 | 10900 | 45 |
|          | Henderson II    | 1  | 13300 | 6410  | 46 |
|          |                 | 2  | 12300 | 5910  | 47 |
|          | Paradise        | 3  | 59200 | 28400 | 48 |
|          | Shawnee         | 10 | 10200 | 4880  | 49 |
|          |                 |    |       |       | 50 |
|          |                 |    |       |       | 51 |

|               |                |      |       |       |
|---------------|----------------|------|-------|-------|
| Maryland      | Chalk Point    | 1    | 21900 | 10500 |
|               |                | 2    | 23900 | 11700 |
|               | C. P. Crane    | 1    | 10300 | 4960  |
|               |                | 2    | 9230  | 4430  |
|               | Morgantown     | 1    | 35200 | 16900 |
|               |                | 2    | 38500 | 18500 |
| Michigan      | J. H. Campbell | 1    | 19300 | 9250  |
|               |                | 2    | 23100 | 11100 |
| Mississippi   | Jack Watson    | 4    | 17800 | 8540  |
|               |                | 5    | 36500 | 17500 |
| Missouri      | Asbury         | 1    | 16200 | 7770  |
|               |                | 5    | 4830  | 2320  |
|               |                | 1    | 35700 | 17100 |
|               |                | 2    | 37700 | 18100 |
|               |                | 3    | 40300 | 19400 |
|               | Labadie        | 4    | 35900 | 17300 |
|               |                | 1    | 7390  | 3550  |
|               |                | 2    | 8200  | 3940  |
|               |                | 3    | 10100 | 4840  |
|               |                | 1    | 28200 | 13600 |
|               | Montrose       | 2    | 32500 | 15600 |
|               |                | 3    | 15600 | 7480  |
|               |                | 1    | 22600 | 10800 |
|               |                | 2    | 21100 | 10100 |
|               |                | 1    | 10300 | 4920  |
|               | Thomas Hill    | 2    | 17200 | 8270  |
|               |                |      |       |       |
| New Hampshire | Merrimack      | 1    | 10200 | 4890  |
|               |                | 2    | 22000 | 10600 |
| New Jersey    | B. L. England  | 1    | 9060  |       |
|               |                | 2    | 11700 | 5630  |
| New York      | Dunkirk        | 3    | 12600 | 6050  |
|               |                | 1    | 8380  | 4020  |
|               |                | 2    | 12400 | 5960  |
|               | Northport      | 1    | 19800 | 9510  |
|               |                | 2    | 24100 | 11600 |
|               |                | 3    | 26500 | 12700 |
|               | Port Jefferson | 3    | 10500 | 5030  |
|               |                | 4    | 12300 | 5920  |
| Ohio          | Ashtabula      | 5    | 16700 | 8040  |
|               |                | 8    | 11700 | 5590  |
|               |                | 9    | 30500 | 14600 |
|               | Cardinal       | 1    | 34300 | 16400 |
|               |                | 2    | 38300 | 18400 |
|               | Conesville     | 1    | 4210  | 2020  |
| 2             |                | 4890 | 2350  |       |



|                  |   |       |       |
|------------------|---|-------|-------|
|                  | 3 | 5500  | 2640  |
|                  | 4 | 48800 | 23400 |
| Eastlake         | 1 | 7800  | 3750  |
|                  | 2 | 8640  | 4150  |
|                  | 3 | 10000 | 4810  |
|                  | 4 | 14500 | 6970  |
|                  | 5 | 34100 | 16400 |
| Gen. J. M. Gavin | 1 | 79100 | 38000 |
|                  | 2 | 80600 | 38700 |
| Kyger Creek      | 1 | 19300 | 9260  |
|                  | 2 | 18600 | 8910  |
|                  | 3 | 17900 | 8600  |
|                  | 4 | 18700 | 8980  |
|                  | 5 | 18700 | 9000  |
| Miami Fort       | 6 | 11400 | 5460  |
|                  | 7 | 38500 | 18500 |
| Muskingum River  | 1 | 14900 | 7140  |
|                  | 2 | 14200 | 6800  |
|                  | 3 | 14000 | 6700  |
|                  | 4 | 11800 | 5650  |
|                  | 5 | 40500 | 19400 |
| Niles            | 1 | 6940  | 3330  |
|                  | 2 | 9100  | 4370  |
| Picway           | 5 | 4930  | 2370  |
| R. E. Burger     | 3 | 3080  | 1480  |
|                  | 4 | 10800 | 5170  |
|                  | 5 | 12400 | 5970  |
| W. H. Sammis     | 5 | 24200 | 11600 |
|                  | 6 | 39900 | 19200 |
|                  | 7 | 43200 | 20700 |
| W. C. Beckjord   | 5 | 8950  | 4290  |
|                  | 6 | 23000 | 11000 |
| Pennsylvania     |   |       |       |
| Armstrong        | 1 | 14400 | 6920  |
|                  | 2 | 15400 | 7410  |
| Brunner Island   | 1 | 27800 | 13300 |
|                  | 2 | 31100 | 14900 |
|                  | 3 | 53800 | 25800 |
| Cheswick         | 1 | 39000 | 18700 |
| Conemaugh        | 1 | 59800 | 28700 |
|                  | 2 | 66400 | 31900 |
| Hatfield's Ferry | 1 | 37800 | 18200 |
|                  | 2 | 37300 | 17900 |
|                  | 3 | 40300 | 19300 |
| Homer City       | 1 | 40100 | 19200 |
|                  | 2 | 34700 | 16700 |
| Martins Creek    | 1 | 12700 | 6080  |
|                  | 2 | 12800 | 6150  |
| Portland         | 1 | 5940  | 2850  |
|                  | 2 | 10200 | 4910  |
| Shawville        | 1 | 10300 | 4960  |
|                  | 2 | 10300 | 4960  |

|               |                 |    |       |       |
|---------------|-----------------|----|-------|-------|
|               |                 | 3  | 14200 | 6830  |
|               |                 | 4  | 14100 | 6760  |
|               | Sunbury         | 3  | 8760  | 4210  |
|               |                 | 4  | 11500 | 5500  |
| Tennessee     | Allen           | 1  | 15300 | 7360  |
|               |                 | 2  | 16800 | 8050  |
|               |                 | 3  | 15700 | 7520  |
|               | Cumberland      | 1  | 86700 | 41600 |
|               |                 | 2  | 94800 | 45500 |
|               | Gallatin        | 1  | 17600 | 8470  |
|               |                 | 2  | 17300 | 8310  |
|               |                 | 3  | 20000 | 9610  |
|               |                 | 4  | 21300 | 10200 |
|               | Johnsonville    | 1  | 7790  | 3740  |
|               |                 | 2  | 8040  | 3860  |
|               |                 | 3  | 8410  | 4040  |
|               |                 | 4  | 7990  | 3830  |
|               |                 | 5  | 8240  | 3950  |
|               |                 | 6  | 7890  | 3790  |
|               |                 | 7  | 8980  | 4310  |
|               |                 | 8  | 8700  | 4180  |
|               |                 | 9  | 7080  | 3400  |
|               |                 | 10 | 7550  | 3630  |
| West Virginia | Albright        | 3  | 10700 | 5120  |
|               | Fort Martin     | 1  | 41600 | 20000 |
|               |                 | 2  | 41200 | 19800 |
|               | Harrison        | 1  | 48600 | 23300 |
|               |                 | 2  | 46100 | 22100 |
|               |                 | 3  | 41500 | 19900 |
|               | Kammer          | 1  | 18700 | 9000  |
|               |                 | 2  | 19500 | 9340  |
|               |                 | 3  | 17400 | 8350  |
|               | Mitchell        | 1  | 44000 | 21100 |
|               |                 | 2  | 45500 | 21800 |
|               | Mt. Storm       | 1  | 43700 | 21000 |
|               |                 | 2  | 35600 | 17100 |
|               |                 | 3  | 42400 | 20400 |
| Wisconsin     | Edgewater       | 4  | 24700 | 11900 |
|               | La Crosse/Genoa | 3  | 19100 | 9160  |
|               | Nelson Dewey    | 1  | 6010  | 2880  |
|               |                 | 2  | 6680  | 3210  |
|               | North Oak Creek | 1  | 5220  | 2510  |
|               |                 | 2  | 5140  | 2470  |
|               | Pulliam         | 8  | 7510  | 3600  |
|               | South Oak Creek | 5  | 9670  | 4640  |
|               |                 | 6  | 12000 | 5780  |
|               |                 | 7  | 16200 | 7770  |
|               |                 | 8  | 15800 | 7580  |



"Section 505. Second Phase Sulphur Dioxide Emission Reduction Program.

"(a) APPLICABILITY.-- After December 31, 2000, each steam-electric existing unit with nameplate capacity of 75MWe or greater and an actual 1985 emission rate of 1.20bs/mmBTU or greater is an affected unit under this section. 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 in determining applicability under this section. Each source that includes one or more affected units is an affected source.

"(b) EMISSIONS LIMITATIONS.-- After December 31, 2000, each affected unit, as described in subsection (a), shall be subject to an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBTU, divided by 2000.

"(c) UNITS BELOW 75 MWe OR 1.20bs/mmBTU.-- After December 31, 2000, each steam-electric existing unit with nameplate capacity of less than 75 MWe or an actual 1985 emission rate less than 1.20bs/mmBTU shall not exceed an annual emission rate requirement equal to its actual 1985 emission rate. The emission rate requirement for an existing unit that was not in operation during calendar year 1985 shall be the emission rate for a calendar year after 1985, as determined by the Administrator. Such a unit shall not be an affected unit for purposes of this title, except as provided under section 509.

"Section 506. Nitrogen Oxides Emission Reduction Program.

"(a) APPLICABILITY.-- After December 31, 2000, emission rate



requirements for nitrogen oxides shall be met in the second phase of the emission reduction program by coal-fired steam-electric existing units with a nameplate capacity of 75MWe or greater.

"(b) EMISSION LIMITATIONS.-- After December 31, 2000, each unit described in subsection (a) shall not exceed a nitrogen oxides emission rate established by the Administrator. The Administrator shall establish emission rates, based on the application of low nitrogen oxides burner technology for each type of boiler, which are designed to reduce total nitrogen oxides emissions by 2 million tons below 1989 projected emissions for calendar year 2000. Any unit subject to an emission rate requirement under this section shall not be an affected unit for nitrogen oxides for purposes of this title, except as provided in section 509.

"Section 507. Permits and Compliance Plans.

"(a) PERMIT PROGRAM.-- This title shall be implemented by permits issued in accordance with the provisions of title IV, as modified by this title. Any permit issued by the Administrator, or a State with an approved permit program, shall prohibit (1) emissions of sulfur dioxide or nitrogen oxides in excess of the total allowances or limitations for the affected unit or source, (2) exceedances of applicable sulfur dioxide or nitrogen oxide emissions rates, or (3) contravention of any other provision of the permit.

"(b) COMPLIANCE PLAN.-- Each permit application shall be accompanied by a compliance plan for the source to comply with its requirements under title V. The compliance plan shall provide all necessary information on the schedule and means by which the source will achieve compliance with its annual tonnage limitation, including specification of any additional allowances beyond the initial allocation that will be used to achieve

compliance. The Administrator may also require--

"(1) for a source, a demonstration of attainment of national ambient air quality standards, and

"(2) from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

"(c) FIRST PHASE PERMITS.-- The Administrator shall issue permits to the affected sources under section 504.

"(1)(A) Not later than twenty-seven months after the date of enactment, the owner or operator of each affected source under section 504 shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator. The owner or operator shall also provide either a certification by the Governor or a notification that a certification was requested but not issued in accordance with subsection (d). The permit application and the compliance plan shall be binding on the owner or operator, and be enforceable for purposes of title V requirements, in lieu of a permit, until a permit is issued by the Administrator for the source.

"(B) In the case of a compliance plan for an affected source under section 504 for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit by 20 percent or more, as compared with the baseline prescribed in section 502(c)(1)(A), or by shutting down the unit, the owner or operator shall include in the compliance plan a specification of the units that will provide electrical generation



to compensate for the reduced output of the affected source. The source, and any unit to be used for such compensating generation, if not otherwise affected under section 504, shall be deemed affected under section 504, subject to the phase I requirements of this title, except that allowances shall be allocated to such unit in the amount of an annual limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emission rate, divided by 2000.

"(2) If the Administrator determines that a proposed compliance plan does not satisfy the requirements of this title or title IV, the plan shall be disapproved within six months after receipt of a complete submission.

"(3) Not later than eighteen months after enactment, the Administrator shall promulgate regulations, in accordance with title IV, to implement a federal permit program to issue permits for affected sources under this title. Following promulgation, the Administrator shall issue a permit to implement the requirements of section 504 and the allowances provided under section 503 to the owner or operator of each affected source under that section. Such a permit shall supersede any permit application and compliance plan submitted under paragraph (1).

"(d) CERTIFICATION.-- Any owner or operator submitting a Phase I permit application and compliance plan under subsection (c) shall request a certification from the Governor of any State within which the source is located that the application and compliance plan are consistent with State law. Where required by State law, the Governor's certification may



preclude the use of coal produced outside the State at the source. The Governor's certification or denial of certification shall be a condition of any permit issued by the Administrator or a State to the source unless the Administrator, within 60 days after receipt, notifies the Governor that the certification or denial is inconsistent with the provisions or purposes of the Act or with other compelling national interest. In the event that the Governor fails or refuses to act on a request for certification within 90 days after receipt of the request, the requirements of this subsection shall be waived with respect to such application and compliance plan.

"(e) SECOND PHASE PERMITS.-- To implement sections 505 and 506, each State in which one or more sources subject to those sections are located shall submit a permit program to the Administrator for approval, as provided under section 402 of title IV. The Administrator shall approve any permit program meeting the requirements of section 402 and this title.

"(1) The owner or operator of each affected source under section 505 shall submit a permit application and compliance plan for that source to the permitting authority, not later than January 1, 1995.

"(2) Not later than July 1, 1996, each State with an approved permit program shall issue permits to the owners or operators of existing affected sources under section 505 that satisfy the requirements of title IV and this title. In the case of a State without an approved permit program, or a State that fails to issue permits to all of its existing affected sources by July 1, 1996, the Administrator shall, not later than July 1, 1997, issue a permit to the owner or operator of each such affected source that has not been issued a State permit.

"(3) Not later than July 1, 1997, the Administrator shall issue allowances to each affected source for the calendar years included within the permit term, and these shall be deemed a part of the permit issued for that source, as provided in section 503.

"(4) The owner or operator of any unit subject to an emission rate requirement under section 505(c) or 506 shall submit a permit application for such unit to the permitting authority, not later than January 1, 1998. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of title IV and this title, including any appropriate monitoring and reporting requirements. Unless designated under section 509, such a unit shall not receive, and is not obligated to emit in conformance with, allowances issued under this title.

"(f) NEW UNIT PERMITS. --

"(1) Each State shall submit a permit program for new units to the Administrator for approval, as provided under section 402 of title IV. The Administrator shall approve any permit program meeting the requirements of section 402 and this title.

"(2) The owner or operator of each source that includes a new unit or units shall submit a permit application and compliance plan to the permitting authority not later than twenty-four months prior to December 31, 2000, or to commencing operation of the unit, whichever is later. The permitting authority shall issue a permit to the owner or operator of the unit that satisfies the requirements of title IV and this title.

"(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.

"(h) PROHIBITION.-- It shall be unlawful for an owner or operator (1) to fail to submit a permit application or compliance plan in accordance with the deadlines specified in this section or otherwise to fail to comply with regulations implementing this section, or (2) to operate any source subject to this title except in compliance with the terms and requirements of a permit application and compliance plan or permit issued by the Administrator or a State with an approved permit program.

"Section 508. Repowered Sources.

"(a) AVAILABILITY.-- Not later than January 1, 1998, the owner or operator of an existing unit may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under sections 505 or 506. The owner or operator shall, as part of any such demonstration, provide, not later than December 31, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation.

"(b) EXTENSION.-- An owner or operator satisfying the requirements of subsection (a) shall be granted an extension of the emission limitation or rate requirement compliance date for that unit from December 31, 2000 to December 31, 2003. The extension shall be specified in the permit issued to the source under section 507, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this



section shall not be eligible for a waiver under section 111(j) of this Act.

"(c) CONTROL REQUIREMENTS.--

"(1) Any source qualifying for an extension under this section shall not be required to meet any standard of performance under section 111. Except as provided in paragraph (2), any qualifying source that will not increase emissions of any pollutant relative to its pre-repowering level, as measured by its potential to emit, expressed as mass per unit of time, shall not be subject to the requirements of Parts C and D of this Act for that pollutant.

"(2) Any qualifying source that will increase emissions of a pollutant relative to its potential pre-repowering level shall not be subject to the requirements of Parts C and D of this Act for that pollutant, provided that the owner or operator of such source submits information sufficient to demonstrate to the Administrator (in consultation with the Federal Land Manager with respect to (C) below) that the increased emission level will not:

"(A) cause or contribute to an exceedance in any area of any national ambient air quality standard or of any maximum allowable increase in concentrations established under Part C of the Act; or

"(B) interfere with reasonable further progress within the meaning of Part D of the Act; or

"(C) result in an adverse impact on visibility or air quality related values in any Class I area under Part C.

Upon receipt of a complete submission, the Administrator shall determine within 90 days whether the requirements of subparagraphs (A) through (C)

have been met.

"(d) ALLOWANCES.--

"(1) For the period of the extension under this section, the Administrator shall issue to the owner or operator of the affected source, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved SIP limitation or its actual emission rate for 1996. Such allowances may not be transferred or used by any other source to meet emission requirements under this title. The source owner or operator shall notify the Administrator 60 days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

"(2) Effective on that date, the emission rate for the source shall revert to 1.20 lbs/mmBTU for sulfur dioxide. Allowances for the year in which the source is removed from operation to install the repowering technology shall be calculated by multiplying that rate times the baseline, divided by 2000, and prorated accordingly, and are transferable.

"(3) Except as provided in paragraph (4), allowances for calendar years after the year the repowering is complete shall be based on 1.20 lb./mmBTU of sulfur dioxide multiplied by the baseline.

"(4) In lieu of meeting the requirements of paragraph (3), the owner or operator of such unit may elect to receive allowances calculated as the sum of the following:

"(A) 1.2 lb./mmBTU emission rate multiplied by the baseline, divided by 2000, and



"(B) the annual equivalent emission rate required by the standard under section 111 that would apply in the absence of subsection (c)(1) of this section, multiplied by the difference between the nameplate electric generating capacity of the unit after repowering and the nameplate capacity prior to repowering, multiplied by the heat rate of the repowered unit, multiplied by 3.1.

"(5) Allowances issued in accordance with paragraph (4) may not be transferred.

"(e) PROHIBITION.-- It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, and any regulations to implement this section.

"Section 509. Election for Additional Sources.

"(a) APPLICABILITY.-- The owner or operator of any existing unit or process source under subsection (e), that emits sulfur dioxide or nitrogen oxides, but that is not an affected unit, may elect to designate that unit, or source, to become affected under this title. An election may be submitted to the Administrator for approval anytime after promulgation of regulations under subsection (g) of this section. The Administrator shall approve a designation that meets the requirements of this section and such designated unit, or source, shall be affected for purposes of this title.

"(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 not available, the Administrator may prescribe a baseline based on alternative representative data.



"(c) EMISSION LIMITATIONS.-- Annual emission limitations for sulfur dioxide or nitrogen oxides shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBTU, or, if the unit did not operate in 1985 the emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2000. After December 31, 2000, the emission rate for calculating an emission limitation under this subsection shall be the rate prescribed under section 505(c) or 506 for any unit subject to those provisions. However, any such unit shall be subject only to an emission limitation under this section, and not also to an emission rate requirement under those provisions.

"(d) ALLOWANCES AND PERMITS.-- The Administrator shall issue allowances to an affected unit, or source, under this section in an amount equal to the limitation calculated under subsection (c) or (e), in accordance with section 503. Such allowances may be transferred to the owner or operator of any other affected source in accordance with the provisions of this title. The permitting authority shall issue a permit to the affected source in accordance with section 507.

"(e) PROCESS SOURCES.-- The Administrator may establish, by regulation, a program for designation of process sources as affected sources under this section. The Administrator shall define the sources that may be included (not including any unit as defined under this title), specify the operating and emission baselines and data requirements, prescribe CEMS or other monitoring requirements, and promulgate permit, reporting, and any other requirements necessary to implement such a program.

"(f) LIMITATION.-- Any unit designated under this section shall not

transfer or bank allowances produced as a result of reduced utilization or shutdown.

"(g) IMPLEMENTATION.-- The Administrator shall issue regulations to implement this section not later than 18 months after enactment.

"Section 510. Excess Emissions.

"(a) EXCESS EMISSIONS FEE.-- The owner or operator of any affected source that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the allowances it possesses for that calendar year shall be liable for the payment of an excess emission fee. That fee shall be calculated on the basis of the number of tons emitted in excess of allowances multiplied by two thousand dollars (\$2000). Any such fee shall be due and payable without demand to the United States Environmental Protection Agency as provided in regulations issued by the Administrator. Any such funds shall be deposited in the U.S. Treasury pursuant to the Miscellaneous Receipts Act. Any fee due and payable under this section shall not diminish any fine, penalty or fee imposed on the same source under any other section of this Act.

"(b) EXCESS EMISSIONS OFFSET.-- The owner or operator of any affected source liable for payment of a fee under subsection (a) is also liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source shall, within 60 days after the end of the year, submit to the Administrator, and the State, a plan to achieve the required offsets. The Administrator shall also deduct allowances equal to the excess tonnage from those issued for the source for the calendar year, or succeeding years, following the year in which the excess emissions



occurred.

"(c) FEE ADJUSTMENT.-- The Administrator shall, by regulation, adjust the fee specified in subsection (a) for inflation, based on the Consumer Price Index, beginning in calendar year 1996 and annually thereafter.

"(d) PROHIBITION.-- It shall be unlawful for the owner or operator of any source liable for a fee and offset under this section to fail to pay the fee under subsection (a) or to provide, and thereafter comply with, a compliance plan as required by subsection (b), or offset excess emissions as required by subsection (b).

"Section 511. Monitoring, Reporting, and Recordkeeping Requirements.

"(a) APPLICABILITY.-- All sources subject to this title shall be required to install and operate CEMS and quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow for each unit subject to this title. The Administrator shall, by regulations issued not later than eighteen months after enactment, specify the requirements for CEMS, for alternative methods that provide sufficiently reliable and timely information, and for record keeping and reporting of information from such systems.

"(b) FIRST PHASE REQUIREMENTS.-- Within thirty-six months after enactment, the owner or operator of each affected unit under section 504 shall install and operate CEMS, quality assure the data, and keep records and report in accordance with regulations issued under subsection (a).

"(c) SECOND PHASE REQUIREMENTS.-- Not later than January 1, 1995, the owner or operator of each source subject to sections 505 and 506 which has not previously met the requirements of subsection (a) shall comply with those requirements.



"(d) UNAVAILABILITY OF CEMS.-- If CEMS data is not available for any affected unit during any period of a calendar year in which such data is required under this title, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner and, by regulation, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 510 in accordance with such regulations which shall be issued not later than eighteen months after enactment.

"(e) PROHIBITION.-- It shall be unlawful for the owner or operator of any source subject to this title to operate a source without complying with the requirements of this section, and any regulations implementing this section.

"Section 512. Compliance with Other Provisions.

"(a) GENERAL.-- Except as expressly provided, compliance with the requirements of this title shall not exempt or exclude the owner or operator of any source subject to this title from compliance with any other applicable requirements of this Act.

"(b) STACK HEIGHT REQUIREMENTS.-- Except for requirements relating to intermittent or supplemental control systems as defined in section 123(b), compliance with the requirements of section 123 of title I is not required for any source subject to this title for emission requirements for sulfur dioxide and nitrogen oxides.

"Section 513. Enforcement.

"A violation by the owner or operator of a source subject to this title

of the prohibitions of, requirements of, or regulations promulgated pursuant to title V shall be a violation of this Act. Operation of an affected source to emit sulfur dioxide or nitrogen oxides in excess of its allowances shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

"Section 514. Report to Congress.

"Not later than January 1, 2003, the Administrator shall assess and submit a report to Congress on the environmental effects of the emission reductions under this title.

"Section 515. Clean Coal Technology Regulatory Incentives.

"(a) For purposes of this section, 'clean coal technology' means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of the date of enactment of this title.

"(b) FEDERAL RATE INCENTIVES.--

"(1) Within twenty-four months after enactment of this Act, the Federal Energy Regulatory Commission shall complete a rulemaking to establish a demonstration program for regulatory incentives to promote the development of clean coal technologies and other innovative control technologies that limit powerplant emissions. The regulatory incentives shall include--

"(A) establishment of an incentive rate of return for clean coal or other innovative emission control technologies that



recognizes their inherent risk; and

"(B) allowance of a 10 to 20 year amortization period to recover the capital costs of a clean coal or other innovative emission control technology.

"(2) The Federal Energy Regulatory Commission demonstration program is subject to the following--

"(A) the program initially will have a 5-year life;

"(B) the program will cover no more than four units in each technology class; and

"(C) the technology classes eligible for the program should be reasonably likely to realize significant cost reductions when employed.

"(3) At the end of the 5-year demonstration program, the Federal Energy Regulatory Commission shall review the merits of the program and determine whether it should be extended or made permanent.

"(c) FERC PREAPPROVAL OF PRUDENCE FOR CLEAN COAL TECHNOLOGY COSTS.--  
The Federal Energy Regulatory Commission shall establish a process for negotiating with potential developers of clean coal technology or other innovative control technology projects to agree upon cost caps for future projects and preapproval of the prudence of expenses for those projects if the expenses fall within the agreed-upon cap.

"(d) REVISED REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.--

"(1) The Administrator shall promulgate regulations under this subsection to revise requirements under Section 111 and Parts C and D of the Act, as appropriate, to facilitate temporary and permanent clean coal demonstration projects, consistent with the attainment and



maintenance of national ambient air quality standards and prevention of significant deterioration as provided in paragraphs (2) and (3). Such regulations shall address physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration shall mean a project conducted under Title II, Section 101(d) of the Further Continuing Appropriations Act of 1985 (Section 5903d of Title 42 of the United States Code), or subsequent appropriations, up to a total amount of \$2.5 billion for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"(2) Temporary Projects.-- Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with all State implementation plans and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of Section 111 or Parts C or D of the Act.

"(3) Permanent Projects.--

"(A) For permanent clean coal technology demonstration projects, any qualifying project shall not be subject to standards of performance under Section 111.

"(B) Any permanent demonstration project that complies with

all State implementation plans and other requirements necessary to attain and maintain the national air quality standards shall not be subject to the requirements of Parts C or D of the Act, provided that the project will not result in an increase, relative to its predemonstration levels, as measured by its potential to emit, expressed as mass per unit of time, of any pollutant regulated under the Act. For any project that will result in an increase in potential emissions of any such pollutant, the owner or operator and the Administrator shall follow the procedure specified in section 508(c)(2) for that pollutant.

"(4) Pre-existing Requirements.-- Any clean coal demonstration technology project shall be subject to its pre-existing obligations under this Act until such time as it qualifies under regulations implementing this section for alternate requirements.

"(e) ENCOURAGEMENT OF STATE INCENTIVE PROGRAMS.-- Because the use of clean coal technologies is in the national interest, States, including their agencies and political subdivisions which regulate public utility rates and charges, are encouraged to provide additional incentives for their implementation. Those incentives may include, but are not limited to--

"(1) pre-approval of recovery of capital costs and other expenses, within reasonable bounds agreed upon before project construction;

"(2) elimination of retroactive 'used and useful' reviews for clean coal technologies;

"(3) rapid amortization of clean coal technology expenditures; and

"(4) immediate recovery of a portion of clean coal technology

expenses through a fuel adjustment clause or by some other method."



## TITLE VI--PROVISIONS RELATING TO ENFORCEMENT

## SEC. 601. SECTION 113 ENFORCEMENT.

(a) Section 113(a) of the Clean Air Act is amended by striking in its entirety the heading that begins "FINDING OF VIOLATION" and inserting in lieu thereof "NOTIFICATIONS AND COMPLIANCE ORDERS".

(b) Section 113(a)(1) of the Clean Air Act is amended as follows:

(1) In the first sentence, after "finds that any person", insert the words "has violated or"; and following the words "shall notify the person" replace "in violation of" with "who violated".

(2) In the second sentence,

(A) strike the words "If such violation extends beyond the 30th day after the date of the Administrator's notification," and insert in lieu thereof the words "At any time after the expiration of 30 days following the date on which such notice of the violation is issued,";

(B) insert after ". . . of such plan" the following: ", may issue an administrative penalty order in accordance with subsection (d),"; and

(C) insert, at the end of the sentence, the following: ", without regard to the period of the violation. Nothing in this subsection shall preclude the United States from commencing a criminal action under section 113(c) without such notification for any such violation."

(c) Section 113(a)(2) of the Clean Air Act is amended as follows:

(1) In the first sentence:

(A) insert after the words "applicable implementation plan" the words "or approved permit program";

(B) insert after the words "in which the plan" the words "or program"; and

(C) insert after the words "enforce the plan" the words "or program".

(2) In the third sentence (which begins "During the period"):

(A) insert after the words "enforce such plan" the words "or permit program"; and

(B) insert after the words "requirement of such plan" the words "or program".

(3) Strike the "or" at the end of section 113(a)(2)(A), redesignate subparagraph "(B)" as "(C)", and insert the following new subparagraph (B):

"(B) by issuing an administrative penalty order under subsection (d) of this section, or".

(4) Insert the following new sentence at the end of section 113(a)(2):

"Nothing in this subsection shall preclude the United States from commencing a criminal action under section 113(c) without such notification for any such violation."

(d) Section 113(a)(3) of the Clean Air Act is amended as follows:

(1) Insert the words "has violated or" before the words "is in violation of" in the first sentence.

(2) Strike the words "section 111(e) of this title" and all that

follows down through "(relating to inspections, etc.), he" and insert in lieu thereof the following new language:

"any other requirement of title I, III, IV, or V of this Act, including, but not limited to, a requirement of any rule, order, waiver or permit promulgated or approved under those titles or for the payment of any fee owed the United States under this Act the Administrator:".

(3) Strike the words "or he" before the words "may bring a civil action" and insert in lieu thereof the following words:

"may issue an administrative penalty order in accordance with subsection (d);".

(4) Insert after the words "may commence a civil action in accordance with subsection (b)" the words "and section 305; or may ask the Attorney General to commence a criminal action in accordance with subsection (c).".

(e) Section 113(a)(4) of the Clean Air Act is amended by inserting at the end thereof:

"An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State or the United States' authority to enforce under other provisions of this Act, nor affect any person's obligations to comply with any section of this Act, or a term or condition of any permit or applicable implementation plan



promulgated or approved under this Act."

(f) Section 113(a)(5) of the Clean Air Act is amended as follows:

(1) Strike the words "regulation referred to" and all that follows through "of this subchapter, he" and insert in lieu thereof the following:

"Act relating to the construction of new sources or the modification of existing sources, the Administrator:".

(2) Insert a comma after "construction"; strike the word "or" before "modification"; and insert ", or operation" after "modification".

(3) Insert after "such provisions apply" the following:  
", may issue an administrative penalty order in accordance with subsection (d),".

(4) Strike "he" before "may bring".

(5) Insert at the end of section 113(a)(5) the following:  
"Nothing in this subsection shall preclude the United States from commencing a criminal action under section 113(c) without such finding for any such violation."

(g) Section 113(b) of the Clean Air Act is amended as follows:

(1) Strike the existing heading and insert in lieu thereof the words "CIVIL JUDICIAL ENFORCEMENT".

(2) In the first sentence, insert the words "as appropriate" after "The Administrator shall,".

(3) In the first sentence, insert after "the owner or operator of", the words "an affected source, a major emitting facility, or".

(4) Strike "of" after "\$25,000 per day" and insert in lieu thereof "for each".

(5) Strike all of existing paragraphs (1), (3), and (4).

(6) Redesignate paragraph "(2)" as paragraph "(1)", and amend it as follows:

(A) after the words "applicable implementation plan" insert "(such action shall be commenced";

(B) after the words "30 days", strike "after having been notified by the Administrator" and insert in lieu thereof "following the date of the Administrator's notification"; and

(C) after "violating such requirement" insert ")".

(7) Insert new paragraph (2) as follows:

"(2) violates any other requirement of title I, III, IV or V, including, but not limited to, a requirement of any rule, order, waiver or permit promulgated or approved under this Act or for the payment of any fee owed the United States under this Act; or".

(8) Redesignate existing paragraph "(5)" as "(3)" and amend it by inserting a comma after "construct"; striking the "or" before "modify"; and inserting ", or operate" before "a major stationary source".

(9) Strike in its entirety the sentence beginning "The Administrator may commence a civil action".

(10) Amend the sentence beginning "Any action" thus:

(A) strike the words "the district court of" from before "the United States";

(B) after "United States" insert "District Court for the District of Columbia, or";

(C) after "violation" insert "is alleged to have"

(D) after "assess such civil penalty" insert a comma and

delete "and";

(E) after "to collect any" insert "fees owed the United States under the Act and any";

(F) after "noncompliance" insert "assessment and nonpayment";

(G) strike "(and nonpayment penalty)"; and

(H) after "section 120 of this title" insert ", and to award any other appropriate relief."

(11) Strike in its entirety the sentence beginning "In determining the amount of".

(h) Section 113(c) of the Clean Air Act is amended by striking the heading "PENALTIES" and inserting in lieu thereof "CRIMINAL ENFORCEMENT", and by inserting the following new paragraphs 113(c)(1) and (2):

"(1) Any person who knowingly fails to pay any fee owed the United States under title I, III, IV, or V shall, upon conviction, be punished by a fine pursuant to Title 18 of the United States Code, or by imprisonment for not more than one year, or by both, per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

"(2) Any person who negligently releases into the air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 11002(a)(2) of Title 42, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under Title 18 of the United States



Code, or by imprisonment for not more than 1 year, or by both, per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(i) Section 113(c)(1) of the Clean Air Act is redesignated as "(3)" and amended as follows:

(1) Strike after "who knowingly" the "--", and strike subparagraphs (A), (B), (C), and (D) in their entirety (through "(relating to ozone)") and insert the following:  
 "violates any requirement of title I, III, IV or V, including, but not limited to, a requirement of any rule, plan, order, waiver or permit promulgated or approved under those titles."

(2) Insert ", upon conviction," before "be punished by a fine"; thereafter, strike "of not more than \$25,000 per day of violation" and insert in lieu thereof "pursuant to title 18 of the United States Code".

(3) After "imprisonment for not more than", replace "one year" with "five years", and after "or by both" insert ", per day for each violation".

(4) Strike the last sentence in the subparagraph and insert in lieu thereof:

"If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment."

(j) Section 113(c)(2) of the Clean Air Act is redesignated as "(4)"

and amended as follows:

(1) Insert a "--" after "who knowingly", and insert a designation of subparagraph "(A)" before "makes any false statement".

(2) After "or certification in" insert ", or omits material information from or knowingly alters, conceals or fails to maintain or file".

(3) Before "application, record," insert "notice,".

(4) After "required to be" insert "filed,"; after "maintained", strike "under this chapter" and insert in lieu thereof "or used for purposes of compliance under this Act (whether with respect to the requirements imposed by the Administrator or by a State)".

(5) Before "falsifies", strike "who", insert the following new subparagraph (B) and designate the provision beginning with "falsifies" as subparagraph "(C)":

"(B) fails to notify or report as required under this Act; or".

(6) After "renders inaccurate" insert ", or fails to install"; and after "required to be maintained" insert "or followed".

(7) After "punished by a fine" strike "of not more than \$10,000" and insert in lieu thereof "pursuant to title 18 of the United States Code,".

(8) Strike "six months" and insert in lieu thereof "two years", and after "or by both" insert the following:

", per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum

punishment shall be doubled with respect to both the fine and imprisonment."

(k) Current section 113(c)(3) of the Clean Air Act is redesignated as "(6)" and a new section 113(c)(5) is added to the Act as follows:

"(5)(A) Any person who knowingly releases into the air any hazardous air pollutant listed pursuant to section 112 of this Act or any extremely hazardous substance listed pursuant to section 11002(a)(2) of title 42, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under Title 18 of the United States Code, or by imprisonment of not more than fifteen years, or by both, per day for each violation. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 per day for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any hazardous air pollutant listed pursuant to section 112 for which the Administrator has set an emissions standard, a release of such pollutant shall not constitute a violation of this paragraph unless it exceeds such standard.

"(B) In determining whether a defendant who 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;

except that 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.

"(C) The term 'organization' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

"(D) The term 'serious bodily injury' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(1) Current section 113(d) of the Clean Air Act is deleted in its entirety and replaced with the following new section 113(d):

"(d) ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES

"(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day for each violation, whenever, on the basis of any available information, the Administrator finds that such person--

"(A) violates any requirement of an applicable implementation

plan (such order 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 (a)(1) of this section of a finding that such person is violating such requirement); or

"(B) violates any other requirement of title I, III, IV or V, including; but not limited to, a requirement of any rule, order, waiver or permit promulgated or approved under this Act or for the payment of any fee owed the United States under this Act; or

"(C) attempts to construct, modify or operate a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than twelve 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)(A) An administrative penalty assessed under paragraph (d)(1) shall be assessed by the Administrator by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of Title 5 of the United States Code. The Administrator may issue 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 such order and provide such person an opportunity to request such a hearing on the order, within 15 days of the date the notice is received by such person.

"(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under paragraph (d)(1).

"(3) The Administrator may implement through regulation, after consultation with the Attorney General, a field citation program for appropriate minor violations, which authorizes the issuance of field citations assessing civil penalties not to exceed \$5,000 per day for each violation. Any person to whom a field citation is assessed may, within a reasonable time as prescribe by the Administrator through 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 hearing shall not be subject to section 554 or 556 of Title 5 of the United States Code, but shall provide a reasonable opportunity to be heard and to present evidence. 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 the Act, if the violation continues.

"(4) Any person against whom a civil penalty is assessed under this



subsection may seek review of such 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 such person resides, or where such person's principal place of business is located, within thirty days following the date the civil penalty order is issued under subsection (d)(2), or the final decision in a hearing under subsection (d)(3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall promptly file in such court a certified copy, or certified index, as appropriate, of the record on which the order or final decision was issued within 30 days. Such court shall not set aside or remand such order or final decision 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. In any such proceedings, the United States may seek to recover civil penalties assessed under this section.

"(5) If any person fails to pay an assessment of a civil penalty-

"(A) after the order making the assessment or field citation has become final, or

"(B) 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 district court to recover the amount assessed (plus interest at rates established pursuant to 26 U.S.C. sec.

6621(a)(2) from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such penalty shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty under this section shall be required to pay, in addition to such penalty and interest, the United States' enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to twenty percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(m) Current section 113(e) of the Clean Air Act is deleted in its entirety and replaced with the following new sections 113(e) and 113(f):

"(e) PENALTY ASSESSMENT CRITERIA.--

"(1) In determining the amount of any penalty to be assessed under this section or section 304(a), the court shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation.

"(2) A penalty may be assessed for each day of each violation.

For purposes of determining the number of days of violation for which a penalty may be assessed under this section or section 304(a), or an assessment may be made under section 120, the violation shall be deemed to commence on the first provable date of violation and to continue each and every 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.

"(f) REWARDS.-- The Administrator may pay a reward, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a civil judicial or administrative judgment of liability for any violation of titles I, III, IV, or V of this Act enforced under this section. 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. An authorized contractor acting as a representative of the Administrator shall be considered an employee of the United States for purposes of this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such a reward.

#### **SEC. 602. REVIEWABILITY OF ADMINISTRATIVE ORDERS.**

(a) Section 307(b)(2) of the Clean Air Act is amended by adding at the end thereof:

"Orders or notices issued under section 113(a), section 167 and section 303, administrative subpoenas under section 307(a), and actions under



sections 114, 206(c) and 208 of this Act are not considered final action for purposes of this section. Such orders, notices, subpoenas and actions shall not be subject to judicial review except in a proceeding commenced by the United States under sections 113, 120, 204 or 205, or in a citizen suit commenced under section 304, to enforce the order, notice, subpoena or action. No such order, notice, subpoena or action may be challenged in any citizen suit under section 304 unless the Administrator and the Attorney General are notified in writing of such challenge."

(b) Section 307(e) of the Clean Air Act is amended by inserting at the end thereof:

"Orders or notices issued under section 113(a), section 167 or section 303, subpoenas issued under section 307(a), and actions under sections 114, 206(c) and 208 of this Act may only be reviewed in an proceeding commenced by the United States under sections 113, 120, 204 or 205, or in a citizen suit under section 304, to enforce the order, notice, subpoena or action."

#### SEC. 603. COMPLIANCE CERTIFICATION.

(a) Section 114(a)(1) of the Clean Air Act is amended by-- ( 1 ) inserting ", on a one-time, periodic or continuous basis" immediately before "to (A) establish and maintain";

(2) inserting "audit procedures" immediately before "or methods, (D)";

(3) inserting "procedures or" immediately before "methods, at such locations,";

(4) inserting "during such continuous periods" immediately before ", and in such manner as the Administrator";

(5) striking "and" immediately before subparagraph (E); and

(6) redesignating subparagraph (E) as (G) and inserting the following new subparagraphs: "(E) keep periodic or continuous records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical, (F) submit compliance certifications in accordance with section 114(a)(3); and".

(b) Section 114(a) is amended by adding the following new paragraph:

"(3) The Administrator shall in the case of any person which 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. Compliance certifications 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, (v) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be public information. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement the Act."

(c) Section 307(b)(1) is amended by inserting "or revising regulations for enhanced monitoring and compliance certification programs under Section 114(a)(3) of this Act," immediately before "or any other final action of the Administrator".

**SEC. 604. CONTRACTOR INSPECTIONS.**

(a) Section 114(a)(2) of the Clean Air Act is amended by inserting "(including an authorized contractor acting as a representative of the Administrator)," immediately before "upon presentation of his credentials".

(b) Section 114(c) is amended by striking "except that such record," and all that follows in the subsection and inserting "of the United States Code. Any authorized representative of the Administrator (including an authorized contractor acting as a representative of the Administrator) shall be considered an employee of the United States for purposes of the provisions of section 1905 of Title 18. Nothing in this subsection shall prohibit the Administrator or an authorized representative of the Administrator (including any authorized contractor acting as a representative of the Administrator) from disclosing records, reports or information to other officers, employees or authorized representatives of the United States (including any authorized contractor acting as a representative of the Administrator), or to any State concerned with carrying out this Act, or when relevant in any proceeding under this Act.".

**SEC. 605. ADMINISTRATIVE ENFORCEMENT SUBPOENAS.**

Section 307 of the Clean Air Act is amended by redesignating subsection (a)(1) as subsection (a), and, in that newly designated subsection, striking "or section 202(b)(5)" and inserting ", any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the Act (including but not limited to section 113, section 114, section 120, section 205, section 206,



section 208, section 303 or section 306), or to otherwise carry out the provisions of the Act," immediately after "section 202(b)(4) or 211(c)(3)".

**SEC. 606. ENFORCEMENT OF ADMINISTRATIVE ORDERS.**

Section 303(b) of the Clean Air Act is deleted in its entirety and subsection 303(a) is redesignated as section 303.

**SEC. 607. SCOPE OF EMERGENCY ORDERS.**

Section 303 of the Clean Air Act, as amended by section 606 of this Act, is further amended by--

(a) striking "the health of persons, and that appropriate State or local authorities have not acted to abate such sources" and inserting "public health or welfare, or the environment";

(b) revising the second sentence to read "If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment."; and

(c) striking the last two sentences in their entirety.

**SEC. 608. CONTRACTOR LISTINGS.**

Section 306(a) of the Clean Air Act is amended by--

(a) striking "113(c)(1) of this title" and inserting "113(c), 205(d), 211(d)(3), and 212(e) of this Act"; and

(b) inserting at the end thereof "For convictions arising under section 113(c)(2), the condition giving rise to the conviction also shall be

considered to include any substantive violation of this Act associated with the violation of 113(c)(2). The Administrator may extend this prohibition to other facilities owned or operated by the convicted person."

**SEC. 609. JUDICIAL REVIEW PENDING RECONSIDERATION OF REGULATION.**

Section 307(b)(1) of the Clean Air Act is amended by adding at the end thereof:

"A petition for reconsideration by the Administrator of any otherwise final agency action shall not render the action nonfinal for purposes of judicial review nor extend the time within which a petition for review may be filed, and shall not postpone the effectiveness of the agency action."

**SEC. 610. CITIZEN SUITS.**

(a) Section 304(a) of the Clean Air Act is amended by inserting immediately before the period at the end thereof:

", and to apply any appropriate civil penalties (except for actions under paragraph (a)(2)), including those pursuant to a consent judgment, payable to the special fund as established in subsection (g), taking into account the factors listed in section 113(e)".

(b) Section 304 of the Clean Air Act is amended by adding the following new subsection:

"(g) **PENALTY FUND.**-- Penalties received under subsection (a) shall be deposited in a special fund in the United States Treasury for licensing and other services, which shall be available for appropriation, and remain available until expended for use by the Environmental Protection Agency to

finance air compliance and enforcement activities."

(c) Paragraph (2) of subsection 304(c) of the Clean Air Act is amended to read as follows:

"(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. In such intervention, the Administrator may substitute himself as the plaintiff with regard to any claim for civil penalties. Upon such substitution, the citizen plaintiff's claims for civil penalties shall abate. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States."

(d) Section 304(c) is amended by adding the following new paragraph:

"(3) Whenever any 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. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to forty-five days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right."

**SEC. 611.     ENHANCED IMPLEMENTATION AND ENFORCEMENT OF NEW SOURCE REVIEW REQUIREMENTS.**

Section 167 is amended by striking "the construction of a major emitting facility" and inserting "the operation, construction, or modification of



a major emitting facility".

**SEC. 612. MOVABLE STATIONARY SOURCES.**

Section 302 is amended by adding the following subsection:

"(t) STATIONARY SOURCE.-- The term "stationary source" means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes."

**SEC. 613. ENFORCEMENT OF NEW TITLES OF THE ACT.**

Section 120(a)(2)(A) is amended by--

(a) inserting "167, or 303" after "112" in (ii), and deleting "or" and inserting a comma after (iii);

(b) inserting, in clause (iii), "or (iii)" immediately after "(ii)" and deleting "or" and inserting a comma after "(i)";

(c) redesignating clause (iii) as (iv); and

(d) inserting the following new clause:

"(iii) a stationary source which is not in compliance with any requirement of Title IV, V or VII of this Act, or".

## TITLE VII--MISCELLANEOUS PROVISIONS

## SEC. 701. GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS.

(a) Sections 105(a)(1)(A) and (B) of the Clean Air Act are amended to read as follows:

"(A) The Administrator may make grants to air pollution control agencies, within the meaning of paragraphs (1), (2), (3), or (4) of section 302, in an amount up to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national ambient air quality standards. For the purpose of this section, implementation means any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such an air program.

"(B) Subject to subsections (b) and (c) of this section, those air pollution control agencies contributing less than the required two-fifths minimum shall have three years following the enactment of this section in which to attain this required minimum level; should such an agency fail to meet and maintain this required level, the Administrator shall reduce the amount of the Federal contribution accordingly."

(b) Section 105 (a)(1)(C) of the Clean Air Act is amended by striking "(B)" and inserting "(A)".

(c) Section 105(b) of the Clean Air Act is amended by--

(1) inserting "(1)" immediately after "(b)";

(2) striking all that follows "(3) the financial need of the respective agencies"; and

(3) redesignating paragraphs (1), (2), and (3) as subparagraphs (A), (B), and (C) respectively.

(d) Section 105 of the Clean Air Act is amended by redesignating subsection (c) as paragraph (b)(2) and is further amended by striking all that follows "into which such area extends." in the newly designated paragraph (b)(2) and inserting "Subject to the provisions of subsection (b)(1) of this section, no State shall have made available to it for application less than one-half of one per centum of the annual appropriation for grants under this section for grants to agencies within such State.".

(e) Section 105 of the Clean Air Act is amended by inserting the following new subsection:

"(c)(1) No 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 agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) due to periodic increases experienced by that agency from time to time in its annual



expenditures for purposes acceptable to the Administrator for that fiscal year.

"(2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (1) of this subsection if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No 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 so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds. 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."

(f) Section 106 of the Clean Air Act is amended by striking "three-fourths of the air quality planning program costs of such agency" and inserting "three-fifths of the air quality implementation program costs of such agency".

#### **SEC. 702. ANNUAL REPORT REPEAL.**

Section 313 of the Clean Air Act is repealed.

#### **SEC. 703. NOx AND VOC STUDY.**

The Administrator of the Environmental Protection Agency, in conjunction

with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study should examine the roles of NO<sub>x</sub> and VOC emission reductions, the role of biogenic VOC emissions, and the basic information required for air quality models. The study should be completed and a report submitted to Congress within two years of enactment of this section.

SEC. 704. REVIEW AND REVISION OF CRITERIA AND STANDARDS.

(a) Section 109(d)(1) of the Clean Air Act is amended to read as follows:

"(d)(1)(A) Not later than five years after enactment of this paragraph and thereafter as provided in subparagraph (C), the Administrator shall complete a review of the criteria published under section 108 and the standards promulgated under this section and (i) make such revisions in the criteria as may be appropriate to reflect advances in scientific knowledge and (ii) determine whether it is appropriate to propose revisions of the standards based on the applicable criteria. In making revisions or determinations under this subparagraph, the Administrator may use such procedures as he deems appropriate. Notice of revisions and determinations made under this subparagraph shall be published in the Federal Register not later than 30 days after the revisions or determinations, respectively, are made, and copies shall be made available to the general public.

"(B) If the Administrator determines under subparagraph (A) that it is appropriate to propose revision of a standard, he shall

commence rulemaking proceedings under section 307(d) and make such revisions as are appropriate as expeditiously as practicable but not later than three years after such determination is made. The Administrator may elect to follow the same procedure with respect to a determination that it is inappropriate to propose revision of a standard.

"(C) After the first review and (as appropriate) revision of a standard under this paragraph, the Administrator shall repeat the process specified in subparagraphs (A) and (B) from time to time for such standard. The review specified in subparagraph (A) shall be completed not later than five years after completion of the last review of the standard or, if the standard was revised as a result of such review (or judicial review), not later than five years after completion of such revision. For any new standard promulgated after the enactment of this paragraph, the first review under subparagraph (A) shall be completed not later than five years after the date of promulgation.

"(D) A determination under subparagraph (A) that it is inappropriate to propose revision of a standard shall be reviewable as a final action under section 307(b). If the Administrator elects to commence rulemaking proceedings under subparagraph (B) with respect to such a determination, the determination shall be reviewable only upon completion of the rulemaking. A determination under subparagraph (A) that it is appropriate to propose revision of a standard shall not be subject to judicial review under section 307(b) or otherwise.



"(E) The Administrator may review and revise criteria or standards earlier or more frequently than required under this paragraph.".

(b) Section 109(d)(2)(B) of the Clean Air Act is amended by striking "January 1, 1980, and at five-year intervals thereafter," and inserting "five years after enactment of paragraph (1) and thereafter at intervals corresponding to the Administrator's review of criteria and standards under paragraph (1),".

(c) Section 108(a)(2) of the Clean air Act is amended by striking "12 months" and inserting "three years".

(d) Section 108(c) of the Clean Air Act is amended by striking "criteria or" in the first sentence.

(e) Section 109(a)(2) of the Clean Air Act is amended by-

(1) inserting "first" immediately before "issued" in the first sentence;

(2) striking "publish, simultaneously with the issuance of such criteria and information, proposed" in the first sentence and inserting "promulgate";

(3) striking "for any such pollutant." in the first sentence and inserting "as appropriate for such pollutant not later than three years after such issuance.";

(4) striking "paragraph (1)(B) of this subsection" in the second sentence and inserting "subsection (d)"; and

(5) striking "promulgation" in the second sentence and inserting "revision".

(f) Section 109(b) of the Clean Air Act is amended by striking the

second sentence of paragraph (1) and by striking the second sentence of paragraph (2).

SEC. 705. AIR POLLUTANT RELEASE INVESTIGATION BOARD.

The Clean Air Act is amended to add a new section to read as follows:

"Section 192--Air Pollutant Release Investigation Board

"(a) Establishment.-- There shall be established within the Environmental Protection Agency an Air Pollutant Release Investigation Board for the purpose of investigating major life-threatening releases of air pollutants. The Board shall consist of one or more panels of five members convened by the Administrator to investigate such releases.

"(b) Membership.-- Any panel of the Board shall consist of four employees of the United States Environmental Protection Agency selected by the Administrator, and the Secretary of Labor or his designate. With the consent of the head of any other federal agency, the Administrator may select an employee of such agency as a member of the panel in place of an employee of the Environmental Protection Agency.

"(c) Duties.--

"(1) The board may investigate or cause to be investigated (in such detail as it shall prescribe), and determine the facts, conditions, and circumstances and the cause or probable cause or causes of any major life-threatening release of an air pollutant except: (A) any release of source, byproduct, or special nuclear material from a nuclear incident which the Nuclear Regulatory Commission is authorized to investigate, and (B) any transportation-related release, including marine oil spills, which the National Transportation Safety Board is authorized to

investigate.

"(2) For any investigation performed under paragraph (1) of this subsection, the Board shall develop a written report on the facts, conditions, and circumstances of the release and shall make such reports available to Congress and, upon reasonable cost, available to the public. No report shall be subject to judicial review in any court.

"(d) Powers.--

"(1) The Board, or upon the authority of the Board, any member thereof, or any officer or employee duly designated by the Administrator, may, for the purpose of carrying out subsection (c), hold such hearings, sit and act at such times and places, and administer such oaths, as the Board or such officer or employee deems advisable.

"(2) In addition to that described in paragraph (1), the Board may use any information gathering authority of the Administrator under any statute, including the subpoena power provided in section 307(a)(1) of this Act.

"(e) No part of the conclusions, findings, or recommendations of any report 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 in which the United States is a party arising out of any matter mentioned in such report."



SECTION-BY-SECTION ANALYSIS OF  
THE "CLEAN AIR ACT AMENDMENTS OF 1989"

July 20, 1989

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**SECTION-BY-SECTION ANALYSIS OF  
THE "CLEAN AIR ACT AMENDMENTS OF 1989"**

**TITLE I--PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF  
AMBIENT AIR QUALITY STANDARDS**

**Section 101. General Planning Requirements.**

**SECTION 101(a)(1)**

Section 101 of the bill substantially amends section 110 of the CAA. Section 101(a)(1) of the bill replaces current CAA sections 110(a)(1) through 110(a)(3)(A) with new CAA sections 110(a)-(h). Section 110 is overhauled to set out a scheme, generally in chronological order, for State and EPA action following promulgation of new or revised national ambient air quality standards ("NAAQS"), which includes designating areas attainment, nonattainment, or unclassifiable.

**CAA Section 110(a)--Initial Plan Elements**

After promulgating a new or revised NAAQS, EPA may require any State to submit an initial plan or plan revision that meets any of the requirements of subsection 110(d) (discussed below). These requirements include authority to gather information concerning air quality, which would facilitate the designation process under subsection 110(b) (discussed below).

**CAA Section 110(b)--Designations**

This subsection sets out the provisions concerning designations, replacing the current CAA section 107(d).

**Paragraph (1)--Designations Generally:**

After EPA promulgates a new or revised NAAQS, each State is required to designate each area within the State as nonattainment, attainment, or unclassifiable (*i.e.*, inadequate information to determine whether attainment or nonattainment) for the new or revised NAAQS. At any other time, a State may designate any area of the State as nonattainment, attainment, or unclassifiable for any standard.



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The State must submit the designations to EPA, which must promulgate them, making any modifications that EPA deems appropriate. If EPA intends to make a modification, it must so inform the State prior to promulgating the designation, to give the State an opportunity to respond.

After promulgating a new or revised NAAQS, EPA must promulgate the designations for all areas of the country as expeditiously as practicable, and no later than two years after the promulgation, except that a one-year extension is available if EPA has insufficient information to make the designation.

Areas that EPA has designated under the current CAA section 107(d) retain their current designation.

**Paragraph (2)--Procedure:**

To promulgate a designation or redesignation, EPA must publish a notice in the Federal Register. In the case of initial designations (including initial ozone, carbon, monoxide, and PM-10 designations required under the bill), this notice is not subject to notice and comment, but remains subject to judicial review.

**Paragraph (3)--Redesignation:**

At any time, EPA may notify a State that a redesignation of any area may be necessary. The State must submit any redesignation that it considers necessary within 120 days. EPA must finalize the redesignation within another 120 days, making any appropriate modifications, after first giving the State an opportunity to respond to those modifications.

A State may, on its own motion, redesignate an area and submit the redesignation to EPA. EPA must then approve or deny the redesignation. The mere submission of a redesignation by the State, however, has no effect on the SIP requirements for the area.

EPA can redesignate a nonattainment area to attainment only if (i) the area has attained the NAAQS; (ii) the area has a fully approved plan; (iii) EPA determines that the improvement in the air quality is due to permanent and enforceable reductions in emissions due to implementation of the plan (and federal controls) and other permanent reductions; (iv) the State has submitted, and EPA has approved, a maintenance plan for the area; and (v) the area has met all applicable requirements resulting from any "SIP call" (as described below) (including any SIP call issued under new section 110(e)(4)) to address the area's contribution to air pollution problems in an interstate transport region under section 176).

EPA may not redesignate any nonattainment area as unclassifiable.



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Paragraph (4)--New Designations for Ozone, Carbon Monoxide ("CO"), and Particulate Matter ("PM-10"):

Within 120 days of the enactment of the bill, each State must designate, affirm or reaffirm the designation of, or redesignate all areas with respect to ozone and carbon monoxide. Each State must submit the designations or redesignations to EPA, which must promulgate them within another 120 days. EPA may modify the State's designations or redesignations, after first giving the States an opportunity to respond to any modifications the EPA intends to make.

The bill provides specific requirements for PM-10 designations: areas identified at 52 Federal Register 29383 (Aug. 7, 1987) as Group I areas (except as modified by EPA prior to the enactment of this bill), and all areas that measured exceedance of the PM-10 NAAQS, are designated nonattainment by operation of law. All other areas are designated unclassifiable for PM-10 until redesignation.

The particulate matter designations made previously by EPA under the particulate matter standards measured in terms of "total suspended particulates" (EPA replaced these standards with the new PM-10 standards in 1987) will remain in effect for a period of time in order to implement the particulate matter prevention of significant deterioration (PSD) "increments" (measured in terms of total suspended particulates) under section 163(d), which is discussed below. These designations will remain in place until EPA determines that they are no longer necessary for that purpose.

Paragraph (5)--Designations for Lead:

EPA is authorized, at any time, to require a State to designate any area with respect to lead.

#### CAA Section 110(c)--Maintenance Plans

This subsection provides that EPA may, but is not obligated to, require any area designated attainment or unclassifiable to submit a "maintenance SIP" to assure that the standard is not violated for the period EPA determines appropriate. At any time (before or after the expiration of the period covered by the initial maintenance plan), EPA may require a subsequent maintenance plan or plans for additional periods. As determined appropriate by EPA, these maintenance plans may include any of the provisions, including emissions inventories, that are described under subsection 110(d), below. States must submit the required maintenance plans according to reasonable schedules prescribed by EPA.

#### CAA Section 110(d)--Requirements for All

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Implementation Plan Submittals

This subsection contains the basic requirements that SIPs must meet, most of which parallel existing section 110(a)(2). First, all SIPs or SIP revisions must be adopted by the State after reasonable notice and public hearing. Beyond that, the requirements listed in the paragraphs of this subsection (i) apply in whole or in part, as determined by EPA, to initial SIPs required by EPA after promulgating a new or revised NAAQS (as described above under subsection 110(a)) and to maintenance SIPs (as described above under subsection (c)); and (ii) apply in whole to SIPs required for nonattainment areas (as described below under Part D).

The following lists the requirements for SIPs found in the paragraphs of subsection 110(d):

Paragraph (1):

The SIP must include enforceable emission limitations, other measures (including economic incentives such as fees or auctions), and schedules and timetables for compliance that are necessary or appropriate to meet the applicable Clean Air Act requirements.

Paragraph (2):

The SIP must provide for the establishment and operation of appropriate devices or systems to develop air quality data and for making the data available to EPA.

Paragraph (3):

The SIP must provide for the enforcement of the emission limitations and other measures, and regulate stationary sources (including permit programs for attainment and nonattainment areas) as necessary to achieve the NAAQS.

Paragraph (4):

The SIP must prohibit any source or other emissions activity from emitting air pollutants that will contribute significantly to nonattainment in another State, or interfere with any other State's program for the prevention of significant deterioration in air quality or the protection of visibility; it also must ensure compliance with interstate and international pollution requirements of the Act.

Paragraph (5):

The SIP must provide assurances that the State (or local or regional authority, if designated as the air pollution control agency) has adequate personnel, funding, and authority to carry



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out the SIP (including a statement from the attorney for the State, local, or regional authority that the State or local laws provide adequate authority); assure that the State complies with Clean Air Act requirements concerning conflicts of interest for members of State boards that approve permits or enforcement orders; and assure that if the State has delegated to a local or regional agency authority to implement the SIP, the State has retained ultimate responsibility for implementation.

Paragraph (6):

The SIP must require (i) stationary sources, in accordance with EPA's prescription, to take necessary steps to monitor emissions, and (ii) the State to submit periodic reports concerning such emissions as well as to correlate such reports with emissions requirements. The SIP must also require the State to submit reports on other emissions-related data, in accordance with EPA prescription.

Paragraph (7):

The SIP must provide authority, including contingency plans, to restrict emissions of air pollutants that present an imminent and substantial danger.

Paragraph (8):

The SIP must provide for revision of the plan as may be necessary to take account of revisions in the NAAQS or improved methods to attain the NAAQS, and to respond to findings by EPA that the plan is substantially inadequate to attain the NAAQS (a "SIP call"). However, the current provision that revisions to the plan are not necessary with respect to exemptions specified under section 110(j)(2) (formerly section 110(a)(3)(C)) (e.g., federal facilities and temporary energy or economic authority) is continued.

Paragraph (9):

The SIP must meet the requirements of the nonattainment provisions of the Act (part D), if the area is designated nonattainment.

Paragraph (10):

The SIP must meet the requirements, to the extent applicable, of the consultation provisions (section 121), the public notification provisions (section 127), and the provisions related to prevention of significant deterioration in air quality and visibility (part C), of the Act.

Paragraph (11):



The SIP must provide for air quality modeling as EPA may prescribe, and submission of such data from such modeling to EPA, upon request.

Paragraph (12):

The SIP must include provisions to require stationary sources to pay permit fees to cover the costs of reviewing, acting on, and implementing the permit (except for court costs or the costs of enforcement action), except that those provisions may be superseded by the expanded permit fees requirement under section 402(b)(3) of new Title IV of the Act (concerning permits).

CAA Section 110(e)--EPA Action on Plan Submissions

This subsection contains the requirements for EPA action on SIP submissions, including timetables and the types of actions EPA is authorized to take.

Paragraph (1)--Completeness of Plan Submissions:

EPA is required to promulgate minimum criteria for completeness that all plan submissions (except initial SIP elements submitted after promulgation of a new or revised NAAQS) must meet before EPA is obliged to approve or disapprove them. Within 60 days of EPA's receipt of a submission (but no later than 6 months after the date the SIP was due), EPA must determine whether the submission meets those minimum criteria. If EPA determines that the submission does not meet the minimum criteria for completeness, the State is treated as having failed to make the submission, and, in the case of submissions required by Part D (for nonattainment areas) or in response to EPA's SIP calls, EPA must follow the applicable provisions of sections 179 and 180 (concerning sanctions and Federal Implementation Plans).

Paragraph (2)--Deadline for Action:

EPA must act on each complete submission within 12 months of its submission, and also act on submissions not subject to the completeness criteria within 12 months of submission.

Paragraph (3)--Full and Partial Approval and Disapproval:

This authorizes EPA to approve a submission in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which it meets the requirements of the Act.

Paragraph (4)--Calls for Plan Revisions ("SIP Calls"):

This authorizes EPA to require a State to revise its plan

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whenever EPA finds that the plan is substantially inadequate to attain or maintain the NAAQS for any area, to mitigate interstate pollutant transport, or to otherwise comply with any requirement of the Act. EPA may establish a schedule for the State's submission of such a SIP revision. In addition, EPA may, in its discretion, subject the State to the same requirements that applied to the SIP for which EPA issued the finding, to establish appropriate deadlines.

**Paragraph (5)--Corrections:**

This explicitly authorizes EPA on its own motion to correct any errors it may make in taking any action, such as issuing any designation or classification, or approving or disapproving any plan.

**CAA Section 110(f)--Plan Revisions**

This subsection requires EPA to approve a SIP revision if, but only if, the revision will not interfere with any requirement of the Act (including any reasonable further progress or attainment requirement).

**CAA Section 110(g)--Sanctions and Federal Implementation Plans**

EPA is authorized, but not obligated, to apply sanctions (the types of which are set out in section 179, described below) or promulgate a federal implementation plan if (i) the State has failed to submit one or more of the elements required for a nonattainment area; (ii) EPA disapproves such an element submitted by the State; (iii) the State has failed to make any other required submission (including a maintenance plan), or EPA has disapproved such other required submission; or (iv) any requirement of an approved plan is not being implemented. However, the highway sanction applies only with respect to (i) and (ii) above. EPA may apply a sanction or promulgate a federal implementation plan with respect to any portion of the State determined appropriate. FIPs are subject to further requirements under section 180.

**CAA Section 110(h)--Savings Clauses**

In making the transition from the requirements of the current Clean Air Act to the requirements of the Clean Air Act as amended by this bill, certain savings clauses, set out in this subsection 110(h), are appropriate:

**Paragraph (1)--Plan Provisions under Existing Standards:**

Currently approved plan provisions remain in effect, until EPA approves a revision. If a State submits an original SIP for an area not designated nonattainment, to provide for attainment of a NAAQS in effect prior to these amendments (e.g., the lead NAAQS,



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for which there are no designations at all), that SIP must provide for attainment within 3 years of submittal of the SIP. If a State received a notification (under current section 110(a)(2)(H)(ii), prior to the enactment of these amendments), that its SIP for an area not designated nonattainment is substantially inadequate, then a SIP revision submitted in response to that finding must provide for attainment within 5 years of the finding of inadequacy.

**Paragraph (2)--Retention of Construction Moratorium in Certain Areas:**

Any construction ban currently in place in any area (under section 110(a)(2)(I)) due to failure to submit a new source review permit program, or failure to submit an approvable SIP providing for attainment or maintenance of the sulfur oxides NAAQS by December 31, 1982, remains in place until EPA approves a plan correcting those deficiencies by meeting the requirements of new section 172(c)(5) and subpart 5 of Part D, as applicable.

**SECTION 101(a)(2) THROUGH (a)(11)**

Numerous conforming, technical, clarifying, and other changes are made to other subsections of CAA Section 110. Current CAA Sections 110(a)(3)(B) through 110(j) are amended, revised, or repealed, as follows:

**Current CAA Section--**

**Is Revised as Follows--**

110(a)(3)(B) (taking steps to reduce fuel burning).

Redesignated as 110(j)(1), with conforming changes.

110(a)(3)(C) (exemptions from SIP revision requirements).

Redesignated as 110(j)(2), with conforming changes.

110(a)(3)(D) (requirement that ozone and CO extension area plans meet basic transportation needs).

Repealed, because revised Part D adequately addresses transportation-related issues.

110(a)(4) (preconstruction review of the location of new sources).

Repealed, because unnecessary given requirements of Parts C and D.

110(a)(5) (indirect source review).

Redesignated as 110(k), with conforming changes.

110(a)(6) (supplemental or intermittent control system).

Redesignated as 110(l).



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|                                                                                                              |                                                                                          |
|--------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|
| 110(b) (extension of period for plan submission).                                                            | Repealed, because new schedule in section 110(e) is adequate for these purposes.         |
| 110(c)(1) (promulgation by EPA of federal implementation plan).                                              | Repealed and replaced by new sections 110(g) and 180.                                    |
| 110(c)(2)(A) (study concerning certain transportation control measures).                                     | Repealed as deadwood.                                                                    |
| 110(c)(2)(B) (parking surcharge regulations).                                                                | Redesignated as 110(m)(1), with conforming changes.                                      |
| 110(c)(2)(C) (suspension of regulations concerning parking supply).                                          | Repealed as deadwood.                                                                    |
| 110(c)(2)(D) (definitions relating to transportation control measures).                                      | Redesignated as 110(m)(2), with conforming changes.                                      |
| 110(c)(2)(E) (requirement for public hearing for certain provisions concerning transportation management).   | Redesignate as 110(m)(3), with conforming changes.                                       |
| 110(c)(3) (delegation by EPA to local government of authority to implement federal plan).                    | Redesignated as 110(m)(4), with conforming changes.                                      |
| 110(c)(4) (temporary suspension of plan provisions concerning retrofits, gas rationing, and parking supply). | Repealed as deadwood.                                                                    |
| 110(c)(5) (bridge toll and related provisions).                                                              | Redesignated as 110(m)(5), with conforming changes.                                      |
| 110(d) (definition of applicable implementation plan).                                                       | Redefined as 110(n)(1), with conforming changes.                                         |
| 110(e) (two-year extension of time to attain the NAAQS).                                                     | Repealed because new attainment dates adequately address circumstances of the extension. |
| 110(f) (national or regional emergencies).                                                                   | Redesignated as 110(o).                                                                  |

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|------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|
| 110(g) (temporary emergency suspensions).                        | Redesignated as 110(p), with the reference to four-month period replaced by a reference to 12-month period.                          |
| 110(h) (publication in the <u>Federal Register</u> of SIPs)      | Redesignated as 110(q), periods extended from annually to five years after enactment of this bill, and every three years thereafter. |
| 110(i) (limits on SIP revisions).                                | Redesignated as 110(r), with conforming changes.                                                                                     |
| 110(j) (technological systems of continuous emission reduction). | Redesignated as 110(s).                                                                                                              |

SECTION 101(b)

This section of the bill amends Clean Air Act section 118, to explicitly waive immunity for federal facilities from permit fees charged by the States (or political subdivisions thereof) that meet the requirements of section 402(b)(3) of Title IV or that are reasonable service charges, as long as those fees or charges do not discriminate in favor of State and local facilities.

SECTION 101(c)

This section of the bill amends Clean Air Act section 123, concerning stack heights. The bill amends section 123 to clarify the definition of "dispersion technique" with respect to major sources and the use of merged stacks, and to prescribe the GEP ("good engineering practice") formulas as the proper means for establishing stack height credit for existing sources. The bill would also prescribe that a major source seeking to demonstrate a higher GEP stack height than formula height must meet the applicable new source performance standard limits. New sources would be excluded from coverage.

Section 102. General Provisions for Nonattainment Areas.

In general, this section of the bill amends Part D of the Clean Air Act to include 5 subparts that (i) provide general requirements for all nonattainment areas, (ii) specific requirements for ozone nonattainment areas, (iii) specific requirements for CO nonattainment areas, (iv) specific requirements for PM-10 nonattainment areas, and (v) specific requirements for sulfur oxides, nitrogen dioxide, and lead nonattainment areas.



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SECTION 102(a)(1) THROUGH (a)(2)

This section of the bill amends existing CAA section 171, regarding definitions, and redesignates the section as CAA section 170. The definition of "reasonable further progress" is revised to mean such annual incremental reductions as prescribed by the Clean Air Act or EPA. The definition of "nonattainment area" is revised to mean any area whose designation of nonattainment is promulgated by EPA.

SECTION 102(a)(3)

This section of the bill adds a new CAA Section 171--Applicability. The generally applicable provisions of part D, subpart 1 apply to all nonattainment areas, except as explicitly provided otherwise under other subparts relating to specific pollutants.

SECTION 102(b)

This section of the bill substantially amends existing CAA Section 172--Nonattainment Plan Provisions in General.

CAA Section 172(a)--Classifications and Attainment DatesParagraph (1)--Initial Classification:

After promulgating designation of an area as nonattainment, either soon after promulgating a new or revised NAAQS or at any other time, EPA is authorized to classify nonattainment areas for purposes of imposing different attainment dates and different control requirements. In determining the classifications, EPA may consider the severity of the air quality problem, the feasibility of pollution control measures, and other factors. To announce the classifications, EPA must publish a notice in the Federal Register, which is not subject to notice and comment and is not subject to judicial review. However, EPA's classification may be challenged after EPA takes action on a SIP submittal or imposes sanctions.

Paragraph (2)--Attainment Dates for Nonattainment Areas:

For primary NAAQS, a nonattainment area must reach attainment as expeditiously as practicable, but no later than five years from the date of designation to nonattainment. EPA may grant an extension of up to 20 years, depending on the severity of the problem and the feasibility of control measures.

For secondary standards, the attainment date is a reasonable time after the date of designation.



The Administrator may grant up to two one-year extensions of the attainment date, upon request by the State, if the State complies with all plan requirements and no more than a minimal number of exceedances of the standard, as determined by EPA, has occurred.

CAA Section 172(b)--Schedule for Plan Submissions

When EPA promulgates designation of an area as nonattainment, it must set a schedule for plan submittal. At the latest, all elements of the plan other than the attainment demonstration must be submitted within 3 years from the promulgation of the nonattainment designation.

CAA Section 172(c)--Nonattainment Plan Provisions

The nonattainment plan must include the following provisions (in addition to the provisions identified under section 110(d), which generally apply to all SIPs):

Paragraph (1):

Reasonably available control measures (including reasonably available control technology ("RACT") on stationary sources), as EPA may require.

Paragraph (2):

Requirements for reasonable further progress.

Paragraph (3):

Emissions inventories, including periodic updates as may be required by EPA.

Paragraph (4):

An identification of expected emissions from new sources and a demonstration that those emissions will be consistent with the projected progress towards attainment and ultimate attainment by the date required.

Paragraph (5):

Requirements for permits for new sources, in accordance with CAA section 173 (below).

Paragraph (6):

Emission limits and other measures necessary for attainment (including, at the State's choice, economic incentives such as fees or auctions).

CAA Section 172(d)--Plan Revisions  
Required in Response to Findings of Plan Inadequacy

If the State is required to submit a SIP revision because EPA has issued a finding that the SIP is substantially inadequate to provide for attainment or meet any other requirement of the Act, the SIP revision must correct any deficiencies identified by EPA, and meet all other applicable requirements of the Act. EPA is authorized to adjust otherwise applicable dates (for example, the dates the inventory and control measures are due) to the extent necessary to apply those requirements in a consistent fashion.

SECTION 102(c)

This section of the bill amends CAA section 173, concerning permit requirements.

Requirements for New Sources

The current Clean Air Act requirements for new and modified major stationary sources, including permits, are retained, revised, and expanded.

Permit Requirements

The requirement that new sources, under certain circumstances, obtain offsets for their emissions is retained (although it is limited in the manner discussed below). EPA is given the authority to set the rules for determining the amount of offsets necessary--the "baseline"--(e.g., based on actual or allowable emissions) but this determination must be consistent with the assumptions used in the attainment demonstration. The bill also retains and expands the provision requiring States to analyze possible alternative sites in issuing new source permits.

Sources that emit 100 tons per year or more must obtain case-specific offsets (and cannot rely on any growth allowance in the attainment demonstration), except for sources located in zones targeted by the Department of Housing and Urban Development and EPA for economic development.

Current section 173(4), which is redesignated as section 173(a)(4), is amended to provide that permits cannot be issued under an approved permit program if EPA determines that the State's plan is not being adequately implemented.

Technical and clarifying changes are made to the flush language at the conclusion of current section 173 (which, as noted above, is redesignated as section 173(a)).

Prohibition on Use of Old Growth Allowances



A new provision is added which prohibits continued use of growth allowances approved prior to any SIP call. Formerly, such growth allowances could permit construction of new sources or modification of existing sources.

#### SECTION 102(d)

This section of the bill amends CAA Section 174--Planning Procedures. The planning procedures set out in the current CAA sections 174(a) and (b) are broadened to ensure that state and local (including regional) authorities share in the development and implementation of the SIP, with some technical revisions to make clear that implementation includes enforcement and to conform this section with revisions in other parts of the Act. In addition, a new subsection (c) is added, which clarifies that when a nonattainment area is included within more than one State, the affected States may jointly undertake these planning procedures.

#### SECTION 102(e)

This section of the bill amends CAA Section 175--Maintenance Plans. Any nonattainment area seeking redesignation to attainment must submit an approvable maintenance plan showing that the standard will be maintained for at least 10 years. This provision replaces the current section 175, which provides for EPA grants to localities for transportation or air quality maintenance planning responsibilities.

#### SECTION 102(f)

This section of the bill amends CAA Section 176--Interstate Transport Commissions. This new section authorizes EPA to establish an interstate transport region, consisting of all States or parts of States with a shared air pollution problem.

##### New CAA Section 176(a)--Authority to Establish Interstate Transport Regions

EPA is authorized, upon its own motion or upon petition from a State, to establish an interstate transport region that consists of all States pollution emissions from which contribute to NAAQS violations in any one State. After establishing such a region, EPA may add or remove States from it, based on the same considerations concerning emissions.

##### New CAA Section 176(b)--Transport Commissions



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Whenever EPA establishes an interstate transport region, it must establish a commission, consisting of one air pollution official from each State in the region, and a representative of EPA (along with non-voting representatives from each of the relevant EPA regions). The Commission may recommend that EPA issue a SIP call to certain States, requiring them to include specified measures in their SIPs to solve the interstate transport problem.

#### New CAA Section 176(c)--Commission Requests

EPA is obligated to act on each of the Commission's recommendations within 18 months, although EPA may disapprove them (i.e., decline to issue the SIP call).

Conforming changes are made to CAA section 106 (authorizing EPA to fund interstate air quality agencies) to authorize EPA funding for transport commissions formed under new CAA section 176.

#### SECTION 102(g)

This section of the bill adds two new sections to the CAA: Section 179--Sanctions and Consequences of Failure to Attain, and Section 180--Federal Implementation Plans.

New section 179 provides EPA with the authority to impose sanctions on States when EPA finds that the State has committed one of several specified planning failures, and where EPA determines that the State is not using reasonable efforts to cure those failures. This section revises current law to provide a uniform procedure for imposing sanctions, require close and regular EPA scrutiny of State actions, and provide greater EPA flexibility in imposing any sanctions.

#### New CAA Section 179(a)--Initial Reasonable Efforts Determination

Under the new scheme, at the time EPA finds that State action is deficient in one or more respects, as described under CAA section 110(g), EPA must publish in the Federal Register a proposed determination of whether the State is making reasonable efforts to cure the failure. If EPA proposes to find that the State is not making reasonable efforts, EPA must, at the same time, propose to apply one or more sanctions (described below). Within the next six months, EPA must finalize the notice, and, if it finds no reasonable efforts, apply one or more the sanctions. The criteria for applying sanctions are whether it will encourage the State to undertake reasonable efforts and prevent further deterioration of the State's air quality.

#### New CAA Section 179(b)--Available Sanctions

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The sanctions that are available include (i) a ban on the construction or modification of major stationary sources in the nonattainment area (or portion of such area, if the State failure relates exclusively to that portion). In the case of ozone, the ban is also available with respect to the area within 25 miles of the nonattainment boundary; (ii) a moratorium, imposed by the Secretary of Transportation, on the approval of any highway projects, or the award of any highway grants in the area (except that the highway sanction applies only with respect to certain State failures, as described under the summary for section 110(g), above). This highway sanction applies only if EPA believes that attainment and maintenance of a NAAQS cannot reasonably be achieved without the inclusion of transportation control measures in the plan. The Secretary of Transportation may also exempt certain projects from the moratorium. In addition, the highway sanction may be imposed, as to a particular nonattainment area (or portion thereof), located within a particular State, no more than once in any consecutive five-year period beginning with the date of enactment; (iii) a ban on drinking water hookups in the nonattainment area (or portion of such area), except for hookups necessary to correct a public health hazard; and (iv) a withholding of all or part of the air pollution grants that EPA may award under CAA section 105.

New CAA Section 179(c)--  
Subsequent Reasonable Efforts Determinations

No later than 12 months after publishing a final notice as to whether the State has made reasonable efforts, EPA must publish another proposal on whether the State currently is or is not making reasonable efforts, followed by a final notice within six months. If EPA determines that the State is making reasonable efforts, EPA must lift any sanctions that had previously been imposed (except as described below, under CAA section 179(d)). If EPA determines that the State is not making reasonable efforts, EPA must keep in place any existing sanctions and (in EPA's discretion) add any further sanctions or impose at least one sanction if none were in place.

New CAA Section 179(d)--Failure to  
Submit a Reviewable Plan Within 18 Months of the Required Date

Even if the State is making reasonable efforts to submit a complete SIP or SIP revision, if it fails to do so within 18 months of the required due date, EPA must propose to apply at least one sanction. EPA must make that sanction final within six months thereafter (if the failure has continued).

New CAA Section 179(e)--Notice of Failure to Attain



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EPA is required to publish a notice in the Federal Register, as expeditiously as practicable after the attainment date, identifying areas that failed to attain.

CAA Section 179(f)--Consequences for Failure to Attain

For areas that fail to attain, EPA is authorized to determine additional measures to be implemented--including all feasible measures--and the States are required to submit a SIP revision containing such measures within three years (or sooner, if required by EPA). Areas that fail to attain are granted a new attainment period, starting from the date EPA notified the area of its failure to attain, that is the same as the initial attainment period provided under section 172(a)(2).

New CAA Section 179(g)--Construction Bans

Any area designated nonattainment upon enactment of the bill and that does not receive EPA approval of its construction permit program for major new and modified sources by December 31, 1992, will face a moratorium on the construction of such sources. The same ban will also apply to areas designated nonattainment after enactment if they do not receive EPA approval of such a program within 42 months of the designation.

New CAA Section 180--Federal Implementation Plans

This section on federal implementation plans ("FIPs") effectively replaces the former section 110(c)(1) in order to maintain EPA's opportunity to promulgate a federal plan, but in a more practicable and flexible manner.

New CAA Section 180(a)--General Authority

EPA is authorized to promulgate a FIP at any time it finds the State has failed to submit a SIP, or after EPA disapproves the SIP.

New CAA Section 180(b)--Requirement  
Following Reasonable Efforts Determination

Although EPA is never required to promulgate a FIP, the Agency must decide, at the time it reviews a previous finding concerning reasonable efforts by the State, and determines that a State is not making reasonable efforts, whether to promulgate one. In determining whether to promulgate a FIP, EPA must consider the practicality of such a plan, the severity of the nonattainment problem, the extent to which the State is making reasonable efforts, costs, and the amount of emissions reductions that would be achieved by the FIP. EPA may not promulgate a FIP unless the FIP will result in significant additional progress towards meeting



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the requirements of the Clean Air Act. EPA must explain the reasons underlying the decision, and take final action within 6 months of the date of proposal.

CAA Section 180(c)--FIP Obligations

EPA is currently under court order (or has entered into judicial settlement agreements) requiring the Agency to promulgate several FIPs pursuant to the former section 110(c). Subsection 180(c) provides that EPA is not required to promulgate any of these FIPs.

**Section 103. Additional Provisions For Ozone Nonattainment Areas.**

This section adds a new Subpart 2 to Part D of Title I of the Clean Air Act, consisting of new sections 181 through 185.

New Section 181--Classifications and Attainment Dates

Ozone nonattainment areas are subject to four classifications with attainment dates based on design value, as shown below. EPA must classify ozone nonattainment areas at the time it designates areas as nonattainment. This initial classification is not subject to notice-and-comment or judicial review, although the classification may be challenged after EPA takes action on a SIP submittal or imposes sanctions.

| <u>Area Classification</u> | <u>Design Value</u> | <u>Primary Standard Attainment Date</u>                              |
|----------------------------|---------------------|----------------------------------------------------------------------|
| Marginal                   | .13 ppm             | December 31, 1995                                                    |
| Moderate                   | .14-.15 ppm         | December 31, 1995                                                    |
| Serious                    | .16-.18 ppm         | December 31, 2000                                                    |
| Severe                     | .19 ppm and above   | As expeditiously as practicable, but no later than December 31, 2010 |

Several special rules and adjustments apply with respect to these classifications and attainment dates: (i) Areas currently designated nonattainment, but having a design value of less than .13 ppm, are to be classified as marginal. (ii) EPA may adjust the classification of any area whose design value is within 5 percent of the classification "cut-point". (iii) EPA may allow up to two one-year extensions of the attainment date as long as the State has met all SIP commitments and has not recorded more than one exceedance of the ambient air quality standard in the year preceding the extension year.

New CAA Section 181(b)--New Designations and Reclassifications

Areas subsequently designated nonattainment after the initial designation and classification are given the same time frames to reach attainment as areas initially designated nonattainment. No later than 6 months after the attainment date has passed, EPA must publish a notice identifying each area that failed to attain. EPA must reclassify each such area to the next higher classification, or (if higher) the classification applicable to the area's design value. Areas that are "bumped up" in this respect must begin to meet the requirements of the new classification from the date of reclassification.

New CAA Section 182--Plan Submissions and Requirements

All ozone nonattainment areas are subject to specified planning and control requirements, depending on their classification. Each higher classification must comply with the requirements of the preceding classification, plus additional requirements.

New CAA Section 182(a)--Marginal Areas

States must make the following submissions, with respect to marginal areas:

Paragraph (1):

Within two years after enactment, the State must submit a comprehensive inventory.

Paragraph (2):

The State must submit various SIP revisions, to the extent it has not already done so, to include (i) reasonably available control technology requirements, which EPA has identified in various guidance documents; (ii) corrections to any motor vehicle emission control inspection and maintenance program, as previously required in the area, to assure that the program is the most stringent that is required or already in place for the area; and (iii) requirements that new or modified sources obtain permits and undergo new source review, in the manner provided under EPA guidance.

Paragraph (3):

Each year after the initial inventory is due, the State must submit an updated inventory. In addition, within 2 years after enactment, the State must require all stationary sources (except, under certain circumstances, for sources emitting less than 25 tons per year of VOCs or oxides of nitrogen) to submit emissions statements.



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New CAA Section 182(b)--Moderate Areas

States containing these areas must make the same submissions as marginal areas, as well as the following submissions:

Paragraph (1):

These States must submit SIPs within three years of enactment providing for 15% reductions, from 1990 through 1995, from baseline emissions in the year of enactment. Baseline emissions are actual emissions during the year of enactment, except for emissions that are expected to be eliminated under current EPA regulations due to (i) motor vehicle fleet turnover or (ii) regulations concerning gasoline volatility. All emissions reductions are creditable against the 15% requirement, except for reductions due to (i) or (ii) above, and for reductions due to corrections to current SIPs concerning reasonably available control technology and motor vehicle inspection and maintenance. This 15% reduction requirement applies in lieu of any other requirement for reasonable further progress or submission of an attainment demonstration.

Paragraph (2):

States must implement new RACT control measures recommended by EPA, and must apply RACT to sources with the potential to emit 100 tons per year.

Paragraph (3):

Within 2 years after the date of enactment, States must submit a SIP revision requiring owners or operators of gasoline dispensing systems to install and operate a system for gasoline vapor recovery of emissions from the fueling of motor vehicles (known as "Stage II controls"). These SIP provisions must take effect within 6 months to 2 years of State adoption of the SIP revision, depending on the size of the gasoline dispensing facilities (including retail gasoline stations and fleet fueling facilities) and whether they are newly constructed. EPA is directed to issue guidance as appropriate on the effectiveness of the required Stage II controls. EPA is authorized to exempt small facilities.

New CAA Section 182(c)--Serious Areas

A State with a serious ozone nonattainment area must meet the same requirements imposed with respect to a moderate area, as well as the following:

Paragraph (1)--Attainment and Reasonable Further Progress Demonstrations:

The State must submit, by 1995, an attainment demonstration based on photochemical grid modelling. At the same time, the State



must submit a demonstration that the plan provides for emissions reductions of three percent a year, averaged over each three-year period starting in 1996 (on a rolling basis). However, the State may provide for less than three-percent per year if it includes all feasible measures, or if less than three percent is necessary for the area to reach attainment (or if the area controls NOx emissions in accordance with EPA guidance). The three-percent reductions are required to be computed in the same manner as the 15 percent reductions required for the first five years.

Paragraph (2)--Enhanced Vehicle Inspection and Maintenance Program:

Within 2 years of enactment, the State is required to implement an enhanced program of motor vehicle inspection and maintenance, in accordance with EPA guidance. The program must meet a performance standard achievable by a program combining emission testing with inspection to detect tampering with emission control devices or misfueling of all light-duty vehicles subject to section 202. This program must apply for each urbanized area with a population of 200,000 or more. The programs must include computerized emission analyzers, as well as enforcement through vehicle registration denial unless the State can show that the enforcement provisions of an existing program are more effective in assuring that non-complying vehicles are not operated in the area. The programs may not allow waivers for any vehicles covered by the emission control performance warranty under section 207(b) or for tampering-related repairs. If waivers are allowed the programs must require a minimum expenditure of \$75 on pre-1981 models and of \$200 for the initial waiver period and \$75 in an immediately subsequent period for 1981 and later models. These dollar amounts are to be adjusted periodically for inflation.

Paragraph (3)--Clean-fuel Vehicle Program:

The State must submit a SIP revision, for each area covered by the clean-fuel vehicle program prescribed under section 212(b), which includes measures EPA may require to ensure the effectiveness of that program, including all measures necessary to make use of clean alternative fuels in clean fuel vehicles economic from the vehicle owners' standpoint. Each area which seeks voluntary inclusion in the Federal clean fuel vehicle program must also submit a SIP revision. If a State fails to meet this requirement, it may not receive credit in any attainment demonstration or reasonable further progress demonstration for emissions reductions from implementation of the Federal clean-fuel vehicle requirements under section 212.

However, a State may opt out of this requirement, in whole or in part, if, within 30 months of enactment, EPA approves a SIP revision, submitted by the State within 24 months, that will achieve long-term reductions in ozone-producing and air toxic emissions equal to the performance standard prescribed under

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Section 212(b)(1) or the percentage thereof attributable to the part of the program the State is opting out of, employing measures other than those already required under the bill (either expressly or as necessary to meet requirements for annual percentage reductions). In addition, if EPA approves any fuel-pooling plan applicable to an area, EPA may approve a SIP revision to assure consistency with such plan.

**Paragraph (4)--Transportation control:**

The State must also submit transportation controls if greater-than-anticipated mobile source emissions occur. These controls must include measures selected from section 108(f) as necessary to reduce vehicle mile and congestion levels. Alternatively, the State may obtain equivalent reductions from other types of transportation or mobile source controls, or controls on other sources.

**New CAA Section 182(d)--Severe Areas**

A State containing a severe ozone nonattainment area must make the submissions required for serious areas, and must submit a revised attainment demonstration, by December 31, 2000, which includes the sanctions provisions required under CAA section 185 (described below).

**New CAA Section 182(e)--  
Certain Non-self-generating (Non-MSA) Areas**

If EPA determines that any nonattainment area outside, and not adjacent to, an MSA or CMSA (if any) does not significantly contribute to ozone nonattainment in that area or another area, the area may be subject to only the requirements applicable to marginal areas, regardless of the air quality.

**New CAA Section 182(f)--Reclassified Areas**

Areas that are reclassified because they fail to attain must meet the requirements applicable to the reclassification. EPA may adjust dates for submission of SIPs as appropriate. Areas reclassified as moderate are granted an attainment date of December 31, 2000, and must meet the 3% progress requirement that is otherwise applicable only to serious and severe areas.

**New CAA Section 183(a)-(b)--Control Techniques Guidelines for VOC Sources, and Alternative Control Techniques Document for NOx**

EPA is required to publish seven control techniques documents (CTGs), and prepare an alternative control techniques document for NOx sources, within three years of enactment.

**New CAA Section 183(c)--Consumer or Commercial Products**



EPA is required to submit, within two years of enactment, a study to Congress concerning emissions of volatile organic compounds from consumer and commercial products. Following submission of this study, EPA is authorized to issue regulations reducing emissions from consumer and commercial products to a level that reflects reasonably available controls. Consumer and commercial products are defined as any article or product the use, consumption, storage, disposal, or destruction of which causes release of volatile organic compounds.

EPA may apply the regulations at only the level of the manufacturer, processor, wholesale distributor, or importer, and may exempt health use products for which there are no suitable substitutes. EPA is given broad discretion in fashioning appropriate regulations, including the use of economic incentives (such as fees or auctions). EPA may retain any funds collected. If the State develops adequate procedures under State law for implementing and enforcing these regulations, EPA may approve such procedures.

#### New CAA Section 183(d)--Marine Vessels

EPA is required to promulgate, within four years after the date of enactment of the bill, standards for emissions from loading and unloading marine tank vessels, to take effect after the period EPA finds necessary to permit the development of the requisite technology. The Department within which the Coast Guard is operating is required to issue regulations to ensure the safety of the required emission controls. Until EPA promulgates these standards, no State or locality may regulate marine vessel emissions, and after EPA promulgates these standards, any State or locality regulating such emissions must apply standards at least as strict as EPA's.

#### New CAA Section 183(e)--Ozone Design Value Study

EPA is required to complete, within three years of the date of enactment of the bill, a study on the methodology used to establish the design value for ozone.

#### New CAA Section 184--Northeast Transport Region and Commission

The bill establishes a Northeast Corridor regional ozone transport commission containing 11 States and the District of Columbia. This commission will convene within six months of enactment.

#### New Clean Air Act Section 185--Sanction for Severe Ozone Nonattainment Areas for Failure to Attain

SIPs for severe areas are required to impose a fee of \$5,000



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per ton of VOC on major stationary sources, in areas that fail to attain by the applicable date. The fee applies only to the extent the source fails to reduce its emissions by 20% following the attainment date. The fee begins in the year after the attainment year, and lasts until the area is redesignated attainment (except that the fee does not apply during any of the one-year extensions of the attainment date authorized under section 181). If EPA finds that the State is not collecting the fees properly, EPA may collect them, with interest for the period when the fees were not paid to the State. The amount of the fee is to be adjusted each year (beginning with the year after enactment) for inflation.

Areas with a total population under 200,000 that fail to attain the standard by the applicable date, are not subject to sanctions if the State demonstrates that ozone transport is the cause of the nonattainment problem, and if the area otherwise meets all of the Act's requirements.

#### **Section 104. Additional Provisions For Carbon Monoxide Nonattainment Areas**

This section of the bill adds a new subpart 3 to Part D of Title I of the Clean Air Act, consisting of new sections 186 and 187.

##### New Section 186--Classification and Attainment Dates

Carbon monoxide nonattainment areas are subject to two classifications with attainment dates based on design value, as shown below.

| <u>Area Classification</u> | <u>Design Value</u> | <u>Primary Standard Attainment Date</u> |
|----------------------------|---------------------|-----------------------------------------|
| Moderate                   | 9.5-16.4 ppm        | December 31, 1995                       |
| Serious                    | 16.5 ppm and above  | December 31, 2000                       |

Similar rules as found in the ozone nonattainment area apply with respect to (i) EPA publication of a notice announcing the classification of carbon monoxide areas; (ii) areas designated nonattainment prior to the enactment of this Act, but showing a design value of under 9.5 ppm; (iii) EPA authority to adjust the classification of nonattainment areas that are close to the cut-off point for another classification; (iv) EPA authority to allow brief extensions of the attainment date; (v) requirements for areas redesignated nonattainment after the effective date of this Act; and (vi) reclassification of areas that fail to attain the ambient air quality standard (the "bump-up").

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New CAA Section 187--Plan Submissions and Requirements

As in the case of ozone nonattainment areas, carbon monoxide nonattainment areas must meet requirements that escalate in stringency with the severity of the nonattainment problem.

New CAA Section 187(a)--Moderate Areas

Moderate areas are required to (i) submit an initial inventory, followed by updated inventories; and (ii) assure that pre-1987 requirements for inspection and maintenance of motor vehicles are met, as required for marginal ozone nonattainment areas.

New CAA Section 187(b)--Serious Areas

All serious areas must meet the requirements for moderate areas, as well as (i) submit an attainment demonstration, due by December 31, 1995; (ii) implement an enhanced program for motor vehicle inspection and maintenance, as required for serious ozone nonattainment areas; and (iii) submit provisions to comply with the requirements for transportation control measures, as required for serious ozone nonattainment areas.

In addition, serious areas must submit a SIP revision to include an oxygenated fuels program. This program must require that gasoline available in the Consolidated Metropolitan Statistical Area (or, if none, the Metropolitan Statistical Area) in which the serious area is located be blended with oxygenated fuels during the carbon monoxide season as necessary, in combination with other measures, to provide for timely attainment and maintenance of the carbon monoxide NAAQS. This program must take effect by October 1, 1993. States may opt out of this requirement by demonstrating that the revision is not necessary to provide for timely attainment and maintenance of the carbon monoxide NAAQS.

New CAA Section 187(c)--Reclassified Areas

Moderate areas that are reclassified as serious because they fail to attain must meet the requirements applicable to serious areas. EPA may adjust dates for required submissions as appropriate. Attainment dates may not be adjusted.

New CAA Section 187(d)--Serious Areas that Fail to Attain

Any serious area that fails to attain must submit, within three years of such failure, a SIP revision that includes any additional measures that EPA may prescribe, considering all feasible measures.



**Section 105. Additional Provisions for Particulate Matter (PM-10) Nonattainment Areas.**

This section adds a new subpart 4 to Part D of Title I of the Clean Air Act, consisting of sections 188 through 190.

**New CAA Section 188(a)--Initial Classifications**

All PM-10 nonattainment areas will initially be classified as moderate.

**New CAA Section 188(b)--Reclassification as Serious**

EPA may redesignate to serious those areas which cannot practicably attain by the moderate attainment date. EPA must make these redesignations by the end of 1991 for areas designated nonattainment under section 110(b)(5), and within 18 months of the due date for the SIP submission for areas subsequently designated nonattainment. All moderate areas that fail to attain by the attainment date are automatically reclassified as serious.

**New CAA Section 188(c)--Attainment Dates**

All areas must attain as expeditiously as practicable, with the following outside dates: Moderate areas designated nonattainment under section 110(b)(4) must attain no later than December 31, 1994; for all other moderate areas, the attainment date is no later than 6 years after designation. Serious areas designated nonattainment under section 110(b)(4) must attain no later than December 31, 2001; for all other serious areas, the attainment date is no later than 10 years after the date of designation to nonattainment.

**New CAA Section 188(d)--Extension of Attainment Date for Moderate Areas**

Moderate areas may receive up to two one-year extensions of the attainment date, in a manner similar to ozone and carbon monoxide nonattainment areas.

**New CAA Section 188(e)--Extension of Attainment Date for Serious Areas**

Serious areas may receive an extension of up to 5 years if the otherwise applicable attainment date would be impracticable, the SIP has been fully implemented, the SIP includes the most stringent measures of any other State's SIP that are feasible for the area, and the State submits a demonstration of attainment by the most expeditious alternative date practicable. This subsection lists a number of factors that the Administrator may consider in determining whether or not to grant an extension, and the length of such extension.



New CAA Section 188(f)--Waivers for Certain Areas

EPA may waive any requirement applicable to a serious area, it determines that anthropogenic sources of PM-10 do not contribute significantly to the PM-10 problem in that area. Similarly, EPA may waive the requirement of a specific attainment date where it determines that nonanthropogenic sources of PM-10 contribute significantly to the problem.

New CAA Section 189(a)--Moderate Areas

Moderate areas must submit SIPs that require a new source review permit program, and either a demonstration that the plan will provide for attainment by the attainment date, or a demonstration that attainment by that date is impracticable.

New CAA Section 189(b)--Serious Areas

Serious areas must meet the requirements applicable to moderate areas, impose reasonably available control measures (including the adoption of reasonably available control technology by all major stationary sources), and either a demonstration that the plan will provide for attainment by the attainment date, or (for those areas for which the State is seeking an extension), a demonstration of attainment by the most expeditious alternate date practicable.

New CAA Section 190--Issuance of RACM Guidance

EPA must issue technical guidance on RACM for urban fugitive dust and emissions from residential wood combustion and prescribed open burning within 18 months of enactment.

**Section 106. Additional Provisions for Areas Designated Nonattainment for Sulfur Oxides, Nitrogen Dioxide, and Lead.**

This section adds a new subpart 5 to Part D of Title I of the Clean Air Act, consisting of new sections 191 and 192. This subpart establishes SIP submittal and attainment dates for areas that need to do additional planning to attain the SO<sub>2</sub>, NO<sub>2</sub>, and lead standards.

New CAA Section 191--Plan Submission Deadlines

Areas that are newly designated nonattainment for one of these pollutants after enactment of the bill would need to submit a new plan within 18 months of the designation, showing attainment within five years of the designation. Areas that are currently designated nonattainment for SO<sub>2</sub> or NO<sub>2</sub> but which never received full approval of their SIPs under the current law would have to submit corrective

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SIPs within 18 months of enactment showing attainment within five years of enactment.

New CAA Section 192--Attainment Dates

The corrective SIPs for areas that received (or in the future receive) SIP calls for one of these pollutants must provide for attainment within five years of the date of the call.

**Section 107. Provisions Related To Indian Tribes.**

The section includes a series of provisions authorizing EPA to treat Indian tribes as States for certain purposes, including, under certain circumstances, allowing tribes to develop implementation plans and receive grants.

CAA Section 301--Authority to Treat Tribes as States

The Administrator is authorized to treat tribes as States for Clean Air Act purposes and for providing financial assistance (although tribes are not entitled to the minimum of one-half of one percent of annual appropriations to which States are entitled under Section 105). EPA may promulgate regulations outlining the circumstances under which treatment as a State is appropriate for tribes and procedures for approving tribal implementation plans. If treatment as a State is inappropriate, the Administrator may devise other means of administering the Clean Air Act on reservations. The receipt of grants is not contingent on the promulgation of regulations so that, until EPA promulgates regulations, EPA may continue to give grants to tribes.

CAA Section 105(a)(1)(B)--Grant Eligibility

Tribes are eligible to receive air grants by including tribal air pollution control agencies in the list of agencies eligible to receive grants. At his discretion, the Administrator may decide which of the eligible tribes shall receive grants.

CAA Section 302(b)--Definition of Air Pollution Control Agency

The definition of air pollution control agencies is broadened to include those of Indian tribes.

New CAA Section 302(g)--Definition of Tribe

Indian tribe is defined similarly to the definition under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986.

New CAA Section 110(t)--Tribal Implementation Plans



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Tribal implementation plans are to be reviewed in the same manner as SIPs. When plans become effective, they shall apply within the exterior borders of the reservation.

#### Section 108. Miscellaneous.

This section includes a number of miscellaneous amendments to Title I of the CAA, including, among others, the following:

##### SECTION 108(a)

##### CAA Section 108--Transportation Guidance

EPA, after consultation with the Secretary of Transportation, must update the transportation-air quality planning guidelines issued in 1978, at the start of the initial Part D planning process. EPA must also update its guidance on various types of transportation controls. The list of controls is refined from the initial list appearing in current section 108.

##### SECTION 108(b)

##### CAA Section 110--State Reports on Emissions-related Data

A new section 110(u) is added, which requires that States submit any reports EPA may require to assess the effectiveness of any SIP or SIP revision.

##### SECTION 108(c)

##### CAA Section 111--New Source Performance Standards ("NSPS")

The time frames for developing proposed and final regulations establishing NSPS are extended. The schedules for completion of the NSPS for source categories that EPA has already listed for regulation, and for revision of existing NSPS, are updated and extended. EPA is authorized to waive review of a standard if review is not necessary in light of readily available information.

##### SECTION 108(e)

##### CAA Section 114--Authority to Obtain Information

EPA's information-gathering authority is broadened to include obtaining information from persons who manufacture control equipment or who may have relevant information necessary for the purposes of section 114.



SECTION 108(g)CAA Section 126--Permit Process for  
Addressing Interstate Effects

Under this provision, a source or plan in an area with a permit program meeting the Title IV requirements, including the requirements to address interstate effects of stationary sources, is not subject to the interstate provisions of section 126.

SECTION 108(h) and (i)CAA Sections 163, 165--PM-10 PSD Increments

These provisions replace the sections 163 and 165 particulate matter prevention of significant deterioration ("PSD") "increments" (which were measured by the former indicator for particulate matter, "total suspended particulates"), with increments of comparable stringency measured by the new PM-10 indicator. The amendments also provide that any previously-established baseline areas and baseline dates shall remain in effect, in order to allow approximately the same amount of growth as would have been permitted had the indicator never been changed. In addition, the total suspended particulates increments and implementing regulations in an applicable implementation plan must remain in effect as to an area in that plan until a PM-10 PSD or new source review plan has been approved by EPA and made effective in the plan for that area. Furthermore, these provisions, and an accompanying amendment to section 302(j), bring coal mines within the coverage of new source review provisions, and allow for an exemption from the class II and class III increments (but not class I increments) with respect to fugitive dust from such mines.

SECTION 108(i)CAA Section 166--PSD Increments for Other Pollutants

Subsection (a) is amended so that EPA is no longer obligated to promulgate PSD increments for any pollutants other than particulate matter and sulfur dioxide, although EPA is given the authority to promulgate such increments. This provision also allows EPA to modify the particulate matter increments if it further revises the particulate matter indicator. The new increments would have to be roughly comparable in terms of stringency to the PM-10 increments. EPA is not required to promulgate new particulate matter increments if it promulgates a new particulate matter NAAQS.

SECTION 108(k)--Definitions

New CAA Section 302(r)--Definition of Federal Implementation Plan

New CAA section 302(r) defines a federal implementation plan as a plan, or a portion of a plan, promulgated by EPA to fill a gap in the SIP, that includes enforceable emission limits or other control measures, but that does not necessarily ensure attainment of the standard.

SECTION 108(l)CAA Section 307--Preenforcement Review

CAA section 307(e) is amended to preclude judicial review of regulations or other actions of EPA taken under color of the Clean Air Act, except as provided under the Act. This provision, along with a revision to section 304(e), clarifies that the judicial review provisions in the Act are exclusive, and precludes pre-enforcement review.

SECTION 108(m)CAA Section 307--Interpretation of State Implementation Plan

A new subsection (h) is added to CAA section 307, providing that in the case of conflict between a State's and EPA's interpretation of a SIP provision, EPA's interpretation is to be given deference by a court, as long as that interpretation is rational.

SECTION 108(n)CAA Section 318--Ethics, Financial Disclosure,  
and Conflicts of Interest

This section is repealed because its provisions are archaic or superceded by other statutes or by other legislation proposed by the Administration.

SECTION 108(o)CAA Section 101--Pollution Prevention

A new subsection (c) is added to section 101 to declare that a primary goal of the Act is to promote Federal, State, and local governmental actions for pollution prevention.



**SECTION 108(p)****New CAA Section 103--General Savings Clause**

A general savings clause is provided, under which all regulations and standards issued by EPA as in effect before the date of enactment of this Act remain in effect, except to the extent otherwise provided by the Act, inconsistent with the Act, or changed by EPA.

**SECTION 108(t)****New CAA Section 307(i)--Reports**

A new subsection is added to CAA section 307 precluding judicial review of any reports to Congress required by the Act.

**Section 109. Conforming Amendments.**

This section contains conforming amendments.



**TITLE II--PROVISIONS RELATING TO MOBILE SOURCES****Section 201. Clean Fuel Requirements.**

This section deletes existing CAA section 212 and inserts a new section 212--"Clean Fuel Requirements", establishing two programs for increasing the use of vehicles operated on "clean alternative fuel" such as methanol, ethanol, natural gas, propane, electricity or other motor vehicle fuel such as reformulated gasoline if such other fuel has comparably low emissions, as determined by the Administrator.

The first program requires that new urban buses operated primarily in metropolitan areas having a population of over 1,000,000 be capable of operating, and exclusively operated, on clean alternative fuel. The Administrator is to phase in this requirement over the 1991 through 1994 model years. If the Administrator, after consultation with the Secretary of Transportation, finds that delaying the program would substantially increase its benefits or decrease its costs, the requirement may be postponed for up to two years. For diesel-fueled buses sold during the phase-in period, the particulate matter emission standard is set at 0.25 gram per brake horsepower-hour. The Administrator is required to issue regulations implementing the urban bus program within 12 months of enactment of this section.

The second program requires that a specified number of passenger cars and light-duty trucks capable of operating on clean alternative fuel ("clean-fuel vehicles") be sold in the most serious ozone nonattainment areas. Such clean-fuel vehicles are to meet emission standards that will ensure that, when operated on clean alternative fuels, the vehicles emit substantially less ozone-producing hydrocarbon emissions and total air toxic emissions than do conventional gasoline-fueled vehicles meeting applicable emissions standards. So that clean-fuel vehicles are in fact operated on clean alternative fuel, the program also provides that clean alternative fuels be made available in the areas where clean-fuel vehicles are to be sold.

Within 12 months of enactment, the Administrator is to establish performance standards for the clean-fuel vehicle program based on the use of clean alternative fuels formulated to produce maximum reductions in ozone-producing and toxic air emissions. The Administrator is to use these performance standards to judge the adequacy of state and industry plans for opting out of the clean-fuel vehicle program.

Within 18 months of enactment, the Administrator is to promulgate regulations establishing initial requirements, and subsequently may revise such regulations as necessary, for

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attainment of the performance standards he establishes for the clean-fuel vehicle program. The regulations are to provide for the manufacture, sale and distribution of clean-fuel vehicles according to the following schedule: 500,000 in model year 1995, 750,000 in model year 1996, and 1,000,000 in each of model years 1997 through 2004. To permit automakers greater flexibility, the Administrator may grant an appropriate amount of transferable credits toward compliance with emission standards or the vehicle sales requirements for selling (1) clean-fuel vehicles that emit less than regulations require, (2) more clean-fuel vehicles than regulations require, and (3) heavy-duty trucks that are capable of operating on clean alternative fuel.

The clean-fuel vehicles are to be sold in areas that are designated ozone nonattainment, have a 1988 ozone design value at or above 0.18 parts per million, and had a 1980 population above 250,000. However, any of these areas may "opt out" of all or part of the clean-fuel vehicle program upon approval by the Administrator if the applicable state implementation plan includes measures different from those otherwise required by the Act that achieve long-term environmental benefits equal to the clean-fuel vehicle program performance standard. Conversely, any other area may "opt into" the clean-fuel vehicle program at the request of the governor of the state in which the area is located if inclusion of the area in the program is appropriate and would result in progress toward attainment of any NAAQS. Clean-fuel vehicle sales are to be allocated among participating areas based on population, vehicle sales, and other relevant factors.

The regulations promulgated by the Administrator must also provide for the availability of clean alternative fuels in the areas in which clean-fuel vehicles are to be sold. The Administrator is to determine the clean alternative fuels to be made available based on automakers' projections of clean-fuel vehicle sales and consultations with affected State and local governments. If the Administrator finds (1) that the sale of clean-fuel vehicles has created a demand for clean alternative fuels outside the areas in which such vehicles are sold or (2) that automakers are prepared to sell on a broad basis vehicles that are designed to operate exclusively on clean alternative fuels, he may also require that clean alternative fuels be made available along major nationwide transportation corridors. In addition, the Administrator is authorized to grant transferable credits for exceeding applicable requirements and to establish specifications for clean alternative fuels to reduce or eliminate any unreasonable risk such fuels may pose to public health, welfare and safety, or to ensure adequate vehicle performance and maintenance.

The Administrator may make adjustments to the programs under specified circumstances. First, if one or more areas opt into or out of the clean-fuel vehicle program, the Administrator is required to revise the total number of required clean-fuel vehicles



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sales in proportion to the change in total population covered by the program. Second, the governor of a state containing an area participating in the clean-fuel vehicle program may request that more clean-fuel vehicles be sold in that area than the program would otherwise require. If the request is appropriate and would result in progress toward attainment of any NAAQS, the Administrator is to increase the number of clean-fuel vehicles to be sold in the area by the amount requested. Third, if the Administrator revises the clean-fuel vehicle sales requirement, he is also required to revise as appropriate the clean fuel availability requirements. Fourth, if he finds that delaying the vehicles sales or fuel availability requirements would substantially increase the benefits or lower the costs of the clean-fuel vehicle program, or is appropriate due to the likelihood of a national economic recession, he may postpone the requirements by up to two years and revise the number of clean-fuel vehicles that must be sold as appropriate. Any additional vehicle sales or fuel availability requirements prescribed by the Administrator are to take effect only after such period as he finds necessary for the requisite vehicles or fuels to be made available.

In developing the regulations to implement the bus and clean-fuel vehicle programs, the Administrator is directed to consult with the Secretaries of the Department of Energy and the Department of Transportation. The Administrator is also authorized to obtain information needed to enforce the two programs from manufacturers, distributors and retailers of vehicles and fuels.

Finally, section 202(a)(4) of the current Act is amended to establish that any aspect of vehicle design used to meet requirements prescribed under title II, including new section 212, may not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

This section replaces the former section 212 which had established a low emission vehicle board to promote the development of low emission vehicles. The board was abolished in 1980 by Public Law 96-208, 94 Stat. 98.

#### **Section 202. Emissions of Hydrocarbons, Carbon Monoxide, and Oxides of Nitrogen From Passenger Cars.**

This section phases in tighter passenger car emission standards for nonmethane hydrocarbons and oxides of nitrogen and maintains the current standards for total hydrocarbons (as a cap on methane emissions) and carbon monoxide (CO). Forty and 80 percent of each automaker's 1993 and 1994 model year cars respectively and 100 percent of 1995 and later model year cars are required to meet a nonmethane hydrocarbon standard of 0.25 grams per vehicle mile ("gpm") and an NOx standard of 0.70 grams per mile. For total hydrocarbons and CO, the section sets forth the



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current numerical standards instead of retaining the percentage requirement language of the current statute.

The Administrator is also directed to revise the regulations to reflect the statutory change of standards within 180 days of the bill's enactment. The section clarifies the Administrator's authority to tighten passenger car standards as needed to protect health and welfare, considering costs.

This section further amends section 202(b)(1) by deleting provisions that specified passenger car standards for model years 1977 through 1980. Since those vehicles are now beyond their statutory useful life (five years or 50,000 miles), the standards are no longer applicable. Also deleted is language referring to the availability of waivers from the 1981 and later model year carbon monoxide standard, since section 202(b)(5) made those waivers available only for 1981 and 1982 model year vehicles. Similarly, the provision permitting the Administrator to relax the 1981 and later model year oxides of nitrogen standard for 1981 and 1982 model year vehicles is deleted.

#### **Section 203. Emissions of Hydrocarbons and Carbon Monoxide From Light-Duty Trucks.**

This section phases in tighter hydrocarbon and carbon monoxide emissions standards for light-duty trucks on the basis of loaded vehicle weight. For lighter trucks (3,750 lbs. and under), the standards are 0.41 gpm of total hydrocarbons and 4.20 gpm of carbon monoxide. For heavier trucks (over 3,750 lbs.), the emission standards are 0.50 of total hydrocarbons and 5.50 gpm of carbon monoxide. Fifty percent of each automaker's 1994 light-duty trucks and 100 percent of 1995 and later model year light-duty trucks are required to meet the tighter standards.

Since the current Act does not define light-duty trucks, this section also amends section 216 to include the definition of light-duty trucks promulgated by the Administrator under the Act. In addition, it directs the Administrator to revise the regulations applicable to light-duty trucks within 180 days of the bill's enactment to reflect the statutory change in standards. It also specifies the Administrator's authority to tighten light-duty truck standards as needed to protect public health and welfare, considering costs.

#### **Section 204. Carbon Monoxide Emissions At Cold Temperatures.**

This section adds a new subsection (h) to CAA section 202, providing for a reduction in emissions of carbon monoxide (CO) from passenger cars and light-duty trucks when operated at 20 degrees Fahrenheit. As a first step, the section establishes cold

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temperature CO emission standards to be met by 1993 and later model year passenger cars and light-duty trucks when tested at 20 degrees Fahrenheit. Specifically, the section directs the Administrator to establish a passenger car cold temperature CO standard of no higher than 10 grams per mile and requires that light-duty trucks meet a standard of comparable stringency.

To provide manufacturers with flexibility in meeting the standards, the section permits the standards to be met on average by each manufacturer's fleet. It also provides for phasing in the standards over the 1993 through 1995 model years; at least 40 percent, 80 percent and 100 percent of 1993, 1994 and 1995 and later model year vehicles, respectively, must meet the standards. Regulations implementing the requirement for cold CO emission reductions must be promulgated within 12 months of the bill's enactment.

For the second step, the Administrator is directed to assess by December 31, 1993, the need for and feasibility of further reductions in cold CO emissions, and is authorized to promulgate regulations applicable to 1998 and later model year vehicles requiring further reductions in cold CO emissions as warranted. In addition, the section authorizes the Administrator to require reductions in cold CO emissions from heavy-duty vehicles, as he deems appropriate.

#### **Section 205.   Evaporative Emissions.**

This section directs the Administrator to issue regulations within 18 months of the bill's enactment requiring reductions in evaporative emissions from all gasoline-fueled vehicles during operation (running losses) and during sustained periods of nonuse, under summertime conditions conducive to the formation of ozone. The regulations are to require the greatest degree of emissions reduction achievable by means reasonably expected to be available, taking into account cost, safety and energy factors. They are also to take effect as soon as the means for achieving the reductions are available for production.

#### **Section 206.   Mobile Source-Related Air Toxics.**

Under this section, the Administrator is required to complete within 18 months of the bill's enactment a study of the need for and feasibility of controlling toxic emissions which are currently unregulated under title II and associated with motor vehicles and motor vehicle fuels. The section also authorizes the Administrator to regulate mobile-source related air toxics as he deems appropriate based on the study and other information available to him.



**Section 207. Emission Control Diagnostics Systems.**

This section authorizes the Administrator to require that motor vehicles be equipped with computer systems capable of diagnosing problems affecting emission-related systems and alerting vehicle owners to the need for repairs to maintain compliance with emission standards. Specifically, the section requires that emission control diagnostics systems be capable of: 1) identifying emission-related systems malfunctions or deterioration; 2) alerting the vehicle operator to the need for maintenance; 3) storing such information; and 4) providing access to such information for maintenance and testing.

To increase the usefulness of emission control diagnostics systems, the section further authorizes the Administrator to require state inspection and maintenance programs to inspect such systems and to require the repair of any identified malfunctions or deterioration. The Administrator may also require manufacturers to provide information needed to make use of the diagnostics systems to any person engaged in the business of repairing or servicing motor vehicles. To ensure that diagnostics systems operate properly in-use, the Administrator may recall vehicles for the purpose of correcting malfunctions or improper operation of the system. In addition, the section amends section 207 of the Act to extend the warranty coverage provided for emission-related systems to include emission control diagnostics systems.

**Section 208. Heavy-Duty Trucks.**

This section extensively revises section 202(a)(3)(A) to provide the Administrator with greater flexibility in setting emissions standards for heavy-duty vehicles or engines (HDEs). Specifically, the section deletes the statutory standards for HDEs, and instead requires the Administrator to set technology-forcing emission standards, considering cost, energy and safety factors. The window periods for standard-setting and four-year lead time requirement are also deleted. The Administrator may instead tighten standards as he finds appropriate and provide such lead time as he finds necessary to permit the development of the requisite technology (the approach taken by the current Act concerning lead time for all other vehicle emission standards). Section 202(a)(3)(A)(ii) is further revised to clarify that in setting HDE standards EPA may differentiate among HDEs based on the type of fuel used.

Finally, the Administrator is authorized to study the impact of heavy-duty engine rebuilding on engine emissions and, if warranted, to regulate rebuilding practices, including promulgation of standards applicable to engines after their typical useful life.



**Section 209. Non-Road Engines and Vehicles.**

This section provides the Administrator with authority to regulate vehicles or engines not used primarily on roads and not regulated under either section 202 or section 111. (authorizing the establishment of new source performance standards) of the Act. Specifically, the section authorizes the Administrator to promulgate emissions standards applicable to those types of non-road vehicles or engines that he finds cause or contribute to air pollution that endangers public health or welfare, taking costs into account.

The section also follows current section 202(a)(4) in specifying that no emission control device used on non-road engines or vehicles to meet emission standards may present an unreasonable risk to public health, welfare or safety. It further provides that any emission standard promulgated for non-road engines or vehicles be treated like a section 202 (on-road vehicle or engine) emission standard for purposes of determining compliance with and enforcing such a standard.

This section replaces existing section 213 which required the Administrator and the Secretary of Transportation to conduct a fuel economy improvement study. The study has been completed.

**Section 210. Vehicle Certification.**

This section amends section 206 to ensure that vehicles that pass the federal test for determining compliance with emission standards can also pass state inspection and maintenance (I/M) tests. The Administrator is directed to revise the regulations governing the certification of vehicles to include test procedures capable of determining whether properly maintained 1993 and later model year passenger cars and light-duty trucks will pass EPA-sanctioned I/M tests under conditions encountered in the conduct of such tests. EPA's revised test is to reflect reasonably likely I/M test conditions as pertains to fuel characteristics, ambient temperature and short waiting periods before tests are conducted. A manufacturer's vehicles must be able to pass the revised test to receive certificates of conformity.

This section also clarifies the Administrator's authority to permit manufacturers to demonstrate compliance with applicable standards through averaging, trading and banking of emission credits. In addition, it limits the small volume manufacturers' exemption from lengthy testing establishing a vehicle's ability to meet applicable standards over its useful life to original equipment manufacturers.

**Section 211. In-Use Compliance--Recall.**

This section revises section 207 to phase in the passenger car 0.25 gpm nonmethane hydrocarbon standard and the light-duty truck 0.41/0.50 gpm total hydrocarbon standard and 4.20/5.50 gpm carbon monoxide standard as they apply to recall determinations. The phase-in schedule for the passenger car nonmethane hydrocarbon standard is the same as that applicable to cars sold in California, and the phase-in schedule for the light-duty truck standards is similarly patterned after that applicable in California. The section also specifies that the Administrator may require manufacturers to perform recall tests and to audit the effectiveness of repairs performed by dealers pursuant to a recall plan.

**Section 212. Compliance Program Fees.**

This section provides the Administrator with specific authority to assess manufacturers fees to recover the costs associated with operating the motor vehicle compliance and fuel economy programs, including the development and implementation of related policies, procedures and regulations. It grants the Administrator broad discretion in devising a fee schedule and expressly authorizes a fee schedule based on the number of vehicles produced under a certificate of conformity. It also specifies that any fees collected be deposited in a special fund in the U.S. Treasury for use by EPA in carrying out the programs.

**Section 213. Information Collection.**

This section amends section 208 to extend the requirement to maintain records and provide information to manufacturers of new motor vehicle or engine parts or components. It also requires manufacturers of vehicles, engines or parts to perform such tests and provide such data as the Administrator may reasonably require to determine compliance with applicable requirements under the Act and to assist in the development of new regulations. Correspondingly, the section broadens the Administrator's inspection authority so that he may observe required testing or obtain required data. In addition, it provides that authorized contractors acting as representatives of the Administrator may conduct inspections or have access to business sensitive information.

**Section 214. Fuel Volatility.**

This section requires the Administrator to promulgate within six months of the bill's enactment regulations requiring additional reductions in the volatility of gasoline during the high ozone season (approximately the summer months). The section specifies a maximum Reid vapor pressure standard of 9.0 pounds per square

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inch and requires the Administrator to establish more stringent Reid vapor pressure standards as needed to generally achieve comparable evaporative emissions (on a per vehicle basis) nationwide, taking into account such factors as enforceability, environmental need and costs. The regulations implementing the volatility requirements are to take effect no later than the 1992 ozone season, and may permit gasoline containing at least 9 but not more than 10 percent ethanol (by volume) to exceed the volatility requirements by up to 1.0 pounds per square inch.

#### **Section 215. Diesel Fuel Sulfur Content.**

This section requires a reduction in the sulfur content of diesel fuel that will in turn reduce diesel vehicles' emissions of sulfates and ease compliance with the stringent 1994 particulate matter standard applicable to heavy-duty diesel vehicles. Specifically, the section prohibits as of October 1, 1993, the manufacture, sale or transport of motor vehicle diesel fuel having a sulfur content of greater than 0.05 percent (by weight) or a cetane index below 40. It requires the Administrator to promulgate within 12 months of the bill's enactment regulations to implement and enforce the prohibition. It also specifically authorizes the Administrator to require refiners to dye fuel not subject to the sulfur content limitations in order to segregate it from the regulated fuel.

To reflect the change in diesel sulfur content that will occur over the useful life of 1991 through 1993 heavy-duty diesel engines, the section requires that the sulfur content of fuel used to certify diesel engines for those model years be 0.10 percent (by weight). It further requires that certification fuel used for 1994 and later model year diesel engines comply with the lower sulfur content and cetane index minimum requirements applicable to motor vehicle diesel fuel after October 1, 1993.

#### **Section 216. Non-Road Fuels.**

Section 211 of the current Act authorizes the Administrator to regulate motor vehicle fuel and fuel additives as needed to prevent damage to motor vehicle emission controls and to protect public health and welfare. This section expands that authority to include fuel and fuel additives for non-road vehicles and non-road engines, for which section 208 of this bill authorizes the Administrator to establish emission standards.

#### **Section 217. Fuel Waivers.**

This section amends section 211(f) to clarify that the requirement to obtain waivers for new fuels and fuel additives not



substantially similar to the fuels used in vehicle certification applies not only to unleaded gasoline but to all other fuels and fuel additives, including leaded gasoline, diesel fuel, and consumer additives.

#### **Section 218. Market-Based Alternative Controls.**

Under this section, the Administrator is directed to issue regulations within 12 months of the section's enactment to allow automakers to engage in "emissions trading" and fuel refiners to engage in "fuel pooling" to the maximum extent feasible in ozone nonattainment areas with a 1988 ozone design value at or above 0.18 parts per million and a population above 250,000. The regulations are to establish performance standards for motor vehicles and motor vehicle fuels marketed in those areas based on likely emissions reductions that would be achieved by the control measures for which alternative measures could be substituted. Automakers and fuel refiners could then choose to undertake emission control measures different in type or degree from the prescribed measures they would replace, so long as they demonstrated to the Administrator that the combination of measures they selected would meet the performance standards. Companies could also trade emission reduction credits for use in demonstrating compliance with performance standards. If companies could not demonstrate alternative means of meeting the performance standards, they would be required to comply with the prescribed control measures.

Under this section, the Administration is also authorized to promulgate regulations permitting manufacturers and fuel refiners "trade" and "pool" emissions reductions from nationwide control measures. It replaces existing section 214 which required a study of particulate emissions from motor vehicles and a report to Congress. The study and report have been completed.

#### **Section 219. Preemption of State Fuel Regulation.**

This section makes two changes to section 211(c)(4)(A)(ii) regarding the preemption of State fuel regulations by federal rules. First, it clarifies that a federal fuel or fuel additive regulation only preempts a nonidentical State regulation governing the same component or characteristic of the fuel or fuel additive. Second, it further defines the basis on which EPA may approve state implementation plan provisions that regulate motor vehicle fuel or fuel additives in a manner nonidentical with applicable federal regulations. The current Act states that EPA may approve inconsistent State fuel or fuel additive regulations when such regulations are "necessary to achieve" primary national ambient air quality standards. This section defines "necessary to achieve" as meaning that no other reasonable or practicable measures are available to bring about timely attainment.

**Section 220. Enforcement.**

This section broadens and strengthens the Administrator's enforcement authority in several ways. First, the section amends section 203 to conform to new provisions, including new section 212 (relating to clean-fuel vehicles and buses) and amended section 208 (relating to recordkeeping and reporting).

Second, this section further revises section 203 to extend liability for tampering with emission controls to individual vehicle owners and to manufacturers or sellers of devices used to defeat or impair emission controls.

Third, the amendment revises section 205 to raise from \$10,000 (set in 1970) to \$25,000 the maximum civil penalty that can be levied for a violation of certain vehicle requirements. The section also provides that violations of recordkeeping or reporting requirements may be calculated on a per day basis (as in Title I of the Act) to provide adequate deterrence.

Fourth, new authority is provided to the Administrator to assess administrative penalties for violations of sections 203, 211 and 212 that total up to \$200,000 (unless the Administrator and the Attorney General determine that a case involving a larger penalty amount is appropriate for administrative assessment). Any such assessment can only be made after a hearing before the Administrator, and the amount of the penalty is to be based on the weighing of statutorily prescribed factors.

Fifth, the section revises the section 211(d) penalty provision, which currently provides for a mandatory forfeiture of \$10,000 per day for violations of section 211 or fuel regulations issued under that section. It replaces the mandatory forfeiture provision with a provision for a civil penalty of up to \$25,000 per day for each violation plus the economic benefit of noncompliance. In addition, the section clarifies that in the case of violations of fuels standards based on a multi-day averaging period (such as exists in the lead phasedown program), each day during the averaging period is intended to constitute a separate day of violation. It also provides injunctive authority to restrain violations of fuels regulations, as is already available for violations of vehicle and stationary source requirements.

Sixth, the section adds a prohibition against misfueling. Any person, including an individual, may be held liable for civil penalties for introducing leaded gasoline into vehicles which are designed to operate exclusively on unleaded gasoline. This section replaces existing section 211(g) which stipulated that prior to October 1, 1982, small refiners may not be required to reduce the lead content of the gasoline they produce to the same extent as



large refiners. Small refiners have been subject to the same lead content limitations as large refiners, since July 1, 1983, so existing section 211(g) has no continuing effect.

#### **Section 221. Technical Amendments.**

This section revises various sections of the act to delete outdated provisions and to improve the organization of Title II.

For ease of reference, the definitions that are currently found in section 202 are transferred to section 216 which includes other definitions also applicable to section 202.

The section also deletes the provisions making available waivers from the carbon monoxide standard for 1981 and 1982 model year passenger cars and waivers from the oxides of nitrogen standard for 1981 through 1985 model year cars, since those vehicles are generally past their statutory useful life. The exemption from the tampering prohibition available for fuel system modifications on vehicles manufactured before the 1974 model year is deleted since any such vehicles are long past their useful lives.

The provision requiring a study of aircraft pollutants is deleted because the study has been completed. The section also deletes the provision for an annual report to Congress on the development of emissions control systems needed to meet the standards established in section 202(b) by the 1977 Clean Air Act Amendments, since those systems have been developed and the standards met. It similarly deletes the provision for a study on the feasibility of specified high altitude requirements, since that study has been completed. In addition, the requirement that manufacturers build prototype research vehicles demonstrating new emission control technologies is deleted. The section also removes the requirement that the Administrator publish certification test results in the Federal Register.



**Title III--HAZARDOUS AIR POLLUTANTS****Section 301. Technology-Based Standards for Hazardous Air Pollutants.**General

Title III would replace the existing provisions of section 112 of the Clean Air Act.

A major goal of the bill is to attain a basic level of good control of routine multipollutant emissions by significant sources of hazardous air pollutants. The pollutants to be controlled are listed in section 112. The approach the section takes is to mandate maximum achievable control technology (MACT) based on cost and feasibility considerations for listed source categories.

Another major goal is to increase the role of State and local agencies in implementation and enforcement of air toxics controls. This Title and Title IV provide for implementation of national standards by state and local agencies through an operating permit system supported by permit fees. These agencies would also administer an alternative compliance program under which sources could obtain an exemption from national standards by demonstrating that their emissions cause negligible risk to public health, and could obtain certain credits for voluntary emissions reduction.

New Section 112(a)--Definitions**Major Sources:**

A major source is defined as one that emits more than 10 tons per year (tpy) of a single, listed pollutant or 25 tpy of a combination of listed pollutants. For radionuclides, the Administrator will define major sources by regulation, considering radiation dose. For purposes of these definitions, all emissions of listed pollutants are counted from all points within a plant boundary (contiguous property under common ownership). This is to assure that emissions from the facility as a whole are adequately controlled.

EPA has discretion to define major source as one emitting less than 10 tpy or 25 tpy based on the potency or other characteristics such as persistence of an emitted pollutant. Sources could voluntarily reduce their emissions to below the cutoffs to avoid regulation as major sources.

Because there are a variety of methods for measuring and estimating total emissions, EPA would define these methods for regulated source categories. Each source category emission

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standard should address this so that all sources have the same expectation about how their status will be defined for regulatory compliance purposes.

#### Area Sources:

Area sources are small point sources (non-major) that would be regulated by category just as major sources are. They differ in that the basis for regulating them is the adverse effect of their combined emissions rather than the effect of any single source.

#### New Source:

A new source is a stationary source the construction, including reconstruction, of which is commenced after proposal of a standard under subsection (d) or (f). The interpretation of "reconstruction" would be as current rules provide under section 111(a).

#### Electric Utility Steam Generating Unit:

A definition is provided for fossil fuel fired units which will be subject to study and a report to Congress. The study and report concern the hazards that may remain after Title V controls and whether they should be regulated. Until the report is made and considered, these units are not regulated under this section.

#### Other Terms:

"Stationary Source", "owner or operator", and "existing source" have the meaning the terms currently have under section 111(a).

#### New Section 112(b)--Hazardous Air Pollutant List

The pollutants to be controlled are listed in subsection (b). There are about 191 chemicals and chemical categories.

The Administrator may add or delete a pollutant from the list on the basis of criteria relevant to whether the pollutant is an air pollutant reasonably anticipated to cause certain chronic or acute health effects. The public may petition for additions or deletions. The Administrator must act on such a petition within 18 months of its receipt.

The list is the basis for identifying the source categories to be controlled. The purpose is to identify and regulate source categories according to their emissions of pollutants on the list..

The Administrator is authorized to use any authority available to him to acquire health effects information when information on

health effects is insufficient for a determination on listing a pollutant.

#### New Section 112(c)--Source Category List

Sources are to be regulated by category. The categories would be made up of sources that are alike in terms of their commercial product and their operational process. Categories could reflect product groupings such as tire manufacturing or butadiene-styrene rubber production, or service groupings, such as dry cleaning, degreasing, or tank farms. Sources are brought into a category by commonality of product, process, or service. The Agency is authorized to subdivide categories into subcategories or smaller units, based on important factors such as size, process, emissions or other circumstances resulting in sources within a category being dissimilar or not amenable to similar controls.

A list of source categories for which emission standards will be considered will be published within 12 months of enactment. This list will be revised periodically in response to comments and new information. The Agency will hold the list open for comment permanently as a continuing agenda.

The list will contain categories and subcategories of major sources of listed pollutants. It will also contain categories and subcategories of area sources designated as warranting regulation because of their aggregate emissions or potential aggregate emissions.

The Administrator may decide not to list a source category or subcategory because its emissions are already adequately controlled under the Clean Air Act or any other Federal statute or regulation. On the other hand, he may list a category or subcategory previously regulated under section 112. The Administrator may withdraw a category or subcategory from the list if the sources present a negligible risk to public health. For instance, if all sources covered would be able to demonstrate, under procedures of section 112(g), that risks associated with their emissions are negligible, it may be unnecessary to promulgate an emissions standard for them.

#### New Section 112(d)--Maximum Achievable Control Technology Emission Standards (MACT)

The emission standards promulgated for listed source categories would be performance or work practice standards requiring the maximum achievable degree of reduction in emissions by major sources (and designated area sources). The reduction strategies that may be considered include measures to: reduce volume through process change or substitution of material; enclose systems to reduce or eliminate emissions; collect, capture, or treat emissions; utilize work practices that control emissions; or require facility operator training or certification. Combinations



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of the above may be required.

For a new source standard, MACT will be at least as stringent as the best emissions control achieved in practice by a similar source. For an existing source standard, MACT will be at least as stringent as emissions control typical of the best performing similar sources. MACT for area sources may require use of generally available control technologies, if the Administrator elects this level of control. Standards for radionuclides shall be set based on radiation dose.

The considerations for determining what the maximum achievable degree of reduction is for a source category include cost and feasibility of control, other air quality related health and environmental impacts, and energy requirements. Any relevant measure of cost may be considered in deciding what is achievable, including comparisons of the emissions reduction and the cost of the reduction, and whether the controls are affordable for the sources as a group. In order to efficiently issue standards by the required schedule, the Agency may use a system of generic technical standards. These generic standards would cover the kinds of controls that are common to many source categories.

New sources would be required to be in compliance with a MACT standard upon its effective date. Existing sources would be required to be in compliance on a date required by the Administrator within three years of the effective date.

#### New Section 112(e)--Schedule for Standards

The Agency is directed to promulgate regulations for 1/2 of the initially-listed source categories. The source categories to be regulated that are in the remaining 1/2 of the initial list will be designated within 7 years of enactment, with promulgation to come in two stages. The required schedule for standards will be:

First 1/2 of the initial list:

- o 10 source categories within 2 years of enactment.
- o 25% of initially-listed categories within 4 years of enactment.
- o 50% of initially-listed categories within 7 years of enactment.

Second 1/2 of the initial list:

- o All designated, initially-listed source categories within 10 years of enactment.
- Priority of Source Categories For Regulation

The relative priority of the source categories to be regulated mandatorily within 7 years of enactment are to be determined by considering several factors:

1. Quantity and location of emissions.
2. Known or anticipated adverse health effects.
3. Efficiency of grouping categories or subcategories by pollutants emitted or process or technology used.

The administrative efficiency of regulating similar categories at the same time would be taken into account.

#### New Section 112(f)--Unreasonable Risk Evaluation

Within 7 years after promulgation of a MACT standard, the Administrator will evaluate the risks to the public health remaining after application of the standard.

This evaluation will rely on data maintained about the actual emissions reduction achieved under the MACT standard. The up to 7-year post-promulgation period for performing the evaluation allows time for compliance to occur (up to 5 years for existing sources, if there is a 2-year extension under 112(g)), plus time to measure performance after compliance, and perform the evaluation analysis.

If the Administrator finds that residual risk from a source category or portion thereof presents an unreasonable risk of adverse effects on public health, he is directed to promulgate an additional standard within 2 years of the risk evaluation. The standard would require an additional emissions reduction to protect the public health from the unreasonable risk.

A source that is new after the date of proposal of a standard addressing residual risk must be in compliance with the final standard when it is effective. An existing source must be in compliance on a date no later than 6 years after its effective date as the Administrator requires.

#### New Section 112(g)--Alternative Emissions Limitations

A State with a program approved under Title IV may issue a permit that authorizes a major source to comply with emissions limitations in lieu of standards under this section if the source demonstrates that complying with these alternative limitations, results in emissions which present a negligible risk to public health.

The Administrator must publish rules within 2 years of enactment establishing criteria for this demonstration. In addition the Administrator must publish guidance and information

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on methods for assessing risk and evaluating evidence submitted in support of a demonstration.

A state with an approved program may also authorize alternative limitations in two other cases. The first is when any existing source shows that it has voluntarily achieved a 90% emissions reduction of organics or 95% of particulates within five years prior to proposal of a standard. The emissions limitations resulting from such voluntary action may be permitted in lieu of those required under a section 112 standard.

The second is when a source has installed controls required under certain other numerated Clean Air Act provisions or has voluntarily achieved control equal to those requirements. The permit may authorize the limitations associated with those controls in lieu of compliance with section 112(d) standards, for a period of five years after the compliance date for the 112(d) standards. Provisions to define "voluntary" and conditions for defining the baseline are described. The Administrator must publish rules to carry out these provisions within two years of enactment.

A state with an approved program may also grant an extension of up to 2 years for compliance by existing sources with a section 112(d) standard when additional time is needed to install controls.

If the State in which a source is located does not have a program approved under Title IV, the Administrator may grant any extensions authorized under this subsection for such source.

#### New Section 112(h)--Pre-construction and Operating Requirements

This subsection conditions construction and operation on compliance with applicable standards.

#### New Section 112(i)--Technical Assistance

Provisions in this subsection cover technical assistance by the Agency for state and local agencies and research by the Agency.

#### New Section 112(j)--Presidential Exemption

For reasons of national security the President may exempt any source(s) from requirements of this section for a renewable period of two years.

#### New Section 112(k)--Savings Provision

This subsection preserves effectiveness of regulations issued under the superceded section 112 language. Regulations under court review on the date of enactment shall be reviewed under the prior language of 112. A standard remanded to the Agency may be considered by the Administrator under terms of either the prior or the amended section.



The subsection states that certain actions are not final agency action for purposes of judicial review.

New Section 112 (1)--Appropriations

This subsection authorizes appropriations to carry out the section.

New Section 112(m)--Electric Utilities

The Administrator is directed to perform an assessment of the hazards to public health which may be associated with emissions listed under this section from certain electric utilities of pollutants after their implementation of emission controls required under Title V of this Act. The Administrator is directed to report the results of this study to the Congress within three years after enactment. The Administrator shall develop and describe in his report to the Congress, alternative control strategies for emissions from affected sources warranting regulation under this section. The Administrator may not regulate such sources under this section unless he finds such regulation appropriate and necessary considering results of the study.

**TITLE IV--PERMITS****Section 401. Permits.**

This section adds a new title IV to the Clean Air Act to establish a permitting program for certain stationary sources.

**New CAA Sec. 401--Definitions**

This section defines the central terms used in this title. These include the terms "affected source", "schedule of compliance", and "permitting authority." Other terms are defined by reference to the section of the Act where they are initially used and defined.

**New CAA Sec. 402--Permit Programs****In General:**

This title requires States or interstate agencies to submit to the Administrator comprehensive permit programs under State law or under interstate compacts for regulating stationary sources that are subject to one or more of the regulatory programs under the Act: State implementation plan (SIP) requirements, new source performance standards, emission standards for hazardous air pollutants, PSD and nonattainment new source review, and acid deposition controls under the new title V. This comprehensive program is patterned generally after the program that now applies to point sources of water pollution under the Clean Water Act. EPA must issue regulations governing the programs, including requirements for adequate State statutory authority and permit fees. The permit fees are required to recoup all direct and indirect costs of administering the air pollution control program related to the permitted sources, including the portion of such costs as emission and ambient monitoring, modelling, and preparation of generally applicable regulations and attainment demonstrations that may be attributed to the permitted sources. A State is required to submit a permit program to the Administrator not later than three years after enactment. If the State fails to submit a completely approvable program, the Administrator has discretionary authority to apply the sanctions that generally apply to failure to submit SIPs, or to promulgate a complete or partial federal permit program for the State. The Administrator may also withdraw approval, or apply sanctions, if a State fails to implement its program.

**Partial Programs:**

The Administrator may approve partial permit programs covering one of three specific portions of a complete program. Any such partial program must apply all the requirements of that portion.

For example, in order to obtain approval of a partial program to control acid deposition, a State would have to show that it had authority to apply to the affected sources all the requirements of title V, but not that it had authority also to apply all requirements of title I. Similar requirements apply to partial approval of programs applying emission standards under section 112, or programs applying title I requirements other than section 112. Approval of a partial program would not relieve a State of the requirement to submit a fully approvable program.

#### Interim Approval:

Interim approval, for a period not to exceed two years, would be available for programs that substantially meet the requirements of title IV.

#### New CAA Sec. 403--Permit Applications

Sources required to obtain a permit must submit a permit application and compliance plan within six months after approval of a permit program that applies to them, or six months after they become subject to a permit requirement as a result of promulgation of applicable standards. The State may set an earlier deadline for applications. Submission of a timely and complete permit application protects a source from enforcement for failure to have a permit required under the applicable program until a permit is issued to the source. Permit applications, permits, and monitoring or compliance reports, must be made available to the public, except that if a permit applicant is required to submit confidential business information entitled to protection as a trade secret, the applicant may submit the information in a confidential supplement to its application, which will be handled under section 114 of the Act.

#### New CAA Sec. 404--Permit Requirements and Conditions

States with fully approved programs must issue permits that apply, and ensure compliance with, all applicable requirements. Permits must also set forth inspection, entry, monitoring, and reporting requirements to assure compliance with regulatory requirements. The Administrator may prescribe methods for determining compliance and for monitoring and analysis of pollutants. The methods would apply to determining compliance generally under the Act, and in particular, to permits and permit applications. Compliance with a permit constitutes compliance with the regulatory requirements of the Act that are covered by the permit program or partial program, except for standards under section 112 based on eliminating an unreasonable risk, and requirements under Title IV that the Administrator identifies by rule.

#### General Permits:



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The permitting authority may issue general permits for numerous similar sources within a geographical area. This provision is designed to reduce the administrative burden of permitting large numbers of similar sources, which may be small individually, but which in the aggregate require control (for example, as area sources regulated under section 112).

**Temporary sources:**

Some sources requiring permits do not operate at fixed locations. These might include asbestos demolition contractors and certain asphalt plants. This provision allows the permittee to receive a permit allowing operations, after notification to the permitting authority, at numerous fixed locations without requiring a new permit at each site. Any such permit must assure compliance at all locations of operation with all applicable requirements of the Act, including visibility protection and PSD requirements.

**Renewal permit conditions:**

In general, renewal permits are required to be at least as stringent as the permits they replace. For example, a source that installed reasonably available control technology (RACT) based controls would not be permitted to remove them, even if EPA subsequently issued guidance suggesting that it would accept as a general matter a lower level of control. There are several exceptions to this general rule. For example, offsets or emissions trades may be used to relax controls in permits; mistakes or new information may justify a less stringent limit; or the permittee may have installed controls that were anticipated to meet the earlier limit, but due to circumstances beyond its control failed to meet those limits. These exceptions are available only to sources that demonstrate compliance with all applicable regulatory requirements in effect at the time of permit reissuance, including ambient standards, progress requirements, and applicable new source and hazardous air pollutant standards.

New CAA Sec. 405--Notification to Administrator  
and Contiguous States

Except where the Administrator waives review for a permit or class of permits, the permitting State or interstate agency must transmit to the Administrator a copy of each permit proposed to be issued, and must notify each contiguous State of each application for a permit and each proposed action on the application. The Administrator may object to a permit within 90 days after receiving notification if it fails to meet Clean Air Act requirements, including the requirement that emissions from a source in one State not interfere with attainment of standards in another. If the permitting authority fails to respond adequately to the objection, the Administrator may issue or deny the permit. The Administrator

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may also require a State to modify a permit for cause.

New CAA Sec. 406--Relation to Other Authority

This section clarifies that State authority to establish additional permitting requirements not inconsistent with this Act is preserved. It also specifies that title IV is not intended to authorize any State or the Administrator to modify or revoke any requirement of title V, including allowances granted under that title.

**TITLE V--ACID DEPOSITION DEPOSITION CONTROL****Section 501. Acid Deposition Control.**

This section adds a new title V--Acid Deposition Control--to the Clean Air Act, consisting of new sections 501 through 515.

**New CAA Sec. 501--Findings and Purposes**

This new section contains the findings and purposes of the acid deposition control program. In summary the findings include that emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>) are being transformed into acid deposition that represents a threat to natural resources, ecosystems, materials, visibility and health. Given that non-utility emissions of sulfur dioxide will have declined by over 1 million tons between 1980 and 2000, the purpose of this title is to reduce utility emissions of sulfur dioxide sufficiently to achieve a 10 million ton reduction relative to 1980 levels and to reduce NO<sub>x</sub> emissions by 2 million tons from expected levels. It is also the purpose of title V to encourage energy conservation and pollution prevention as a long range strategy for reducing air pollution and other adverse impacts of energy production and use. Emission reductions will be achieved in two phases -- phase one reductions are required after December 31, 1995 and phase two reductions are required after December 31, 2000.

**New CAA Sec. 502--Definitions**

This new section contains the definitions and meanings of key terms used in this title.

**New CAA Sec. 503--Allowance Program for Existing Units**

This new section describes the emission allowance system proposed as the key implementation vehicle for Title V. To ensure that the emissions reductions contemplated by this Title are met, a limited number of emission allowances will be issued to affected sources for each year based on a statutorily prescribed formula. An allowance is a federal authorization to emit a ton of sulfur dioxide or nitrogen oxides in a calendar year. Holders of these allowances are prohibited from emitting SO<sub>2</sub> or NO<sub>x</sub> unless they hold an equivalent number of allowances. In phase I, allowances can be transferred among affected sources within a State and within an interstate utility company. In phase II, allowances may be transferred among affected sources within two multistate regions of the country. Allowances may be transferred and banked according to regulations in both phases. Nitrogen oxide allowances may be traded for sulfur dioxide allowances, and vice versa, at an exchange rate of 1.5 pounds of nitrogen oxides for 1 pound of sulfur dioxide. When existing sources shutdown, they are allowed



to keep (and transfer) their allowances. New sources will be required to obtain allowances. EPA will track all emission allowances and transfers.

New CAA Sec. 504--First Phase Sulfur Dioxide  
Emission Reduction Program

This new section sets forth the first phase SO<sub>2</sub> reduction program. All existing fossil fuel-fired steam electric generating units larger than 100 MWe are required to limit their emissions after December 31, 1995 to the tonnage equivalent of a 2.5 lbs./mmBtu emission rate for SO<sub>2</sub> on an annual average basis. (The tonnage equivalent is determined by multiplying the 2.5 lb/mmBtu rate times the annual average fuel consumption for 1985-1987.)

The phase one reduction requirements may be reassigned to one or more alternative fossil fuel-fired units upon application during the first phase by the owner or operator of the affected units. The Governor of the State where the units are located may prohibit the use of out-of-State coal.

New CAA Sec. 505--Second Phase Sulfur Dioxide  
Emission Reduction Program

This section sets forth the second phase SO<sub>2</sub> emission reduction program. Fossil fuel-fired steam-electric generating units larger than 75 MWe with emission rates greater than 1.2 lbs/mmBtu will receive SO<sub>2</sub> allowances equal to the product of 1.2 lb/mmBtu multiplied by the unit's historic (1985-1987) annual average fuel consumption. Through the trading program established by section 503, allowances can be transferred among affected sources. Units which are currently limited to an emission rate of less than 1.2 lb/mmBtu and generating units smaller than 75 MWe will be required to emit at a rate no higher than their actual 1985 emission rate.

New CAA Sec. 506--Nitrogen Oxides Emission Reduction Program

This new section contains the reduction requirements for NO<sub>x</sub> sources. By rule, the Administrator will establish emission standards for existing coal-fired steam-electric generating units that are sufficient to reduce NO<sub>x</sub> emissions by 2 million tons below projected emissions for calendar year 2000.

New CAA Sec. 507--Permits and Compliance Plans

This new section establishes the permits and planning requirements for the acid deposition control program. Sources subject to title V are required to apply for first and second phase permits. These will contain, among other things, the schedule of compliance the source will follow to meet the requirements of this program and, if applicable, the number of allowances initially

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allocated to the source. Permit applications for phase 1 are required no later than 27 months after enactment; phase 2 applications by January 1, 1995. Applicants may submit revisions to their permit applications and compliance plans. Each permit will contain the key enforceable provision that each source is prohibited from emitting sulfur dioxide or nitrogen oxides in excess of the allowances that it holds or rates prescribed for each of those pollutants.

#### New CAA Sec. 508--Repowered Sources

This new section establishes the availability of a non-renewable three year extension of the stage two compliance date (i.e., until December 31, 2003) for any unit being repowered with clean coal technologies specified in this title. Such repowered sources would be required to meet a hybrid standard based on the rated capacity of the boiler prior to repowering and the new capacity of the boiler once repowered. Such sources would also be exempt from meeting new source performance standards and would be subject to streamlined new source review procedures if their potential emissions are expected to increase.

#### New CAA Sec. 509--Election for Additional Sources

This new section establishes the terms under which existing utility boilers smaller than 75MWe or with emission rates lower than 1.2 lbs/mmBtu and non-utility sources (e.g., industrial boilers) may elect to participate in the emission allowance transfer system.

#### New CAA Sec. 510--Excess Emissions

This new section establishes that the owners and operators of sources that emit in excess of their allowances are liable for the payment of an excess emission fee of \$2000/excess ton. (This fee is in addition to any penalty liability under other sections of the Act.) The fee is non-discretionary. In addition, units that emitted in excess of their allowances must offset the excess emissions by an equal tonnage amount in the year following the excess.

#### New CAA Sec. 511--Monitoring, Reporting and Recordkeeping Requirements

This new section establishes the Title V monitoring, reporting, and record keeping requirements. All affected sources will be required to install and operate continuous emissions monitors (CEM) for SO<sub>2</sub>, NO<sub>x</sub> and opacity or employ a comparably reliable method for continuously monitoring emissions and to keep records and provide reports of emissions. This requirement is necessary for verifying actual emissions performance for purposes of ascertaining compliance, the availability of allowances for

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trade, and the amount of any excess emission fee and offset liability.

New CAA Sec. 512--Compliance with Other Provisions

This new section establishes that compliance with Title V does not exempt or exclude sources from their requirements under an other part of the Act, except that affected sources are exempt from stack height requirements under section 123.

New CAA Sec. 513--Enforcement

This new section establishes the enforceability of the various provisions of the Title.

New CAA Sec. 514--Report to Congress

This new section requires the Administrator to report to Congress on the environmental effects of the emission reductions required under this Title.

New CAA Sec. 515--Clean Coal Technology Regulatory Incentives

This new section provides regulatory incentives to encourage the use of clean coal technologies. The Federal Energy Regulatory Commission (FERC) is required to adopt regulations for a 5-year demonstration program that would include establishment of an incentive rate of return and a 10 to 20 year amortization period for innovative emission control technologies. FERC is also required to develop a process to negotiate a prudent level of investment for clean coal and other innovative technology projects. This section also exempts temporary and permanent clean coal technology demonstration projects from new source review requirements under section 111 and Parts C and D of the Clean Air Act so long as the demonstration project does not increase the original facility's potential to emit for any pollutant regulated under the Act. Finally, States are encouraged to provide additional utility regulatory incentives for the promotion of clean coal technologies.



## TITLE VI--PROVISIONS RELATING TO ENFORCEMENT

## Section 601. Section 113 Enforcement

This section amends existing Clean Air Act (CAA) section 113 to accomplish several important goals:

Clarification of 30-day Notice Provisions

Section 113 is amended to clarify and confirm that the 30-day notice period is not a shield to protect sources. Subsection 113(a)(1) is amended to clarify and confirm that the 30-day notice provision is intended solely to allow the states an opportunity to exercise their civil enforcement prerogatives before Federal enforcement action is initiated. Subsection 113(b)(2) is likewise amended to clarify and confirm that a source is liable for penalties for all violations of a SIP, even if the violations predate the Notice of Violation. Amendments to subsection 113(a) clarify and confirm that the 30-day notice provision for civil and administrative SIP actions is inapplicable to criminal actions. Furthermore, the amendment clarifies and confirms that, as with all other environmental statutes, the option of proceeding criminally is not excluded by the bringing of an administrative or civil action.

Expanded Administrative Compliance Order Authority

Subsection 113(a)(4) is amended to authorize EPA to issue administrative orders with non-renewable compliance schedules of up to 12 months' duration. This provides EPA with the ability to expeditiously resolve violations administratively, while still protecting against extensions of applicable compliance deadlines. EPA will retain authority to pursue civil penalty actions, contractor listing and other appropriate remedies until compliance is achieved, and the issuance of an order will not insulate a source from criminal prosecution.

Ensuring Full Enforceability of Stationary  
Source Statutory Requirements

Section 113 is amended to ensure that administrative, civil judicial, and criminal sanctions may be imposed for any violation of any requirement of titles I, III, IV or V of the Act, including any rule, order, waiver, permit, plan or fee requirement promulgated or approved under the Act. This amendment ensures enforceability of new requirements proposed elsewhere in the Administration's bill.

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Enhanced Criminal Sanctions Authority

Subsection 113(c), which currently authorizes only misdemeanor-level criminal sanctions for violations of the Act, is amended to authorize felony-level sanctions for certain knowing violations and misdemeanor-level sanctions for certain negligent violations.

The paragraphs in subsection 113(c) are also reordered and recodified). New paragraphs 113(c)(1) and (c)(2) authorize misdemeanor-level criminal sanctions against anyone who knowingly fails to pay a fee owed the government or who negligently violates amended section 112 and thereby places another person in imminent danger of death or serious bodily injury. New paragraph 113(c)(5) authorizes felony-level sanctions against anyone who knowingly violates amended section 112 or releases of certain specified extremely hazardous substances and toxic chemicals and who knows at the time that another person is thereby placed in imminent danger of death or serious bodily injury.

Existing CAA paragraph 113(c)(2) (new paragraph 113(c)(4)), which establishes criminal liability for knowing false statements and falsification or tampering with monitoring devices, is amended to include liability for: knowing failures to act; knowing omissions of material information; the knowing destruction, alteration, concealment, or failure to maintain documents necessary for CAA compliance; and knowing failures to install necessary monitoring devices. It also increases the maximum term of imprisonment for this category of violation from six months to two years, and the \$10,000 penalty cap with a reference to title 18 U.S.C., which provides for maximum fines of \$250,000 for individuals and \$500,000 for organizations.

Administrative Penalty Authority

The CAA is amended to authorize the EPA to issue administrative penalty orders. This amendment sets a presumptive cap of \$200,000 on administrative penalties, and provides that EPA and the Department of Justice may agree to increase the penalty limit for certain cases or categories of cases by entering into memoranda of understanding. These agreements would be especially appropriate for categories of cases which routinely involve multiple violations, each of which may have minor penalties but which total more than \$200,000.

The CAA is also amended to authorize EPA to issue "field citations" for minor violations discovered during the course of an inspection and for violations of routine reporting and record-keeping requirements. The particular categories of cases which may be addressed by field citations will be specified by the Administrator, from time to time, through a memorandum of understanding between the Administrator and Attorney General and



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will be promulgated in regulations. Civil penalties assessed in a field citation will not exceed \$5,000 and the payment of a civil penalty assessed pursuant to a field citation shall not be a defense to further enforcement and penalty liability for violations occurring before or after the date of the violation(s) addressed in the citation. Sources against whom field citations are issued may either pay the civil penalty to an EPA official other than the inspector who issued the citation or request an informal hearing as provided for in regulations. The hearing would not be a formal adjudicatory hearing and would not be subject to 5 U.S.C. sections 554 and 556.

Assessment of civil penalties under either of these new administrative penalty authorities are subject to judicial review in the appropriate United States District Court. Assessments are also enforceable by suit brought by the Attorney General in the appropriate U.S. District Court. The provisions for judicial review and collection of penalties are intended to operate like the comparable provisions for administrative penalties in the Clean Water Act, 33 U.S.C. § 1319(g) (8) and (9).

Current subsection 113(d), which allows states and EPA to grant "delayed compliance orders" of SIP requirements past the attainment deadlines, is prospectively repealed. That authority is no longer necessary or appropriate in light of the amendments proposed to subsection 113(a) authorizing 12-month compliance orders, and the revised planning procedures and deadlines proposed in Title I of the Administration Bill. Any delayed compliance orders in effect prior to the repeal of section 113(d) shall, however, remain in effect until expiration or termination as provided therein, and shall not be affected by this amendment.

#### Penalty Assessment Criteria

A new subsection 113(e) clarifies the criteria to be applied in assessing penalties, and clarifies and confirms that the maximum statutory penalty may be assessed for each day of each violation, including each day of a multi-day averaging period.

Subsection 113(e) also clarifies and confirms that once EPA establishes evidence of a violation using a formal test method, EPA can use other credible evidence to prove additional violations, or that a violation has continued. In addition, subsection 113(e) clarifies and confirms that once EPA has made a *prima facie* case that establishes a period of violation, the burden of proving any intervening days of compliance rests with the source. Sources may then rebut this presumption by proving by a preponderance of the evidence that there were intervening days with no violation or that the violation was not continuous in nature.

Finally, new subsection 113(e) explicitly identifies the factors both a court and the Administrator shall consider in determining the amount of any civil penalty assessed under section



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113 or section 304(a)(1) or (3).

Current subsection 113(e), which extended compliance deadlines for certain steel plants up until the end of 1985, is prospectively repealed. That authority is no longer necessary or appropriate in light of the expiration of the deadlines and the very limited number of extensions that were sought by the steel industry.

#### Informant Rewards

Subsection 113(f) authorizes the Administrator to offer rewards of up to \$10,000 to individuals who provide information concerning violations of the Act which lead to criminal convictions or civil or administrative judgments of liability. Funding for rewards would come from general appropriations or from appropriations from the separate fund provided for in section 304 as amended.

#### **Section 602. Reviewability of Administrative Orders.**

This section amends subsection 307(b)(2) of the CAA to clarify and confirm that orders or notices issued by the Administrator under sections 113(a), 167 and 303, administrative subpoenas under section 307(a), and actions under sections 114, 206(c) and 208 of the Act are not final agency action for purposes of judicial review. This section further provides that such orders, notices, subpoenas and actions are not judicially reviewable until an enforcement proceeding is brought under sections 113, 120, 204, 205 or 304 of the Act. This amendment does not alter the provision of subsection 307(b)(2) that precludes challenges in enforcement proceedings to actions that could have been directly reviewed under subsection 307(b)(1). The ability of a violator to contest the validity of an administrative order, notice, subpoena, or investigatory action is preserved as defendants will have the opportunity to challenge the same in the district court enforcement action.

#### **Section 603. Compliance Certification**

This amendment clarifies and confirms that EPA has the authority under subsection 114(a) to require enhanced monitoring and submission of compliance certifications, and to require such monitoring and compliance certifications by major stationary sources.

#### **Section 604. Contractor Inspections.**

This section amends CAA section 114 to clarify and confirm that, as in other environmental statutes, EPA has discretionary

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authority to use contractors to conduct CAA inspections. The section includes a reference to 18 U.S.C. § 1905 providing that contractors are subject to that provision's criminal sanctions for illegal disclosures.

#### **Section 605. Administrative Enforcement Subpoenas**

This section amends CAA subsection 307(a) to give EPA express authority to issue administrative subpoenas in support of its enforcement activities under the Act. This expands existing authority to issue subpoenas in support of rulemaking activities. This authority corresponds to the increased administrative enforcement mechanisms proposed in these amendments, and conforms the CAA to other environmental statutes.

#### **Section 606. Enforcement of Administrative Orders.**

Current subsection 303(b) provides for civil penalties of \$5,000 for each day of "willful" violation of an emergency order issued by the Administrator under subsection 303(a), and no criminal penalties. This amendment deletes subsection 303(b) and makes section 303 orders enforceable under the Act's other enforcement authorities, e.g. sections 113, 120, 304(a)(1), and 306. The maximum civil penalty for an emergency order violation is thereby raised to \$25,000 per day of violation and the requirement of proving "willfulness" for civil actions is eliminated. In addition, criminal sanctions are made available under subsection 113(c) for knowing violations of emergency orders and for knowing endangerment.

#### **Section 607. Scope of Emergency Powers.**

Section 303 is also amended to authorize injunctive actions and emergency orders for episodes threatening to the environment, in addition to its current authority to safeguard human health. In addition, both the 24- or 48-hour time limitations on the duration of emergency orders, and the prohibition against judicial enforcement of emergency orders unless state and local authorities have not acted, are eliminated. This will allow the Agency to effectively order necessary emergency action and to enforce any order issued without delay, and conforms the CAA to other environmental laws. This amendment preserves the existing section 303 requirement that the Administrator consult with state and local authorities before taking any action.

#### **Section 608. Contractor Listings.**

Section 306 of the Act is amended to enable the Administrator to exclude from Federal government contracts, grants, or loans any facility owned or operated by a person criminally convicted under

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subsection 113(c). This expands current authority, which limits the contractor listing action to the particular violating facility. The Administrator is given discretion to limit the scope of the exclusion to the particular violating facility or to a subdivision of the legal entity which owns or operates the facility, as appropriate.

The mandatory listing requirement of subsection 306(a) is expanded to include any violation criminally actionable under subsection 113(c) of the Act, as well as mobile source violations under sections 205(d), 211(d)(3) and 212(e). The amendment also clarifies and confirms that following a conviction under paragraph 113(c)(2) (*i.e.*, false statements, omissions, etc.), not only must the false statement be corrected, but additionally any substantive violation underlying the false statement (*e.g.*, a source in violation of the NSPS for which the defendant falsely submitted complying monitoring information) must be certified as in actual substantive compliance by the Administrator in order for the defendant to be removed from the list.

This section is also ensures that the new criminal sanctions for knowing endangerment, negligent violations, and knowing omissions and failures to act result in mandatory listing under section 306.

#### Section 609. Judicial Review Pending Reconsideration of Regulation.

This amendment clarifies and confirms that under subsection 307(b), as under subsection 307(d)(7)(B), a petition for agency reconsideration does not render agency action non-final for purposes of judicial review and does not toll the 60-day time period for seeking judicial review.

#### Section 610. Citizen Suits.

Section 304 is amended to authorize the assessment of civil penalties in citizen suit actions as in the Clean Water Act and the Resource Conservation and Recovery Act. The section provides further for the deposit of citizen suit penalties into a special fund in the U.S. Treasury. The monies would be available for appropriation to EPA for use in air compliance and enforcement activities.

In addition, section 304 is amended to require that copies of complaints and proposed settlements in citizen suit cases be served on the Administrator and the Attorney General, as in the Clean Water Act. The amendment provides specifically that no citizen suit settlement can be entered unless the government is given 45 days notice and an opportunity to comment or intervene in the



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action. This amendment allows the government to substitute itself as plaintiff with respect to a citizen claim for civil penalties, and clarifies and confirms that the federal government is not bound by a citizen enforcement action to which it is not a party.

**Section 611. Enhanced Implementation and Enforcement of New Source Review Requirements.**

This section clarifies and confirms that operation, as well as construction and modification, of major sources not meeting new source review requirements is prohibited, and that section 167 administrative orders regarding new sources can be directly enforced both civilly and criminally under section 113.

**Section 612. Movable Stationary Sources.**

The definition in section 302 of the Act of the term "stationary source" is amended to clarify and confirm that emissions from movable stationary sources such as mobile asphalt batch mixing trailers and ships at port are subject to the Act's stationary source requirements.

**Section 613. Enforcement of New Titles of the Act.**

This provision expands availability of the section 120 remedy allowing recovery of the economic benefit of noncompliance to cover violations of the new proposed Title IV governing permit programs and Title V regarding acid precipitation.

**Title VII--MISCELLANEOUS PROVISIONS****Section 701. Grants for Support of Air Pollution Planning and Control Programs.**

Amends Sec. 105 to allow the Administrator to make grants to air pollution control agencies in amounts up to three-fifths of the cost of implementation. Agencies contributing less than the required two-fifths minimum have three years to attain this minimum funding level.

Requires that, in most cases, no air pollution control agency shall receive a grant during any fiscal year if its current expenditures of non-Federal funds for recurrent expenditures for air pollution control programs is less than expenditures in the preceding year. The Administrator shall also revise the current regulations defining applicable nonrecurrent and recurrent expenditures.

**Section 702. Annual Report Repeal**

Repeals section 313 of the Clean Air Act.

**Section 703. NOx and VOC Study.**

Within two years of enactment, EPA, in conjunction with the National Academy of Sciences, shall study and report to Congress, the role of ozone precursors in tropospheric ozone formation and control and specifically examine the roles of NOX and VOC emission reductions.

**Section 704. Review and Revision of Criteria and Standards.**

Amends sections 108 and 109 by revising the procedures for periodic review and revision of national ambient air quality standards and the air quality criteria on which they are based. In general, it requires the Administrator to determine every five years whether revision of existing standards is appropriate and, if so, to complete appropriate revisions within three years. The section also provides for issuance of criteria and promulgation of standards for pollutants newly listed under section 108 and makes technical and conforming changes.

**Section 705. Air Pollutant Release Investigation Board.**

Establishes within EPA an Air Pollutant Release Investigation

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Board for the purpose of investigating potentially dangerous accidental releases of air pollutants. The Board would consist of the Secretary of Labor or his designate and four members appointed and convened by the Administrator following a major life-threatening release of an air pollutant or pollutants to investigate the release and report to Congress.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**DRAFT**

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

SUBJECT: Legal Opinion on Definition of "Source" for Early  
Reductions Program (Clean Air Act Sec. 112(i)(5)).

FROM: E. Donald Elliott,  
Assistant Administrator  
and General Counsel

TO: William Rosenberg,  
Assistant Administrator  
Office of Air and Radiation

This is in response to your request for a legal opinion concerning the questions that have been raised recently regarding the extent of the Agency's legal discretion to define the term "source" broadly for purposes of the Early Reduction Program under Sec. 112(i)(5) of the Clean Air Act. I have concluded that "bubbling" of unrelated process units is permissible, but that giving individual polluters discretion to define as "the source" arbitrary pools of emissions consisting of less than a piece of equipment, or some other unit that EPA considers a "discrete but integrated operation which pollutes," is not.

1. "Bubbling" Unrelated Pieces of Process Equipment.

The obvious starting point for any analysis of the term "source" under the Clean Air Act is that EPA has very broad legal discretion to adopt a definition which, in the Agency's reasonable judgment, will advance the policies of the Act. Chevron v. NRDC, 467 U.S. 837 (1984). After careful consideration, I have concluded that in one important respect, the outer limits of the Agency's legal discretion are somewhat broader than the current staff draft (4-14-91 version) of the preamble. On reflection, I believe that we could defensibly allow two or more process units to be grouped together, or "bubbled," for purposes of the Early Reduction Program without regard to whether these groups are "logically or functionally related." Thus, for example, the grouping which is shown in Figure 9 of the current draft as "unacceptable" could be

considered acceptable, if the Agency were willing to exercise its discretionary legal authority to allow one process unit or piece



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of equipment to be grouped together or "bubbled" with another (or more than one other) process units or pieces of equipment.

The conclusion that EPA may legally group together, or "bubble," sources without regard to whether each individual source is "functionally-related or geographically contiguous" to the others is suggested not only by the result in Chevron itself, but is also clearly implicit in the definition of "major source" in Sec. 112(a)(1). This definition of "major source" for purposes of the Title III air toxics program states that "any ... group of stationary sources" may be considered as a single major "source," provided that they are "located within a contiguous area and under common control."<sup>1</sup> Thus, it follows that EPA may consider unrelated process units or pieces of equipment as a single "source" for purposes of the Early Reductions Program,<sup>2</sup> provided that they are all under common control and are located "within a contiguous area," such as a common plant-site; contrary to the position taken in the current draft of the preamble, groups of individual sources such as pieces of equipment, process units, tanks or buildings do not have to be located next to one another or to be functionally-related in order to be "bubbled," provided that they are all located within the same geographic area which is under common control, such as a plant-site.

The conclusion that bubbling between unrelated process units is permissible for purposes of the Early Reduction Program is

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<sup>1</sup> It is not beyond the limits of legal ingenuity to argue that something can be a "major source" without being a "source." This tortured reading is implausible, however. To the extent that Congress thought about the issue at all after Chevron, the language of Sec 112(a)(2) clearly suggests that Congress contemplated that a group of unrelated sources in a common area under common control could be considered a single source.

It is irrelevant for present purposes that in applying the limits for determining whether a source is "major," emissions from all of the collocated sources within common control must be considered. The important point for present purposes is that Congress clearly contemplated that a "group" of sources could be grouped together and considered as a single "source."

<sup>2</sup> My conclusions are limited to the context of the Early Reductions Program for several reasons. In particular, Congress specifically contemplated netting one hazardous pollutant against another for purposes of this program; Congress indicated in the legislative history that it wishes EPA to encourage participation in this program to obtain early reductions; and the statutory requirement for 90% reductions raises quite different factual and policy questions than might be applicable elsewhere.



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confirmed not only by the statutory language and caselaw discussed above, but also by the statutory policies and legislative history of the Early Reductions Program. Sec 112(i)(5)(E) clearly indicates that Congress contemplated offsetting early reductions of one hazardous air pollutant against reductions of other hazardous air pollutants for purposes of the Early Reductions Program, except for a separate category of "high risk" pollutants such as dioxins and furans which are to be treated differently. In addition, the legislative history indicates that Congress wanted EPA to encourage participation in the program. See H.R. Rep. No. 101-490, 101st Cong., 2d Sess. 332 (May 17, 1990) ("In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.")

## 2. Allowing Polluters to Select "Any Collection of Emission Points" as the "Source."

Some have suggested that EPA should go beyond allowing "bubbling" among recognized pieces of equipment and process units to delegate to polluters unlimited discretion to select for themselves "any collection of emission points" that they choose to consider on an ad hoc basis as a "source" solely for purposes of satisfying the statutory requirement for 90% reductions, which Congress imposed as a condition for obtaining a six year extension of the deadline to install Maximum Achievable Control Technology ("MACT"). Sec. 112(i)(5)(A).

This proposal (also called "the random pooling approach" goes far beyond "bubbling" among recognizable pieces of process equipment. It would give polluters a free hand to gerrymander emission points together into arbitrary and unique combinations that would never conceivably have been considered by EPA or Congress as "the source." For example, rather than being required to obtain a 90% reduction in emissions from an identifiable piece of process machinery as a whole in order to qualify for the six year MACT delay, a polluter could pick and choose various emission points on the unit and claim the benefit of a six-year MACT extension by making a 90% reduction from them, even though the reduction from the unit as a whole was only 50% (or even 20%).

Giving individual polluters unlimited discretion to define the statutory terms "an existing source" and "the source" in whatever way they choose is difficult to square with the language of the statute, which defines a stationary source as a "building, structure, facility or installation",<sup>3</sup> not whatever portions of a

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<sup>3</sup> Clean Air Act Sec. 111(a)(3). See also Sec. 112(a)(3) (incorporating definition for purposes of Title III).



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building, structure, facility or installation a polluter happens to choose to control. None of the proponents of allowing polluters to designate whatever portions of a facility they like as "the source" has mounted an argument that their approach is consistent with the statutory wording. Rather, they attempt to dismiss the statutory language by pointing to Chevron v. NRDC, 467 U.S. 837 (1984), for the proposition that EPA has very broad discretion to define the term "source" in order to achieve the policies of the Act.

Of course, no one questions EPA's broad discretion to construe the statute under Chevron.<sup>4</sup> But the existence of broad discretion under Chevron for EPA to construe the statute does not resolve the issue presented here for several reasons. First, I understand that EPA has serious objections on a policy level to adopting the random pooling approach, including enforceability and trivializing the Early Reductions Program. (I will leave it to the Office of Air and Radiation to elaborate on the policy issues.) Second, Chevron does not make the language of a statute irrelevant; on the contrary, as Justice Scalia has frequently reminded us in recent decisions, the ordinary meaning of the wording of a statute is the surest guide to Congressional intent.<sup>5</sup> Third, the extent of EPA's discretion under Chevron is not at issue, since the proposal does not contemplate that EPA, but rather that individual polluters, would choose how to define the statutory term "source." (Of course, if EPA were itself to define "source" for early reduction purposes to include individual emission points, then any such points could be aggregated as outlined in Part 1.) Fourth, allowing polluters rather than EPA to opt for the random pooling approach is inconsistent with the discussion of the term "source" in the Chevron case itself. Finally, in my judgment, allowing individual polluters to pool emission points at random would not be judged by a court as consistent with the "policies of the Act" relating to the Early Reductions Program, a point which is confirmed by the legislative history.

a. EPA's Discretion Under Chevron Is Not the Issue.

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<sup>4</sup> Schuck & Elliott, To the Chevron Station: An Empirical Study of Federal Administrative Law, 1990 DUKE L. J. 984 (1991); Starr, Judicial Review in the Post-Chevron Era, 3 YALE J. REG. 283 (1986).

<sup>5</sup> Green v. Bock Laundry Mach. Co., 109 S.Ct. 1981, (1989) (Scalia, J., concurring).



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In an attempt to justify allowing polluters to select whatever collection of emission points they choose as the "source," much emphasis has been placed on EPA's broad discretion to interpret statutory terms under Chevron. This reliance is beside the point. It might well be that a particular collection of emission points selected by a polluter could be justified if it had been selected by EPA, applied even-handedly and rationalized in terms of the statutory policies.<sup>6</sup> But the proposal to allow polluters to pick whatever emission points they choose on an ad hoc basis as "the source" for purposes of making the 90% reductions required to qualify<sup>7</sup> does not contemplate that EPA would make any judgment whatsoever concerning whether the particular configuration of emission points selected by the polluter furthers the policies of the Act. Rather, what is proposed is that EPA should make a wholesale delegation of EPA's broad Chevron discretion to define "the source" to individual polluters without any guidance, review, or attempt to connect their choices to the statutory language or purposes.<sup>8</sup>

b. The Proposal Is Inconsistent with the Chevron Decision.

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<sup>6</sup> Much has been made of EPA's prior decision to regulate "equipment leaks" as part of its SOCOMI NSPS standards. However, unlike the "any collection of emission points" approach, EPA did not allow polluters to choose to cover some equipment leaks but ignore others. Rather, EPA defined a category of sources which applied consistently and even-handedly.

<sup>7</sup> Of course, nothing in the statute in any way precludes a polluter from reducing its emissions of pollution from any emission point at any time. The issue here is whether an applicant can qualify for the statutory benefit of a six year delay in the effective date of MACT standards by making reductions on a basis other than that which was contemplated by Congress when it passed the statute.

<sup>8</sup> As a matter of constitutional theory, broad discretion in the Executive branch to interpret statutory terms is acceptable in part because the Chief Executive is accountable to the people (Chevron, 467 U.S. at 865); delegating this broad discretion to interpret statutory terms and policies to private parties raises quite different issues. See United States v. Rock Royal Co-op., 307 U.S. 533, 577 (1939); Carter v. Carter Coal Co., 298 U.S. 238 (1936) (delegation of legislative authority to private parties held impermissible).



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Far from being supported by Chevron, allowing polluters to choose whatever portions of a facility they like as "the source" for purposes of the Early Reduction Program is contrary to the discussion of the meaning of the term "source" in Chevron itself. In that case, the Supreme Court stated that the statutory language "building, structure, facility or installation" was not to be interpreted literally, but constituted a delegation of discretion to EPA to designate any "discrete, but integrated, operation which pollutes" to further the policies of the Act. Chevron v. NRDC, 467 U.S. at 861 (emphasis supplied). Presumably, Congress was aware of the Chevron decision, construing a "discrete, but integrated, operation which pollutes" as the scope of EPA's discretion to define "source," when it enacted Title III in 1990.

The proposal would, however, authorize polluters to choose to cover significantly less than the "discrete, but integrated, operation" as contemplated by the Chevron court and all of EPA's prior constructions of the term. The crucial distinction between the random pooling of emission points approach (which I believe is illegal) and the bubbling of unrelated process units approach (which I agree is permissible, see section 1 supra) is that the former would authorize individual polluters to consider less than a "discrete, but integrated, operation which pollutes" as determined by EPA. Arbitrary sub-parts of "discrete but integrated operations" could be designated and treated as nonetheless satisfying the statutory requirement that polluters must achieve a 90% reduction from an "existing source" in order to qualify for the benefits of the Early Reductions Program.

By using a familiar term of art, "source," after the Chevron decision had authoritatively interpreted its scope, Congress must have intended to incorporate the range of meanings that EPA and the Supreme Court had placed on the term, particularly in this context where the term is not used in isolation but to circumscribe the basis for defining the extent of reductions required to qualify for a government benefit.

By allowing sources to pick and choose which sub-portions of their "discrete, but integrated" operations they will choose to have the statute cover, the random pooling interpretation would run directly contrary to the discussion of the term "source" in Chevron, in that it would permit sources to consider less than "integrated" operations and it would dispense with EPA consideration of statutory policies. This is in stark contrast to "bubbling," which allows several integrated operations to be grouped together.

## c. Statutory Policies.



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Under Chevron, EPA may devise a definition of source that will "effectuate the policies of the Act." 467 U.S. at 862. The purported justification for a wholesale delegation of EPA's discretion to interpret the term "source" to regulated parties is that Congress wanted to facilitate broad participation in the Early Reduction Program. See H.R. Rep. No. 101-490, 101st Cong., 2d Sess. 332 (May 17, 1990) ("In the administration of this provision EPA thus should strive to encourage companies to take advantage of this incentive to reduce emissions early.")

Encouraging participation was certainly one of Congress's purposes, but this section of the Act involves a more complex mix of policies than merely encouraging participation at any price. On its face, the statutory scheme strikes a balance between competing goals. Congress decided, after all, to make the six year extension of MACT requirements contingent upon obtaining a "90 percent reduction ... in emissions of hazardous air pollutants from ... an existing source."<sup>9</sup> If Congress's only goal had been to maximize participation in the Early Reduction Program, it could have offered to postpone MACT standards for sources making smaller percentage reductions, or in emissions from smaller sub-portions of the "the source." (Indeed, EPA has recently announced a separate program which calls for voluntary reductions in toxic emissions of 33% by 1992 and 50% by 1995.) The statute does not say that a polluter may delay MACT by making a 90% reduction in any emissions anywhere in his facility; it says, on the contrary, that a 90% reduction of total emissions of hazardous air pollutants "the existing source" must be achieved.

Congress apparently concluded that overall benefits to the environment would be greater if sources were required to strive to obtain 90% reductions from an "existing source," than if they were able to obtain a delay in installing MACT technology by making lesser reductions in emissions. This judgment may not be correct, but it is one which this Agency must respect. However, if polluters are not required to obtain a 90% reduction in emissions from an identifiable piece of machinery or process unit in order to qualify for the six year MACT delay, but are allowed

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<sup>9</sup> Sec. 112(i)(5)(A). Thus, there is a fundamental difference in the statutory context for the use of the term "source" at issue in the Chevron case, and the context in which the term is used in the Early Reductions Program in Sec. 112(i)(5). Here a benefit, in the form of a six year delay in the applicability of MACT standards, is conditioned upon making a 90% reduction in emission from an "existing source." In this context, the concept of "source" cannot be interpreted as being infinitely elastic (particularly not at the will of the polluter); it must have some pre-defined scope which can be used to determine whether the 90% requirement has been met.



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to re-draw the boundaries of "the source" arbitrarily to satisfy the statutory requirement, a polluter may pick and choose various emission points on a process unit and claim to have satisfied the statutory requirement by making a 90% reduction from the designated points, even though the reduction from the unit as a whole was less than the statute requires.

Even if this interpretation could be squared with the language of the statute and the Chevron decision, adopting a definition of an "existing source" that allows polluters to consider any combination of emission points that they choose on an ad hoc basis as the "source" would clearly vitiate the policies underlying the statutory requirement for a 90% reduction from "an existing source." There is a fundamental difference between making a 90% reduction in emissions from whatever collection of emissions points the polluter chooses to select and making a 90% reduction in emissions from an "existing source" as EPA and the Congress have traditionally understood the term. Rather than striving to obtain a 90% reduction from a recognized "source," as Congress intended, polluters would be permitted to gerrymander the definitions of "source" to claim credit for reductions that can be made easily, or would have been made for other purposes. The "incentive to reduce emissions" (H.R. Rep. 101-40 at p.332) that Congress intended would be undermined, since polluters could obtain the benefits of delaying regulation merely by re-drawing the lines constituting "the source," rather than by striving to obtain a 90% reduction from the source as a whole as Congress intended.

This reading of the Act is confirmed by the legislative history. The only place in the legislative history where the meaning of the term "source" for purposes of the Early Reductions Program was addressed specifically is a statement that Senator Durenberger, one of the Senate managers, inserted into the record. 126 CONG. REC. S.16928 (daily ed. Oct. 27, 1990). Senator Durenberger discussed at length his views of how EPA should interpret the term "source" for purposes of the air toxics title, including the Early Reductions Program. While of course the statement of an individual legislator is not legally binding, it is likely to be given some weight by a reviewing court.<sup>10</sup>

The Durenberger statement specifically considered and rejected the idea that "the source" could be subdivided into various emission points and a MACT deferral obtained by making 90% reductions from individual emission points rather than the source as a whole:

"The EPA paper posits a source type with several emission points -- for example, stack emissions and

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<sup>10</sup> Brock v. Pierce County, 476 U.S. 253, 263 (1986) (floor statements considered but not controlling).



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fugitive emissions. The source category is subject to a MACT standard which applies to any source of that type and specifies emission limitations for each of the emission points within the source. Under this alternative, an owner could obtain an extension from one portion of the standard -- for example, the stack emission limit -- by making a 90-percent reduction of stack emissions. ... The difficulty with this option, as the paper points out, is that by subdividing a source in this manner, the owner could get an extension from a part of the MACT standard's requirements without making a 90-percent reduction in overall emissions. This is not consistent with our intent and we reject this alternative." 126 CONG. REC. S16928 (Oct. 27, 1990) (2d col.) (emphasis supplied).

Of course, a statement by an individual legislator would not be effective to impose requirements that are not grounded in the statute, but here Senator Durenberger is merely explaining the meaning of the statutory provision that the 90% emission reduction requirement applies to "the source," not to "any combination of emission points that the polluter chooses within the source." While EPA has concluded that it is impractical to follow other aspects of Senator Durenberger's approach to the Early Reductions Program because EPA has not done sufficient work on future MACT standards to issue a final definition of the MACT "source" at this time, the Durenberger statement does show that one of the Senate managers who was involved in drafting Title III understood the term "source" to apply to integrated pieces of equipment or process units, in accordance with EPA's prior practice and the Supreme Court's Chevron decision, rather than individual groups of emission points to be selected at will by the polluter. There is no support whatsoever in either the legislative history or in EPA's prior practice for the contrary interpretation.

For all of these reasons, in my opinion it would be contrary to the statutory language, EPA's prior practice, the language of the Chevron decision and the statutory policies and purposes to allow individual polluters to select emission points at random for purposes of defining "the source" for purposes of the Early Reductions Program.



# DRAFT

DRAFT  
April 26, 1991

SUBJECT: Tier 1 Standards: Actual versus Projected Sales

TO: E. Donald Elliott  
Assistant Administrator and General Counsel

THROUGH: Alan W. Eckert  
Associate General Counsel  
Air and Radiation Division

FROM: Kevin McLean  
Attorney/Advisor  
Air and Radiation Division

## I. INTRODUCTION

Sections 202(g) and 202(h) of the Clean Air Act establish the Tier 1 emission standards applicable to light-duty vehicles and light-duty trucks. Those provisions require the new emission standards to be phased in over either a three-year or two-year period depending on the category of vehicles involved. The provisions implement the phase-in in terms of a requirement that "emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified." The applicable percentages (40, 80 and 100 percent in the case of light-duty vehicles) are then set forth in implementation schedules that contain notes reiterating the sales volume language: "Percentages in the table refer to a percentage of each manufacturer's sales volume."

This memorandum examines the issue of whether EPA must determine compliance with the phase-in percentages on the basis of actual sales of vehicles or instead may rely solely on a good faith projection of sales or production made by the manufacturer at the time of certification. The first option represents a performance based approach that would set a standard that a manufacturer could decide to meet in whatever way it decided was the most efficient way of doing so, e.g., if the manufacturer had great confidence in its sales projections it could plan on just meeting the phase-in percentage requirement or if it had less confidence in its sales projections it could plan on a "cushion" or margin of safety to ensure that it did not fail to meet the sales requirement. The second option represents a subjective intent approach whereby each manufacturer's compliance would be determined with reference to whether its sales projection was made in good faith.

At the outset it should be noted that even though sales projections may well have matched actual sales historically, there could be differences. As the manufacturers have pointed out in their comments, projections and the actual sales or production numbers may differ because of changes in the economy



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or because consumer preferences and demand for certain models turn out to be different than anticipated by a manufacturer. (See GM Comments at 4 (March 26, 1991); Chrysler Comments at 2 (March 26, 1991).)

## II. TIER 1 STATUTORY LANGUAGE AND ITS LEGISLATIVE HISTORY

### A. Statutory Language

In Chevron U.S.A. v. NRDC, 467 U.S. 837 (1984), the Supreme Court set forth a two-step analysis for determining the degree of deference to be given to agency interpretations of statutes. The Court described the analysis in the following terms: "First, always, is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U.S. at 842-43 (footnotes omitted).

Section 202(g), which establishes the Tier 1 standards for light-duty vehicles and light-duty trucks up to 6,000 lbs. gvwr, states that "the regulations under subsection (a) applicable to emissions of [certain pollutants from those vehicles] shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below." The implementation schedule specifies percentages of each manufacturer's sales volume of 40 percent in model year 1994, 80 percent in model year 1995, and 100 percent in model years 1996 and thereafter.

The clearest and most straightforward reading of this statutory language is that compliance with the phase-in percentages is to be determined on the basis of actual sales. The phrase "sales volume" means a volume of sales, which has the connotation of a volume of completed sales transactions. Thus, absent an adjective such as "projected," the phrase "sales volume" means actual sales.

Moreover, interpreting the phrase "sales volume" to mean "projected sales" would not make sense in the context of the entire sentence. If the phrase "projected sales" were substituted for "sales volume," that would mean that the



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statutory language requires that emission standards apply to a percentage of "projected sales." Emission standards, however, can apply only to actual vehicles, not projected vehicles. This suggests that if "projected sales" was the intended basis for the phase-in percentages, the statutory language would have been drafted in a different manner.

Of particular note in analyzing the phrase "sales volume" in the Tier 1 provision is that Congress explicitly used the term "projected sales" in another provision of Title II of the Clean Air Act. That provision, Section 206(a)(1), concerns EPA's testing authority and limits the testing requirements for manufacturers whose "projected sales" will not exceed 300 in a model year. Clearly, Congress knew how to use the term "projected sales" when it desired to do so.

## B. Legislative History

### 1. Joint Statement of the Conferees

The conclusion that the statutory phrase "sales volume" does not extend to projected sales is confirmed by the Joint Explanatory Statement of the Committee of Conference, which addresses the phase-in of the Tier 1 standards as follows: "Auto manufacturers are required to reduce tailpipe emissions of hydrocarbons and oxides of nitrogen by 35 percent and 60 percent, respectively, beginning with 40 percent of the vehicles sold in 1994 and increasing to 100 percent of vehicles sold in 1998." (H.R. Rep. 101-952, Clean Air Act Amendments of 1990, Conf. Rep. to Accompany S. 1630, at 337 (Oct. 26, 1990).) The phrase "vehicles sold" clearly indicates that the phase-in percentages are to be applied to actual sales, not some projection of sales. (It should be noted that Congressman Dingell emphasized that the Joint Statement of the Conferees is the only piece of legislative history that embodies the views of all the conferees. He also stated, however, that with respect to the provisions of Title II, the legislative history of the House Committee on Energy and Commerce is applicable because the House-passed version of the bill was the "underlying vehicle used by the conferees." Cong. Rec. E 3714 (Nov. 2, 1990).)

### 2. Floor Statements

Few floor statements in either the House or Senate that were made at the time the Amendments were passed addressed the issue of whether actual sales or projected sales should serve as the basis for determining compliance with the Tier 1 phase-in percentages. Rep. Luken indicated that EPA should rely on projected sales information, but did not state that EPA must rely solely on that data. He stated that "Manufacturers are to specify which engine families are to be covered by the new



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standards, which must be projected to meet the necessary percentages for each model year. As in California, manufacturers may use, and EPA would be expected to accept, projected sales information in determining compliance with the percentage phase-in requirements." (Cong. Rec. H12866 (Oct. 26, 1991).) Senator Chafee, on the other hand, described the provisions in language identical to that used in the Conference Report quoted above, i.e., "vehicles sold." (Cong. Rec. S16954 (Oct. 27, 1990).)

### 3. House Committee Report

The House Committee Report is of great interest in ascertaining the intent behind the term "sales volume" because, as Congressman Dingell has noted, the House version of Title II served as the basis for the conferees' deliberations. In explaining the language in the House Committee Bill, which is identical to the language in the Amendments with respect to this issue, the House Committee Report (at page 298) described the Tier 1 phase-in schedule in the following manner: "Forty percent of each automaker's 1994 model year passenger cars and light-duty trucks, eighty percent of each automaker's 1995 model year passenger cars and light-duty trucks and 100 percent of each automaker's passenger cars and light-duty trucks thereafter are required to comply with" the Tier 1 emission standards. Phrasing such as "eighty percent of each automaker's 1995 model year passenger cars and light-duty trucks" again confirms that sales volume should be read as actual sales because reliance solely on a projection could lead to a situation under which less than that percentage of the manufacturer's vehicles in fact met the Tier 1 standards.

### III. OTHER TITLE II PROVISIONS AND THEIR LEGISLATIVE HISTORY

#### A. Statutory Language

A number of other provisions are useful in analyzing the meaning of the phrase "sales volume" in the Tier 1 provisions. Identical or virtually identical language is used in establishing phase-in schedules for cold temperature CO requirements (Section 202(j)), onboard refueling requirements (Section 202(a)(6)), and in-use compliance standards (Section 207(c)(4)). All of these provisions contain language referring to phase-ins based on percentages of a manufacturer's sales volume. The onboard refueling provision, however, refers at one point to a percentage of each manufacturer's "fleet" and at another point to a percentage of a manufacturer's sales volume.

#### B. Legislative History

The House Committee Report is instructive with respect to the other provisions of Title II that utilize the phase-in concept. The cold CO provision is of particular interest. At



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the time of the House Committee Report, the bill employed different language in the cold CO provision than do the Amendments. In contrast to the "sales volume" language of the Tier 1 provision and the cold CO provision in its final form, the cold CO provision in the House Committee Bill contained language referring to percentages of each manufacturer's vehicles. It stated that "[t]he standards also shall provide that each manufacturer's light-duty vehicle and light-duty truck fleets shall comply with applicable standards according to the following schedule: at least 40 percent of 1993 model year vehicles shall comply with applicable standards; at least 80 percent of 1994 model year vehicles shall comply with applicable standards; and 100 percent of 1995 and later model year vehicles shall comply with applicable standards." (Section 204 of H.R. 3030, H.R. Rep. 101-490, May 17, 1990, at 64.) The Committee Report explained this language in the following terms: "Standards are to be phased in over 1993 through 1995 model years. At least 40 percent of 1993 model year vehicles produced by each manufacturer are required to meet the standards. The standards apply similarly to 80 percent of the MY 1994 vehicles, and 100 percent of the MY 1995 vehicles. (H.R. Rep. 101-490 at 302.) Thus, the House Committee described statutory language regarding a phase-in on the basis of a percentage of each manufacturer's vehicles as language requiring that that percentage of each manufacturer's actual production comply with the standard. In conference, however, the statutory language was changed so that it conformed to the "sales volume" language of the Tier 1 provision, thereby indicating that the conferees drew a distinction between sales and production.

The House Committee Report discusses the phase-in requirement for the in-use standards in terms of a percentage of "each manufacturer's sales volume." (H.R. Rep. 101-490 at 310.) That discussion simply tracks the statutory language of that provision of the House Committee Bill, which referred to sales volumes, as does the language in the CAA Amendments. (Section 213 of H.R. 3030, H.R. Rep. 101-490 at 69.)<sup>1</sup>

#### IV. CONGRESSIONAL INTENT REGARDING THE ADOPTION OF THE TIER 1 CALIFORNIA STANDARDS AND PROCEDURES

Congressman Dingell and the manufacturers have argued that EPA should follow California's approach to phase-in compliance, which is based on the concept of good faith sales projections, because Congress based the Tier 1 standards and their implementation on California's program. In support of this

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<sup>1</sup> The House Committee Bill provision concerning onboard refueling did not contain any phase-in language. Consequently, the House Committee Report contains no discussion of the phase-in for that requirement that was included in the Amendments.



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contention, Chairman Dingell stated at the March 21, 1991 hearing before the House Subcommittee on Health and the Environment that the House Committee Report stated that the Committee had adopted the "so-called 'California' standards and procedures," and that EPA's proposal "seems to deviate from the California procedures." The Report, however, does not state that the bill adopted the California standards and procedures. It states only that "They essentially adopt the so-called 'California' standards." (House Comm. Rep. at p. 298.)

First, that very general statement itself contains nothing on its face inconsistent with the plain statutory language. The "essentially adopt" language can be read as merely descriptive: Congress adopted a program based on, or conforming in its general outlines to, the California program. Moreover, the Tier I phase-in schedule begins one year later than California's, thereby indicating that while the standards themselves may be virtually identical, their implementation is not. Significantly, in the clean-fuels provisions in Part C of Title II, where Congress also based standards on the standards adopted by California, Congress incorporated a provision expressly directing EPA to follow California's approach to the administration and enforcement of the standards (CAA Section 244). The absence of such a provision in connection with the Tier 1 provisions confirms that Congress did not intend for EPA to be tied strictly to California's implementation procedures in the context of Tier 1.

Consequently, it does not appear that EPA may rely exclusively on the concept of "good faith" projected sales volumes simply because California may rely on such projections in implementing the emission standards that served as a general model for the federal Tier 1 standards.

The California statutory provisions authorizing the California Air Resources Board ("CARB") to promulgate emission standards provide much greater discretion than those prescribing the Tier 1 standards in the Clean Air Act. For example, section 43101 of the California Health and Safety Code provides that: "The state board shall adopt and implement emission standards for new motor vehicles for the control of emissions therefrom, which standards the state board has found to be necessary and technologically feasible to carry out the purposes of this division." See also Cal. Health and Safety Code sections 43013, 43018. Clearly, the provisions of the Clean Air Act establishing the Tier 1 standards and their implementation schedule do not provide EPA with the wide latitude possessed by CARB.

#### V. PROVISIONS OF OTHER STATUTES CONCERNING MOTOR VEHICLES

In contrast to the "sales volume" language of the Tier 1 provisions, the provisions of another statute applicable to motor vehicles, the Energy Policy and Conservation Act ("EPCA"), are



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drafted explicitly in terms of vehicles "manufactured" and "production volume." See 15 U.S.C. 2003. Thus, they do not rely on either some sort of projection or on the concept of sales. Instead, they explicitly contemplate reliance on actual numbers of vehicles manufactured.

Also of note are the provisions of Section 2023(b)(1) of Title 15 regarding the designation of high theft vehicle lines and parts. The language in that provision bases the designation on a calculation based in part on "the sum of the respective production volumes of all passenger motor vehicles of that line (as reported to the Environmental Protection Agency under subchapter V of this chapter)." Thus, like the CAFE provisions of EPCA, this statutory provision explicitly contemplates the use of production volumes.

#### IV. CONCLUSION

In sum, the phrase "sales volume" should be given its plain meaning. That requires reliance on the concept of actual sales for determinations of compliance with the phase-in percentages. The Joint Statement of the Conferees confirms this reading of the statute, as does the language of the House Committee Report. This conclusion is further buttressed by the the fact that Congress used the term "projected sales" in another provision of Title II of the Clean Air Act, clearly demonstrating that Congress was capable of using such a term when it intended the statutory language to have that meaning.

Although the statute clearly specifies the use of "sales volume," neither it nor the legislative history specify to whom the sales are to be made, i.e., to ultimate purchasers or to dealers. Thus, EPA would be able to accommodate the comments by the manufacturers regarding this issue and change its proposal, which relied on sales to ultimate purchasers, to a rule relying on sales to dealers, which would be in accord with the manufacturers' normal business practices.

Notwithstanding the conclusion that "sales volume" means volume of sales, EPA could permit a manufacturer to submit production data in lieu of sales data if production and sales data are essentially the same. Such an equivalency may not exist for all manufacturers; foreign manufacturers that export to the United States operate differently than domestic manufacturers. Consequently, this determination should be made on a manufacturer-by-manufacturer basis.

EPA could also ameliorate the impact of an actual sales approach by expressing an enforcement policy in the preamble to the final Tier 1 rule. That policy might be that EPA does not intend to enforce the requirement in instances where the manufacturers have exercised good faith efforts to comply and

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have come close to meeting the actual sales percentages or that EPA would establish a policy of seeking civil penalties in enforcement actions that would increase as the amount by which a manufacturer falls short of the required percentage increases. Such a policy would likely fall within the area of unreviewable discretion generally afforded the government in areas of enforcement activity. See Heckler v. Chaney, 470 U.S. 821, 827-35 (1985).

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Date: 4/26/90Time:   :  :  

**THE WHITE HOUSE**  
**Office of Policy Development**

**FAX COVER SHEET**

TO:

Roger Porter

Phone:

( ) 456-2705

FAX:

( ) 456-2878

FROM:

Terese Gorman

Phone:

(202) 456-6554

RE: Proposed Conformity Legislation  
H.R. 3030 Committee Bill

Pages following cover sheet = 3



**PROPOSED CONFORMITY LEGISLATION  
H.R. 3030 COMMITTEE BILL**

Page 25, line 1, strike "Conformity to a plan means--" and insert "Conformity to an approved or promulgated implementation plan means--"

Page 25, line 2, strike "(A)" and all that follows through line 25 and insert:

"(A) for plans and programs which are developed pursuant to the comprehensive planning process under section 134 of Title 23, United States Code, that:

(i) emissions resulting from such plans and programs are consistent with baseline emission inventories and emission reduction projections and schedules assigned to those plans and programs in the implementation plan; and

(ii) the plans and programs provide for the timely implementation of the transportation provisions in the approved or promulgated implementation plan.

"(B) a project developed from such comprehensive planning process conforms if:

(i) it is a control measure from the implementation plan; or

(ii) it comes from a conforming plan and program, and the design and scope of such project have not changed since the conformity finding regarding the plan and program from which the project derived; or

(iii) for any project other than those referred to in (i) and (ii) above it is demonstrated that the project either does not contribute to increased emissions in the nonattainment area, or that offsetting emission reductions are made and committed to in the transportation plan and program, or are enforceable through the State implementation plan, before the project is approved.

"(2) No later than one year after the date of enactment of the Clean Air Act Amendments of 1989, the Administrator and the Secretary of Transportation, in consultation with other federal agencies as appropriate, shall promulgate criteria and procedural guidance for demonstrating and assuring conformity of plans, programs, and projects. Such procedures shall

include a requirement that each State containing an ozone or carbon monoxide nonattainment area shall submit to the Administrator and the Secretary of Transportation within 24 months of such date of enactment, a revision to its implementation plan that includes, for each such nonattainment area, criteria and procedures for demonstrating the conformity of any plan, program, or subject to the conformity requirements of this subsection.



1 TITLE I—ATTAINMENT AND MAINTENANCE OF  
2 AMBIENT AIR QUALITY STANDARDS

3 DESIGNATION OF AREAS

4 SEC. 101. (a) DESIGNATIONS.—Section 107 of the  
5 Clean Air Act is amended by adding the following new sub-  
6 section:

"(f) (1) (A) Upon promulgation of a new or revised national ambient air quality standard, the Governor of each State shall (and at any other time the Governor of a State deems 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 national primary or secondary ambient air quality standard for the pollutant,

"(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

**REVISED HALL/FIELDS  
DRAFT ADMINISTRATION CONCERNS**

The Revised Hall/Fields violates several of the Administration's CAA themes as presented in the President's letter.

- 1) **Reduced Environmental Benefits:** Revised Hall/Fields does not meet the test that "important environmental protections...must be maintained in the final legislation."
  - o The emission standards do not include appropriate in-use and recall definitions, significantly increasing allowable emissions.
  - o The fleet emission standards are higher than the Senate or the Revised Administration programs; Broad exemptions allow fleets to avoid program.
  - o Urban bus program is delayed and not used as a demonstration for clean fuels.
- 2) **Reduced Flexibility:** The President's letter states that CAA standards should "be met in a way that creates maximum choice for both states and regulated industries." Revised Hall/Fields restricts cities to freely opt-in and opt-up.
  - o The opt-in is more limited than President's original proposal and not available for fleet programs.
  - o Cities can not opt-up to cleaner vehicles as allowed in the original President's and Senate programs.
- 3) **Higher Cost:** The President's letter states "the bill should be designed to achieve reductions in the most cost-efficient way." Restrictions of opt-in and opt-up in Hall/Fields, could require more expensive control programs.
  - o Additionally, reformulated gasoline is **required** to meet Phase 2, potentially increasing costs.
- 4) **Implementation and Drafting Errors:** Several inconsistencies and technical mistakes remain in the provision.
  - o EPA would not have the authority to introduce fuels along major transportation corridors or to ensure fuel and vehicle quantities meet program needs.
  - o Vehicle baseline is not defined.
  - o Additional technical problems create loopholes.



MEMORANDUM

DATE: July 23, 1990

TO: House-Senate Conference Committee on Clean Air Act Amendments

RE: Responsibility for Managing the Allowance Auctions

The environmental community, state regulators, utilities and industrial electricity consumers all are concerned that both the House and Senate versions of the Clean Air Act Amendments place exclusive responsibility for managing the allowance auction with the Environmental Protection Agency (EPA).

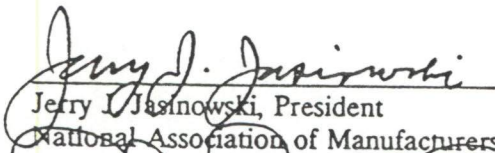
The organizations listed below support modifications to the legislation which would place responsibility for implementing the allowance auction programs with the Department of the Treasury. We believe the Treasury Department has the expertise necessary to minimize the administrative burden of these programs, and therefore help assure a workable and efficient market for allowances.



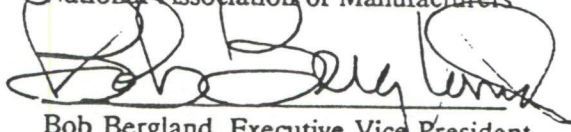
Dan Dudek, Senior Economist  
Environmental Defense Fund



William A. Badger, 1st Vice President  
National Association of  
Regulatory Utility Commissioners



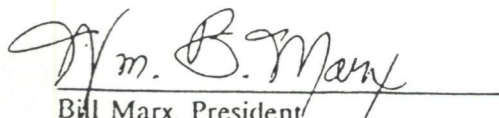
Jerry J. Jasinski, President  
National Association of Manufacturers



Bob Bergland, Executive Vice President  
National Rural Electric Cooperative  
Association



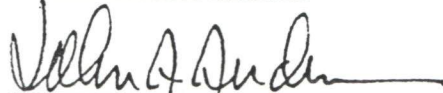
Barton Green, Senior Vice President  
and General Counsel  
American Iron and Steel Institute



Bill Marx, President  
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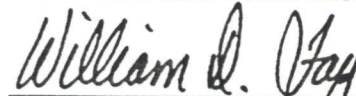
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SUMMARY OF JOINT HOUSE-SENATE STAFF RECOMMENDATIONS  
RE: CHLOROFLUOROCARBONS, HALONS, METHYL CHLOROFORM,  
CARBON TET AND OTHER SUBSTANCES THAT  
DEplete THE STRATOSPHERIC LAYER

AUGUST 3, 1990

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Since passage of both the Senate and House bills, the Montreal Protocol was adjusted and amended in London. The Joint staff proposal recognizes this fact and combines the House-Senate bills and the Protocol with modifications.

1. Findings and Purposes

The staff proposal does not include a series of findings and purposes contained in the Senate offer. Also, several policy provisions in the Senate bill are dropped.

2. Scope

The proposal is limited to protection of the Stratospheric Ozone Layer as is the Montreal Protocol.

3. Ways and Means Committee Section

The proposal is silent on section 512(a) on importation which is in the sole jurisdiction of the Ways and Means Committee.

4. Class I - Class II Substances

The proposal adopts the Senate suggestion of dividing the listing of controlled substances into class I and class II. Class I covers all fully halogenated chlorofluorocarbons (CFCs), halons, carbon tetrachloride, and methyl chloroform. Class II covers all transitional substances (HCFCs). The Environmental Protection Agency (EPA) must publish initial lists for the two classes within 60 days after enactment of this bill.

5. Additional Substances

The staff proposal provides a procedure for the EPA to add substances to either list after making appropriate findings pursuant to specified criteria for each class. This includes a petition procedure. It also provides for extension of the applicable deadlines if the statutory deadlines are not attainable considering when the substance is added.

## 6. Monitoring and Reporting

The proposal adopts the House provisions on monitoring and reporting with technical and clarifying changes, and includes the Senate provisions regarding technology status and emergency reports.

## 7. Class I Schedules

The proposal adopts the following (more stringent than the Protocol) phase out schedules for carbon tet, methyl chloroform, CFCs and halons:

| Date      | Carbon<br>Tetrachloride | Methyl<br>Chloroform | Other Class I<br>Substances |
|-----------|-------------------------|----------------------|-----------------------------|
| 1991..... | 100%.....               | 100%.....            | 85%                         |
| 1992..... | 90%.....                | 100%.....            | 80%                         |
| 1993..... | 80%.....                | 90%.....             | 75%                         |
| 1994..... | 70%.....                | 85%.....             | 65%                         |
| 1995..... | 15%.....                | 70%.....             | 50%                         |
| 1996..... | 15%.....                | 50%.....             | 40%                         |
| 1997..... | 15%.....                | 50%.....             | 15%                         |
| 1998..... | 15%.....                | 50%.....             | 15%                         |
| 1999..... | 15%.....                | 50%.....             | 15%                         |
| 2000..... |                         | 20%                  |                             |
| 2001..... |                         | 20%                  |                             |
| 2002..... |                         | 0%                   |                             |

In addition, for 2002, 2003, and 2004, the EPA, after notice and comment, may authorize production of methyl chloroform solely for essential applications, subject to an annual cap of 10%.

These schedules make it unlawful for a person to produce in excess of the percentage of annual quantities specified in the above schedules. The production termination dates for class I substances are:

CFCs and halons - January 1, 2000  
Carbon tet - January 1, 2000  
Methyl chloroform - January 1, 2002

Consumption must also be phased out in accordance with the schedule.



### 8. Exceptions

In addition to the exception for essential uses of methyl chloroform, the proposal provides exceptions, to the extent consistent with the Protocol, for medical devices (in the case of class I substances), aviation safety (in the case of halons), export to developing countries for their domestic needs, national security (in the case of certain class I substances), and fire suppression and explosion prevention (in the case of halons). The fire suppression and explosion prevention exception is extended to oil and natural gas suppliers on the North Slope of Alaska up to 3% of the baseline year. There is also a study on the need for additional exceptions for methyl chloroform for airline safety.

### 9. Class II Phaseout

In the case of class II substances, there is a production freeze in 2015, a production ban in 2030, and a restriction on use in 2015, except that for equipment using HCFCs as a refrigerant, the date is 2020. Consumption phaseout shall follow such dates. There are provisions for exceptions (medical devices and developing countries).

### 10. Accelerated Schedule

The proposal provides for an acceleration of the statutory schedule for any class I or II substance that is more stringent than that schedule or the Montreal Protocol if:

(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding stratospheric ozone depletion associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment from the adverse effects of such depletion,

(2) based on the availability of substitutes for listed substances, the Administrator determines that such 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 any substance more rapidly than the applicable schedule under this title.



In making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this title. The proposal includes a petition process.

11. Exchanges

The proposal includes, as provided in the Montreal Protocol, provisions for exchanges that result in greater total reductions in production of the substances than would occur in the absence of the trade, including interpollutant trades. (Trading among parties and within "baskets" of substances.)

12. Recycling and Disposal

The proposal adopts the Senate recommendations on recycling and disposal with some clarifications. It includes a provision preventing venting, releasing, or disposing of class I substances used as a refrigerant in an appliance (which is defined) as well as in connection with industrial process refrigeration. Regulations must be issued within 2 years after enactment. Within 4 years after enactment, EPA must issue regulations regarding recycling and disposal of both Class I and II substances not covered by the earlier regulations. This prohibition would apply to substitute substances beginning 5 years after enactment.

13. Motor Vehicle Air Conditioners

The proposal adopts provisions on servicing motor vehicle air conditioners. In the case of small containers, the prohibition begins 24 months after enactment.

14. Nonessential Uses and Other Products

The proposal adopts provisions in both bills for eliminating nonessential products, with some clarifications. At a minimum, these nonessential products include CFC-propelled plastic party streamers, noise horns, CFC-containing cleaning fluids for noncommercial electronic and photographic equipment, and other consumer products (other than medical devices) that (1) release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal), and (2) are determined by the Administrator to be nonessential.

In determining whether a product is nonessential, the Administrator shall consider the purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.

In the case of other products, effective January 1, 1994, no one can sell or distribute any aerosol product or other pressurized dispenser which contains a class II substance, except where 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 the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.

As of the same date, no one can sell or distribute any plastic foam product which contains, or is manufactured with, a class II substance. This prohibition will not apply to a foam insulation product, or to an integral skin, rigid, or semi-rigid foam utilized for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such Standards.

15. Safe Alternatives Policy

The proposal merges House and Senate provisions. It includes a procedure whereby EPA may determine that a substitute substance presents an adverse effect to human health or the environment.

16. Montreal Protocol

Provisions included, as recommended by Senate, to provide for implementation of Protocol.

17. Assistance to Developing Countries

Retains House limitation of \$30 million over 3 years, but allows an additional \$30 million increase as expected both China and India join the Montreal Protocol as Parties.

18. Transfers Among Parties to Montreal Protocol

Provides for international trading.

19. Methane Studies

Adopts Senate methane studies with modifications.



## SUMMARY OF REMAINING ISSUE

### PREEMPTION/MORATORIUM

Current Law. Under the present provisions of the Clean Air Act regarding ozone protection, States and local communities may adopt and enforce requirements concerning the control of any substance, practice, process or activity to protect the stratosphere or ozone in the stratosphere unless there is a Federal regulation in place. In such case, the State and local rule must be identical to the requirement of the federal regulation. This provision does not apply to halocarbons as propellants in aerosol spray containers.

Senate Bill. When the Senate passed S. 1630, they repealed this section of the Clean Air Act. Thus, the Senate bill would not preempt any State or local laws with respect to substances covered by this title.

House Amendment. The House amendment to S. 1630 establishes a 2 year moratorium from the date of enactment during which no State or local government may enforce any requirement concerning the design of any new or recalled appliance for the purpose of protecting the atmosphere or ozone layer.

Staff Discussions. In discussions, Senate staff has insisted on the Senate position, which is to have no preemption or moratorium whatsoever.

The House staff has insisted on inclusion of a moratorium provision, consistent with the House position.