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CAA ✓

EMISSION TRADING BETWEEN STATIONARY AND MOBILE SOURCES

Issue:

Does the Clean Air Act allow the Environmental Protection Agency and the States to promulgate regulations allowing owners of stationary and mobile sources to trade emission credits?

Response:

EPA can develop a program for adoption by States in their Implementation Plans (SIPs), under which marketable credits would be generated by overcompliance with emissions regulations. (EPA cannot, of course, compel the States to adopt such a program.) For example, credits could be earned through the acquisition of clean alternative fuel vehicles beyond the requirements of Title II, or the achievement of emission reductions by a stationary source in excess of those required under Title I. It should be noted that any trading in nonattainment areas may have to be restricted to trading among sources situated in the same nonattainment area. Moreover, no trade can result in emission levels that violate applicable NAAQS. Generally, emission credits could be banked or traded freely among stationary and mobile sources, and can be used either as offsets, to be used by new and modified sources, or as a way to avoid having to comply with the relevant technology-based standard, eg. RACT. Applying this approach to BACT is somewhat more ambitious, but, in our opinion, there are no unsurmountable legal problems. Among the emissions that would be covered would be both NOX and CO.

Rationale:

Policy Arguments

- * A trading program would even the disparity in cost between achieving emission reductions from major stationary sources and mobile sources. That cost disparity lacks any public policy justification, since it is the same pollutant being reduced, whether from a stationary or mobile source.
- * Such a trading program would harness market principles and offer environmental benefits, while fostering economic growth. A more viable market for emission reduction credits would serve as a tremendous incentive for mobile and stationary source owners to exceed the Act's requirements because trading would help defray the cost of compliance.

- * Such a system is the least cost method of compliance. Conceptually, our approach would be to expand the principles that underlie Title IV to the entire Act.

Statutory Authority

- * There is nothing in the Clean Air Act that explicitly prohibits emission trading between mobile to stationary sources.
- * Section 110(a)(2) of the Act states that each SIP submitted to EPA "shall (A) include enforceable emission limitations and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this Act." (emphasis added)
- * Section 182(g)(4)(A) further provides a description of the economic incentive programs that should be implemented by States which fail to meet their ozone nonattainment milestones. Such a program "may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees or sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures." Significantly, the Act also provides in that paragraph that "the program may also include incentives and requirements to reduce vehicle emissions..."
- * Under Section 182(g), EPA must promulgate rules for the economic incentive programs described above. The Act states that "such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources." Dr. Leland Deck, of the EPA Air Quality Management Division, is currently drafting the Notice of Proposed Rulemaking for these regulations and expects that they will be published in the Federal Register in late March.

Existing Emission Trading Policy

- * EPA has the authority to promulgate a stationary to mobile source emission trading program comparable to that established under the "bubble" trading program, established in the Emissions Trading Policy Statement (ETPS). (51 Fed. Reg. 43812 December 4, 1986). ETPS was developed to allow industry and States more

flexibility in meeting statutory requirements of the Act. ETPS allows source specific SIP revisions for sources to trade emission reduction credits with other sources to meet some emission limitations. And, under ETPS, such reduction credits must be surplus -- not otherwise needed for an attainment strategy or already existing control requirements.

- * Rather than adopting the case-by-case method of ETPS with respect to mobile sources, EPA should facilitate such trading by promulgating new regulations under Section 182(g). EPA should ensure that credits can be generated by both stationary and mobile sources. Only surplus emission reductions would generate credits, thus eliminating any chance of "double counting." And emission trades should involve the same pollutant. For example, only reductions of NOX should be substituted for an emission of NOX by another source.
- * The existing definition of RACT, 40 U.S.C. 51.100(o), is sufficiently broad to define RACT in a way that would enable a party, holding sufficient emission credits, to avoid having to install RACT-level controls. As far as BACT is concerned, the situation is somewhat more difficult. The relevant statutory language defines NSPS as the floor for BACT purposes. We believe, however, that there is sufficient flexibility to redefine the NSPS in a way which takes sufficient account of the emission credits that the party, otherwise subject to BACT, holds.

As a fallback position, even if in the end of the day it proves impossible to redefine the NSPS as described above, EPA, as a matter of enforcement discretion, can announce that it will not prosecute parties for failing to comply with the BACT requirement, so long as they hold sufficient emission credits. To be sure, any of the above approaches, to be implemented, would require resolving some difficult monitoring/record keeping issues.

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January 13, 1991

The Honorable Boyden Gray
Counsel
The White House
1600 Pennsylvania Avenue, N.W.
Washington, D.C. 20500

Dear Boyden:

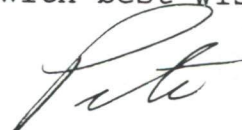
Gordon Binder, Chairman and CEO of Amgen, and I look forward to seeing you tomorrow.

The primary purpose of our meeting is to seek your support for an amendment to pending biotechnology patent protection legislation that would protect against inappropriate transfer of technology and jobs to our foreign competitors. In addition we are concerned about legislative efforts to amend the orphan drug act that has spawned companies like Amgen, which have brought a number of miracle drugs to market.

Enclosed is a memo to you from Gordon binder and an amendment regarding the patent legislation.

It will be good to see you again.

With best wishes,



Peter B. Teeley

PBT:mm
attachments



GORDON M. BINDER
Chairman and
Chief Executive Officer

TO: The Honorable Boyden Gray
FROM: Gordon M. Binder
DATE: January 10, 1992
RE: The Need for Protection Against Unfair
Foreign Exploitation of Biotechnology Patents

Patents are the life-blood of startup biotechnology companies. Patents are used to attract the venture capital which is necessary to finance the companies' research on new health care products. Patents also allow biotechnology companies to enter into licensing agreements that result in a revenue stream until products can be approved and effective. Strong patent protection laws are essential to the success of the biotechnology industry. As the President's Council on competitiveness stated, "[t]he uncertainties in intellectual property rights for innovation in the biotechnology area continue to hamper the industry."

Current patent law does not adequately protect the biotechnology industry for two reasons. First, the decision of the Court of Appeals for the Federal Circuit, In re Durden, has made it difficult for biotechnology companies to secure process patent protection. Second, foreign competitors have discovered a loophole in the patent laws which allows a foreign company to

infringe host cell product patents held by U.S. companies. The infringing company is also allowed to import and market the product manufactured by the host cell in the U.S.

An example of this problem arose in 1983 when Amgen applied to the United States Patent and Trademark Office ("USPTO") for patent protection of its developments regarding recombinant erythropoietin ("rEPO"). In late 1987, the USPTO granted Amgen a patent which included claims to the gene encoding*erythropoietin and recombinant host cells containing this gene. However, because of the Court of Appeals for the Federal Circuit's decision, In re Durden, which held that in the case of a starting material that is not novel and a resulting product that is not novel, a process patent cannot issue, the USPTO would not allow claims to the process for making rEPO using the patented host cells.

More than a year after the grant of Amgen's patent claiming the host cell required to produce rEPO, Amgen finally obtained allowance of process claims. At this time, issuance of the process patent awaits resolution of an interference proceeding at the USPTO. Amgen estimates that it experienced at least a three year delay in obtaining enforceable process patent protection as a result of In re Durden.

* Biotechnology companies in the United States are also challenged by foreign competitors who exploit a loophole in the United States patent laws. A Japanese competitor is utilizing a recombinant host cell, for which Amgen holds a United States patent, to manufacture rEPO in Japan. The competitor seeks to import and market rEPO in the United States. This competitor is attempting to do what no company can legally do in the United States- manufacture rEPO and compete with Amgen in the U.S. market.

Amgen is not the only entity facing this problem. A brief patent search indicates that there are other small biotechnology companies and universities that have obtained only host cell protection. If the loophole in the patent laws is not closed these companies and universities could also experience foreign infringement of their host cell patents.

Representatives Boucher and Moorhead, and Senators DeConcini and Hatch have introduced legislation (H.R. 1417, S. 654) to resolve both the process patent and host cell patent problems. An earlier version of the Boucher legislation would have overruled In Re Durden, as it applies to biotechnology, and would have excluded products from the United States, or from interstate commerce within the United States, if they were produced overseas in violation of a United States product patent describing a biotechnology process. The provision which

would have excluded products made in violation of a United States product patent was dropped by Representative Boucher because Amgen was in litigation with a competitor over the gene and recombinant host cell patent and because of problems with the General Agreement on Tariffs and Trade ("GATT").

Neither of these problems exist any longer. The Court of Appeals for the Federal Circuit recently resolved the litigation between Amegen and its competitor by holding that Amgen's patent on the gene and recombinant host cells, which produce rEPO is valid and enforceable; the competitors patent was also invalidated. Potential problems with the GATT can be resolved simply by deleting the amendments to the Tariff Act. By retaining the amendments to Title 35 of the U.S. Code, shipment into the United of products made overseas in violation of a U.S. product patent can be avoided.

The foreign infringement of product patents loophole results in the unfair exploitation of U.S. technology and the export of U.S. jobs. To retain the United States leadership in biotechnology, this loophole must be closed. This may be accomplished through the attached amendment, which has been carefully crafted to respond to comments by the Administration.

9660C

Chapter 4 Mobile Source Credits

CAA /
Mobile Sources

Overview

The use of emission reduction credits (ERCs) from mobile sources is a complex, controversial, and yet potentially attractive concept. All of the many variations of this concept begin by recognizing that any mobile source credit has a short life. Its value is diminished by the evolution of an ever cleaner mobile car fleet. Yet in the short term, mobile source credits may provide very necessary one or two year extensions of time on emission reduction requirements. (Note: This potential exists under both the current regulatory system and under the MPP.)

The District and ARB have decided to jointly assess the potential use of short-term mobile source credits. A paper on this subject will be developed concurrently with the MPP feasibility evaluation and progress reports will be provided to the MPP Steering and Advisory Committees.

The use of ERCs from mobile source emissions to satisfy emission reduction requirements from stationary sources presents significant issues relative to permitting for the MPP. This chapter describes mobile source reductions that could possibly be incorporated into an MPP if legal and technical issues relative to trading emission reductions between mobile and stationary sources can be resolved. This chapter also investigates mobile source emission reduction techniques and issues involved in their implementation. Table 4-1 summarizes these topics.

Types of Mobile Source Credits

Four types of mobile source credits will be evaluated, including zero emission vehicles (ZEVs), credits for increased average vehicle ridership (AVR), auto buy-back programs, and media programs. Table 4-1 summarizes these potential mobile source credit options.

For each type of mobile source credit, a pre-approved plan would be required as part of the permit application for the facility. The method of calculating emission reductions and ERCs would be approved in advance. Further work is needed to determine the appropriate amount of ERCs and the length of time that should be given for the temporary credits for each type of mobile source reduction.

Table 4-1
Mobile Source Credits

	Mobile Source Credits			
	ZEVs	Auto Buy-Back	> AVR	Media Program
Existing Program		Pre-Approved Plan for Mobile Source Reductions (Rule 1124) Reduce the Number of High Polluting Cars Restrictions (Insurance & Registration)		
MPP	Pre-approved Plan for Mobile Source Reductions	Pre-approved Plan for Mobile Source Reductions Expand Existing Program	Pre-approved Plan for Mobile Source Reductions	Pre-approved Plan for Mobile Source Reductions
	Issues: Time Value of Emission Credits Emission Value for ZEVs Exceed State Standards Incentives (Registration Cost Cuts for Lower Emitting Vehicles) Receive Only Temporary Credits	Issues: Time Value of Emission Credits Receive Only Temporary Credits	Issues: Verification of Credits	Issues: How are Credits Calculated? Population Targets Projected Behavior Changes Monitoring Receive Only Temporary Credits

Mobile source emission reductions could be considered for the following:

- **ZEVs**

ZEV cars and buses purchased in excess of the state's regulation could be eligible for credits.

- **Credits for increased average vehicle ridership (AVR)**

Regulation XV - Trip Reduction/Indirect Source requires employers with 100 or more persons at any work site to reduce work-related trips in single-occupancy vehicles during specific hours. Temporary emission reduction credits could possibly be issued for companies that can verify that they exceed their AVR goals.

- **Auto buy-back programs**

The MPP could include temporary ERCs for removing older vehicles from service.

- **Media Programs**

The District has been asked to consider issuing credits for media programs that seek to cause behavioral changes which would result in decreased emissions. Examples include commercials or exhibits at special event centers to educate people and encourage the use of carpooling or other alternative transportation methods.

Issue:

There are several implementation issues associated with mobile source emission reduction credits.

Discussion:

There are several implementation issues that apply to each of the approaches being considered. They are summarized below:

- **How would mobile source emission reductions and credits be calculated?**
- **ERCs from mobile source reductions could only be temporary. How would the length of time for ERCs be determined?**

There are also implementation issues specific to each of the mobile source reduction techniques being considered. These are summarized below:

*Implementation
Issues*

- **ZEVs**
The state has an aggressive program for mobile source reductions. How can it be demonstrated that purchasing ZEVs will exceed state standards?
- **Credits for increased average vehicle ridership (AVR) in excess of Regulation XV**
These credits could be annual credits only. Methods for calculating emission reductions would have to be developed.
- **Auto buy-back programs**
The program could possibly be extended to some 1980s model cars that have higher emissions.
- **Media Programs**
Credits could only be issued annually. This type of credit will be difficult to quantify and monitor.

Issue: Trading emission reductions between mobile and stationary sources may be limited under current federal legislation.

Discussion: The federal Clean Air Act (CAA) allows Reasonably Available Control Technology (RACT) determination through the aggregation of stationary sources, but may restrict trading between mobile and stationary sources.

The CAA allows RACT emission reductions to be met through aggregation of emissions from stationary sources, but may not allow trading of emissions between stationary sources and area or mobile sources for determining RACT. Appendix D of Working Paper #1 describes this issue in more detail.

Recommendation: The District will continue discussions with EPA and ARB to resolve this issue and determine if it is appropriate for emission reduction credits to be traded between mobile and stationary sources under the MPP.

Issue: What current programs does the District have that allow mobile source emission reduction credits to be applied in stationary source rules?

Discussion:

The District currently has two programs in place for the limited use of ERCs from mobile sources for stationary source rules. Rule 1124 - Aerospace Assembly and Component Manufacturing Operations and Regulation XIII - New Source Review (Rule 1309 - Emission Reduction Credits) include provisions for extending rule compliance deadlines and temporary ERCs from mobile source emission reductions.

Under Rule 1124, a source can use materials that contain a higher VOC content for up to three years by receiving mobile source offset credits. Offset credits are obtained by permanently removing pre-1979 vehicles from service. Requirements for mobile source offsets include the following:

*Rule 1124 mobile
source offset
credits*

- A pre-approved plan that specifies what materials will be used (quantity, VOC content, and excess emissions) and the number of vehicles that will be removed from service is required. An annual report on the plan is also required;
- Vehicles must have been operable, insured, and registered in the Basin one year prior to being removed from service;
- Emission reductions must be at least 120 percent of the excess emissions that would have been produced by the use of compliant coatings;
- Offsets must be in excess of other rule requirements, including Tier I AQMP Control Measures, or any state or federal regulations; and,
- Non-compliant coatings used cannot be above the VOC content specified in the previous versions of the rule.

This option has been available since December 1990, but has not yet been used by the aerospace industry.

*Rule 1309 mobile
source ERCs*

Under Rule 1309, New Source Review (NSR), mobile source ERCs can be granted for emission reductions resulting from the replacement of conventional vehicles with ULEVs. ERCs are issued according to a schedule that gives less credit in later years. ERCs obtained in this manner expire December 31, 2010. To date, no ERCs have been requested under this program.

Recommendation: The criteria in these programs, as well as the ARB guidelines for auto buy-back programs, will be considered in developing the criteria for inclusion of mobile source credits in the MPP.

Issue: Would mobile source emissions be included in a facility baseline?

Discussion: Mobile source emission reduction credits could possibly be used to satisfy emission reduction requirements for stationary sources under the MPP. This presents an issue about whether to include the emissions from on-site mobile sources in a facility baseline. Including mobile sources in the facility baseline would then subject the mobile source emissions to annual reduction requirements.

Recommendation: This issue requires further analysis.

LATHAM & WATKINS

PAUL R. WATKINS (1898-1973)
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BY TELECOPY

Jeff Holmstead
Associate Counsel to the President
Office of White House Counsel
The White House
Washington, D.C. 20500

Re: Mobile Source Trading

Dear Jeff:

Attached is a rough outline of thoughts on the question of whether a source can use mobile source reduction strategies to obtain relief from reasonably available control technology (RACT) provisions. The Act is somewhat ambiguous on this point. However, especially in light of the Act's policy in favor of market incentives, we believe a strong case can be made that this can be done, because RACT provisions fall within the general reasonably available control measure (RACM) requirements of Section 172 of the Act. RACM is a reduction-based, not a technology-based, requirement. Therefore, any set of strategies that meet the area's reduction requirements should work. This is a more complex issue than that brief statement suggests, however, as indicated in the outline.

We don't believe the prospects for trading out of lowest achievable emissions rate (LAER) are as good. That requirement appears to be technology oriented.

LATHAM & WATKINS

Jeff Holmstead
May 29, 1992
Page 2

We would be pleased to polish this analysis, if we have a bit more time. Please call me at your convenience so we can compare notes on this subject. Best regards.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Bob".

Robert A. Wyman
of LATHAM & WATKINS

RACM TRADING ISSUES

This outline addresses certain issues related to meeting RACM requirements within a broad-based trading program.

I. RACM IS A REDUCTION REQUIREMENT, NOT A TECHNOLOGY REQUIREMENT

A. The 1990 Clean Air Act Amendment does not require implementation of technology, but merely requires emission "reductions."

- Section 172(c)(1) provides that implementation "plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards." (emphasis added).

B. RACM reductions are not required to be measured on a source-specific or category-specific basis.

- This interpretation of RACM requirements was embraced by EPA in its Emissions Trading Policy Statement which allowed cross-source averaging.
- Section 182(b)(2) does not prevent aggregation and averaging of RACM reductions across CTG categories. Section 182(b)(2) can be read to simply list those stationary source categories with respect to which RACM reductions must be aggregated in meeting the requirements of Section 172(c)(1). Section 182 should be read to amplify the requirements under Section 172(c)(1) as to what sources must be included in measuring aggregate RACM reductions under Section 172(c)(1). This view is supported by the language contained in Section 182(b)(2) indicating that the provision relates to "implementation of reasonably available control technology under Section 172(c)(1)." (Emphasis added).
- Requirements of Section 182 may be met by quantifying the aggregate reductions that are projected to occur if RACM technology were implemented on each CTG source, each major source and each other source that is subject to a trading program. As long as aggregate reductions in the program emissions are equal to or greater than the expected emission reductions that would be garnered from implementation of RACM technology on each CTG and major source as well as other sources within the trading program, RACM requirements are met.

II. RACM REDUCTIONS ARE DEFINED BY INTERIM PROGRESS AND ATTAINMENT REQUIREMENTS SET FORTH IN THE CAA AND IN STATE PLANS

A. The Legislative history of the 1990 CAA Amendments embrace the EPA's 1979 guidance for the application of RACM:

- "The sponsors believe that EPA's initial (1979) guidance for the application of the 1977 Law's requirement to adopt 'all reasonably available control measures' in each area was sound."

Congressional Record - Senate, October 27, 1990 at S16971.

B. The 1979 Guidance makes clear that RACM requirements can be met by meeting a "straight-line" reduction path or by implementing RACM technology. The 1979 guidance, embraced by the 1990 legislative history, makes clear that a straight-line reduction path that leads to attainment and meets interim requirements will satisfy RACM requirements.

- "An ozone plan with an attainment date after 1982 will satisfy the requirement for reasonable further progress if the SIP requires at least (1) "straight-line reductions" at the end of 1982, or (2) reductions that reflect application of all RACM as expeditiously as practicable through the end of 1982 with no emissions growth allowance for new major sources. "Straight-line reductions" mean reductions at the end of 1982 at least as great as if equal annual reductions were required between 1979 and the attainment date, which can be represented graphically by a straight-line. Until the end of 1982, allowable emissions may remain above the straight-line to accommodate the time required for compliance."

44 Fed. Reg. 20377 (April 4, 1979).

III. NON-ATTAINMENT AREAS MAY TREAT BOTH STATIONARY AND MOBILE STRATEGIES AS RACM

A. The legislative history of the 1990 CAA Amendments makes clear that states may treat mobile as well as stationary source strategies as RACM.

- "In 1977, Congress added a requirement (Section 172(b)(2)) that each state plan contain all reasonably available control measures to reduce transportation emissions. . . . The Senate Committee bill, S. 1630, modified the requirements for the adoption of transportation control measures in State Implementation Plans (SIPs). The Committee bill required that identified transportation control measures be incorporated into each implementation plan for severe and extreme ozone, in serious ozone non-attainment areas under certain circumstances, and in serious

cabron [Sic] monoxide non-attainment area [Sic] unless the state could demonstrate that a measure would not contribute any additional progress toward attainment in the area. [¶] During Senate floor debate, these provisions were modified to require that each listed measure be considered by the state, but the mandatory obligation to incorporate each measure in the absence of a negative determination was removed. The emphasis in the amendment, therefore, was on a state selecting and implementing those measures 'necessary to demonstrate attainment with national ambient air quality standards,' including, of course, interim reduction requirements. . . . [¶] The Committee language in S. 1630 would have eliminated the option of the states to adopt less than all reasonably available control measures even in the circumstances where the states could make the demonstrations allowed by EPAs' [Sic] guidance. In agreeing to the amendment, the sponsors determined that the rigid application of control measures in the Committee bill was too restrictive. The bill (sections 182(c)(5), 182(d)(1) and 182(e)), which adopts the final Senate provisions with respect to transportation control measures for ozone SIPs in addition to the general planning requirements for reasonably available control measures in Section 172(c)(1). Taken together, these provisions require the [Sic] EPA's traditional guidance continues to govern the review of transportation control measures in state plans.

Congressional Record - Senate, October 27, 1990 at S16971-16972
(Emphasis added).

- B. The 1990 legislative history's references to the 1979 guidance (which provides guidance primarily on stationary RACM implementation) to interpret Transportation Control Measure requirements provide further evidence that RACM can be satisfied through mobile source strategies.

IV. STATIONARY SOURCE RACM REDUCTIONS CAN BE MET THROUGH TRADING WITH THE MOBILE SOURCE INVENTORY

- A. Because Congress intended Section 172(c)(1) to apply broadly to both stationary and mobile sources, Section 172(c)(1) should not be read to impose impediments to averaging RACM reductions across the mobile and stationary source inventories. As long as straight-line reductions apply to all stationary and non-stationary source categories that are included in a trading program equal to or greater than the level of reductions that RACM technology achieve from such sources in the aggregate, trading between stationary and non-stationary sources should result in aggregate compliance with RACM provisions.

- B. Section 182(b)(2) is complied with if aggregate trading program reductions include in their overall emission reduction targets RACM equivalent reductions for CTG and major source categories. As long as the aggregate program reductions occur from any source in the trading program, whether they be mobile or stationary or CTG or not, Section 182(b)(2) requirements are met.**
- C. Trading out of source-specific RACM is consistent with economic incentive and market-based attainment strategies embraced by Congress in the CAA.**

- Section 172(c)(6) requires that nonattainment area plan provisions "include enforceable emission limitations, such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment... in such area by the applicable attainment date..."

See also Section 110(a)(2)(A). If EPA were to conclude that a trading program is required as an attainment strategy to meet federal standards, the language of Section 172(c)(6) would conflict with Section 172(c)(1) if the latter provision is read to impose source-specific RACM reductions. EPA should interpret the two provisions to avoid actual or potential conflict.

- D. EPA has limited discretion to approve alternate planning procedures, including trading programs that achieve equivalent reductions as RACM from alternative sources.**

- Section 172(c)(8) extends to EPA discretion to approve alternative attainment strategies so long as such strategies are in the aggregate at least as effective as the specific requirements set forth in Section 172(c)(6). Section 172(c)(a) indicates that "[u]pon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator."

V. WEAKNESSES IN RACM TRADING

A. RACM fix-up provisions

B. Requirements that plans include provisions to reach attainment "as expeditiously as practicable."

- However, what is as "expeditiously as practicable" can be determined at the time that each state defines its reduction path. As long as a trading program stays on the path contained in a state's plan, a trading program can be deemed to meet this requirement. This interpretation is consistent with the 1979 RACM Guidance which indicated that:
"expeditiously as practicable... does not require that all sources apply RACM if less than all RACM will suffice for reasonable further progress and attainment. Therefore, if a state adopts less than all RACM and demonstrates (a) that reasonable further progress and attainment of the NAAQS are assured, and (b) that application of all RACM would not result in attainment any faster, than a plan with less than all RACM may be approved. 44 Fed. Reg. 20375 (April 4, 1979).