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(Original Signature of Member)

115TH CONGRESS
1ST SESSION **H. R.**

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

IN THE HOUSE OF REPRESENTATIVES

, 2017

Mr. GOODLATTE (for himself and Mr. CONYERS) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

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

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

3 **SECTION 1. TABLE OF CONTENTS.**

4 The table of contents for this Act is as follows:

- Sec. 1. Table of contents.
- Sec. 2. Purpose; restatement does not change meaning or effect of existing law.
- Sec. 3. Enactment of title 55, United States Code.
- Sec. 4. Conforming amendments.
- Sec. 5. Transitional and savings provisions.
- Sec. 6. Repeals.

5 **SEC. 2. PURPOSE; RESTATEMENT DOES NOT CHANGE MEANING OR EF-**
6 **FFECT OF EXISTING LAW.**

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

9 (b) RESTATEMENT DOES NOT CHANGE MEANING OR EFFECT OF EXIST-
10 ING LAW.—

1 (1) IN GENERAL.—The restatement of existing law enacted by this
 2 Act does not change the meaning or effect of the existing law. The re-
 3 statement consolidates various provisions that were enacted separately
 4 over a period of many years, reorganizing them, conforming style and
 5 terminology, modernizing obsolete language, and correcting drafting er-
 6 rors. These changes serve to remove ambiguities, contradictions, and
 7 other imperfections, but they do not change the meaning or effect of
 8 the existing law or impair the precedential value of earlier judicial deci-
 9 sions or other interpretations.

10 (2) RULE OF CONSTRUCTION.—

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

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

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

22 (a) TITLE 55.—Title 55, United States Code, “Environment”, is enacted
 23 as follows:

24 **TITLE 55—ENVIRONMENT**

Subtitle I—General Provisions

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Subtitle II—Air

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Subdivision 1—General Provisions

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221.	Motor vehicle emission and fuel standards	221101
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Subdivision 4—Noise Pollution
231. Noise pollution 231101

Subdivision 5—Acid Deposition Control
233. Acid deposition control 233101

Subdivision 6—Permits
235. Permits 235101

Subdivision 7—Stratospheric Ozone Reduction
237. Stratospheric ozone reduction 237101

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239 through 297. RESERVED

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299. Miscellaneous 299101

1 **Subtitle I—General Provisions**
2 **Chapter 101—Definitions**

- Sec.
101101. Definitions.
101102. Environmental law.

3 **§ 101101. Definitions**

4 In this title:

- 5 (1) ADMINISTRATOR.—The term “Administrator” means the Admin-
6 istrator of the Environmental Protection Agency.
7 (2) EPA.—The term “EPA” means the Environmental Protection
8 Agency.

9 **§ 101102. Environmental law**

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

**Chapter 103—Environmental Protection
Agency**

- Sec.
103101. Establishment.
103102. Administrator.
103103. Deputy Administrator.
103104. Assistant Administrators.
103105. Functions.
103106. Office of Criminal Investigations.
103107. Civil investigators.
103108. National Enforcement Training Institute.
103109. Availability of certain accounts.

13 **§ 103101. Establishment**

14 There is established the Environmental Protection Agency.

15 **§ 103102. Administrator**

- 16 (a) IN GENERAL.—There shall be at the head of EPA the Administrator
17 of the Environmental Protection Agency.
18 (b) APPOINTMENT.—The Administrator shall be appointed by the Presi-
19 dent by and with the advice and consent of the Senate.

§ 103103. Deputy Administrator

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

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

(c) FUNCTIONS.—The Deputy Administrator shall—

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

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

§ 103104. Assistant Administrators

(a) IN GENERAL.—

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

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

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

(b) ADDITIONAL ASSISTANT ADMINISTRATORS.—

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

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

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

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

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

§ 103105. Functions

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

(1) The functions that, before December 2, 1970, were vested by law in the Secretary of the Interior and the Department of the Interior and

1 administered by the Gulf Breeze Biological Laboratory of the Bureau
2 of Commercial Fisheries at Gulf Breeze, Florida.

3 (2) The function of conducting investigations, studies, surveys, re-
4 search, and analyses relating to ecological systems.

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

9 (4) Such functions as are incidental to or necessary for the perform-
10 ance by or under the Administrator of the functions described in para-
11 graphs (1) through (3), including authority provided by law to pre-
12 scribe regulations relating primarily to the functions.

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

17 **§ 103106. Office of Criminal Investigations**

18 (a) HEAD OF OFFICE.—The head of the Office of Criminal Investiga-
19 tions—

20 (1) shall be a position in the competitive service (as defined in sec-
21 tion 2102 of title 5) or a career reserved position (as defined in section
22 3132(a) of that title); and

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

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

27 **§ 103107. Civil investigators**

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

32 **§ 103108. National Enforcement Training Institute**

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

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

38 **§ 103109. Availability of certain accounts**

39 (a) AVAILABILITY.—For each fiscal year—

40 (1) the Science and Technology Account and Environmental Pro-
41 grams and Management Account are available for—

6

1 (A) uniforms, or allowances for uniforms, as authorized by sec-
2 tions 5901 and 5902 of title 5; and

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

6 (2) the Science and Technology Account, Environmental Programs
7 and Management Account, Office of Inspector General Account, Haz-
8 arduous Substance Superfund Account, and Leaking Underground Stor-
9 age Tank Trust Fund Program Account are available for the construc-
10 tion, alteration, repair, rehabilitation, and renovation of facilities pro-
11 vided that the cost does not exceed \$85,000 per project.

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

18 **Chapter 105—National Environmental** 19 **Policy**

Subchapter I—Purposes

Sec.

105101. Purposes.

Subchapter II—Policies and Goals

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105303. Employment of personnel, experts, and consultants.

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representatives.

105306. Full-time service; compensation.

105307. Acceptance of travel reimbursement.

105308. Expenditures for international activities.

105309. Authorization of appropriations.

20 **Subchapter I—Purposes**

21 **§ 105101. Purposes**

22 The purposes of this chapter are—

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

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

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

30 (4) to establish a Council on Environmental Quality.

Subchapter II—Policies and Goals

§ 105201. Declaration of national environmental policy

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

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

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

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

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

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

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

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

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

1 **§ 105202. Interpretation of policies, regulations, and public**
2 **laws; actions by Federal agencies**

3 (a) IN GENERAL.—Congress authorizes and directs that, to the fullest ex-
4 tent possible—

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

8 (2) all Federal agencies shall—

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

13 (B) identify and develop methods and procedures, in consulta-
14 tion with the Council on Environmental Quality, that will ensure
15 that presently unquantified environmental amenities and values
16 may be given appropriate consideration in decisionmaking along
17 with economic and technical considerations;

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

22 (i) the environmental impact of the proposed action;

23 (ii) any adverse environmental effects that cannot be avoid-
24 ed should the proposal be implemented;

25 (iii) alternatives to the proposed action;

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

29 (v) any irreversible and irretrievable commitments of re-
30 sources that would be involved in the proposed action should
31 it be implemented.

32 (D) study, develop, and describe appropriate alternatives to rec-
33 ommended courses of action in any proposal that involves unre-
34 solved conflicts concerning alternative uses of available resources;

35 (E) recognize the worldwide and long-range character of envi-
36 ronmental problems and, where consistent with the foreign policy
37 of the United States, lend appropriate support to initiatives, reso-
38 lutions, and programs designed to maximize international coopera-
39 tion in anticipating and preventing a decline in the quality of man-
40 kind's world environment;

1 (F) make available to States, counties, municipalities, institu-
2 tions, and individuals advice and information useful in restoring,
3 maintaining, and enhancing the quality of the environment;

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

6 (H) assist the Council on Environmental Quality.

7 (b) DETAILED STATEMENTS.—

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

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

16 (A) shall be made available to the President, the Council on En-
17 vironmental Quality, and the public as provided by section 552 of
18 title 5; and

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

21 (3) DETAILED STATEMENT PREPARED BY STATE AGENCY OR OFFI-
22 CIAL.—

23 (A) IN GENERAL.—Any detailed statement required under sub-
24 section (a)(2)(C) for any major Federal action funded under a
25 program of grants to States shall not be deemed to be legally in-
26 sufficient solely by reason of having been prepared by a State
27 agency or official, if—

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

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

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

34 (iv) the responsible Federal official provides early notifica-
35 tion to, and solicits the views of, any other State or any Fed-
36 eral land management entity of any action or any alternative
37 thereto that may have significant impacts on the State or af-
38 fected Federal land management entity and, if there is any
39 disagreement on the impacts, prepares a written assessment
40 of the impacts and views for incorporation into the detailed
41 statement.

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

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

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

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

16 (d) NECESSITY OF MILITARY LOW-LEVEL FLIGHT TRAINING TO PRO-
 17 TECT NATIONAL SECURITY AND ENHANCE MILITARY READINESS.—Noth-
 18 ing in this chapter (including regulations implementing this chapter) shall
 19 require the Secretary of Defense or the Secretary of a military department
 20 to prepare a programmatic nationwide environmental impact statement for
 21 low-level flight training as a precondition to the use by the Armed Forces
 22 of an airspace for the performance of low-level training flights.

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

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

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

27 or

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

30 **Subchapter III—Council on Environmental** 31 **Policy**

32 **§ 105301. Definition of Council**

33 In this subchapter, the term “Council” means the Council on Environ-
 34 mental Quality established under section 105302 of this title.

35 **§ 105302. Establishment**

36 (a) IN GENERAL.—There is created in the Executive Office of the Presi-
 37 dent a Council on Environmental Quality.

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

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

3 (d) QUALIFICATIONS.—Each member shall be an individual who, as a re-
4 sult of the individual's training, experience, and attainments, is exception-
5 ally well qualified to—

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

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

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

12 (4) formulate and recommend national policies to promote the im-
13 provement of the quality of the environment.

14 **§ 105303. Employment of personnel, experts, and consult-**
15 **ants**

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

19 (b) EXPERTS AND CONSULTANTS.—The Council may employ and fix the
20 compensation of such experts and consultants as may be necessary for the
21 carrying out of its functions under this chapter, in accordance with section
22 3109 of title 5 (but without regard to the last sentence of subsection (b)
23 of that section).

24 (c) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding sec-
25 tion 1342 of title 31, the Council may accept and employ voluntary and un-
26 compensated services in furtherance of the purposes of the Council.

27 **§ 105304. Duties and functions**

28 It shall be the duty and function of the Council—

29 (1) to—

30 (A) gather timely and authoritative information concerning the
31 conditions and trends in the quality of the environment, both cur-
32 rent and prospective;

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

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

39 (2) to—

40 (A) review and appraise the various programs and activities of
41 the Federal Government in light of the policy set forth in sub-

12

1 chapter II for the purpose of determining the extent to which
2 those programs and activities are contributing to the achievement
3 of that policy; and

4 (B) make recommendations to the President with respect there-
5 to;

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

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

12 (5) to—

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

15 (B) accumulate necessary data and other information for a con-
16 tinuing analysis of those changes or trends and an interpretation
17 of their underlying causes;

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

20 (7) to make and furnish such studies, reports thereon, and recom-
21 mendations with respect to matters of policy and legislation as the
22 President may request.

23 **§ 105305. Consultation with Citizens' Advisory Committee**
24 **on Environmental Quality and other representa-**
25 **tives**

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

28 (1) consult with such representatives of science, industry, agri-
29 culture, labor, conservation organizations, State and local governments
30 and other groups, as the Council considers advisable; and

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

37 **§ 105306. Full-time service; compensation**

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

39 (b) COMPENSATION.—

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

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

7 **§ 105307. Acceptance of travel reimbursement**

8 The Council may accept reimbursement from any private nonprofit orga-
9 nization or from any Federal, State, or local government agency for the rea-
10 sonable travel expenses incurred by an officer or employee of the Council
11 in connection with the officer or employee’s attendance at any conference,
12 seminar, or similar meeting conducted for the benefit of the Council.

13 **§ 105308. Expenditures for international activities**

14 The Council may make expenditures in support of its international activi-
15 ties, including expenditures for—

- 16 (1) international travel;
17 (2) activities in implementation of international agreements; and
18 (3) the support of international exchange programs in the United
19 States and in foreign countries.

20 **§ 105309. Authorization of appropriations**

21 There is authorized to be appropriated to carry out this chapter
22 \$1,000,000 for each fiscal year.

23 **Chapter 107—Environmental Quality**
24 **Improvement**

Sec.

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

25 **§ 107101. Definitions**

26 In this chapter:

27 (1) DIRECTOR.—The term “Director” means the Director of the Of-
28 fice.

29 (2) FUND.—The term “Office of Environmental Quality Manage-
30 ment Fund” means the Office of Environmental Quality Management
31 Fund established under section 107104 of this title.

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

34 **§ 107102. Findings, declarations, and purposes**

35 (a) FINDINGS.—Congress finds that—

- 36 (1) man has caused changes in the environment;
37 (2) many of those changes may affect the relationship between man
38 and his environment; and

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

3 (b) DECLARATIONS.—

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

10 (2) RESPONSIBILITY FOR IMPLEMENTATION.—The primary respon-
11 sibility for implementing that policy rests with State and local govern-
12 ment.

13 (3) REGIONAL ORGANIZATIONS.—The Federal Government encour-
14 ages and supports implementation of that policy through appropriate
15 regional organizations established under law.

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

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

20 (2) to authorize an Office of Environmental Quality, which, notwith-
21 standing any other provision of law, shall provide the professional and
22 administrative staff for the Council on Environmental Quality.

23 **§ 107103. Office of Environmental Quality**

24 (a) ESTABLISHMENT; DIRECTOR; DEPUTY DIRECTOR.—

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

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

29 (3) DEPUTY DIRECTOR.—There shall be in the Office a Deputy Di-
30 rector who shall be appointed by the President, by and with the advice
31 and consent of the Senate.

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

36 (c) EMPLOYMENT OF OFFICERS, EMPLOYEES, EXPERTS, AND CONSULT-
37 ANTS; COMPENSATION.—The Director may employ such officers and em-
38 ployees (including experts and consultants) as may be necessary to enable
39 the Office to carry out its functions under this chapter and chapter 105,
40 except that the Director may employ not more than 10 specialists and other
41 experts without regard to the provisions of title 5 governing appointments

1 in the competitive service and pay such specialists and experts without re-
2 gard to the provisions of chapter 51 and subchapter III of chapter 53 of
3 that title relating to classification and General Schedule pay rates, but no
4 such specialist or expert shall be paid at a rate in excess of the maximum
5 rate payable under section 5376 of title 5.

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

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

12 (2) assisting Federal agencies in appraising the effectiveness of exist-
13 ing and proposed facilities, programs, policies, and activities of the
14 Federal Government, and specific major projects designated by the
15 President that do not require individual project authorization by Con-
16 gress, that affect environmental quality;

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

20 (4) promoting the advancement of scientific knowledge of the effects
21 of actions and technology on the environment and encouraging the de-
22 velopment of the means to prevent or reduce adverse effects that en-
23 danger the health and well-being of man;

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

26 (6) assisting Federal agencies in the development and interrelation-
27 ship of environmental quality criteria and standards established
28 through the Federal Government; and

29 (7) collecting, collating, analyzing, and interpreting data and infor-
30 mation on environmental quality, ecological research, and evaluation.

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

35 **§ 107104. Office of Environmental Quality Management**
36 **Fund**

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

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

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

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

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

10 **Chapter 109—Environmental Research,** 11 **Development, and Demonstration**

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

Sec.

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

109102. Science Advisory Board.

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

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

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

109201. Grants to qualified citizens groups.

109202. Miscellaneous reports.

109203. Staff management.

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

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

109302. Information about environmental research and development activities.

109303. Reimbursement for use of facilities.

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

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

12 **Subchapter I—Provisions Enacted by the** 13 **Environmental Research, Development,** 14 **and Demonstration Authorization Act of** 15 **1978**

16 **§ 109101. Expenditure of funds for research and develop-** 17 **ment related to regulatory program activities**

18 (a) DEFINITION OF PROGRAM OFFICE.—In this section, the term “pro-
19 gram office” means—

20 (1) the Office of Air and Waste Management, for air quality activi-
21 ties;

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

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

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

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

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

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

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

8 **§ 109102. Science Advisory Board**

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

15 (b) MEMBERSHIP; CHAIRMAN; MEETINGS; QUALIFICATIONS OF MEM-
16 BERS.—The Board shall be composed of at least 9 members, 1 of whom
17 shall be designated Chairman, and shall meet at such times and places as
18 may be designated by the Chairman of the Board in consultation with the
19 Administrator. Each member of the Board shall be qualified by education,
20 training, and experience to evaluate scientific and technical information on
21 matters referred to the Board under this section.

22 (c) PROPOSED ENVIRONMENTAL CRITERIA DOCUMENT, STANDARD, LIMI-
23 TATION, OR REGULATION.—

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

33 (A) the proposed criteria document, standard, limitation, or reg-
34 ulation; and

35 (B) relevant scientific and technical information in the posses-
36 sion of EPA on which the proposed action is based.

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

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

5 (e) COMMITTEES.—

6 (1) MEMBER COMMITTEES.—

7 (A) IN GENERAL.—The Board may establish such member com-
8 mittees and investigative panels as the Administrator and the
9 Board determine to be necessary to carry out this section.

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

13 (2) AGRICULTURE-RELATED COMMITTEES.—

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

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

17 (ii) may establish such additional agriculture-related com-
18 mittees and investigative panels as the Administrator and the
19 Board determine to be necessary to carry out the duties
20 under subparagraph (C).

21 (B) MEMBERSHIP.—The standing committee and each agri-
22 culture-related committee or investigative panel established under
23 subparagraph (A) shall be—

24 (i) composed of—

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

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

30 (ii) appointed by the Administrator and the Board, in con-
31 sultation with the Secretary of Agriculture.

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

1 (f) APPOINTMENT AND COMPENSATION OF SECRETARY AND OTHER PER-
2 SONNEL; COMPENSATION OF MEMBERS.—

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

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

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

18 (h) PUBLIC PARTICIPATION AND TRANSPARENCY.—The Board shall
19 make every effort, consistent with applicable law, including section 552 of
20 title 5 (commonly known as the "Freedom of Information Act") and section
21 552a of title 5 (commonly known as the "Privacy Act"), to maximize public
22 participation and transparency, including making the scientific and technical
23 advice of the Board and any committees or investigative panels of the Board
24 publically available in electronic form on the EPA website.

25 (i) REPORT TO CONGRESS.—The Administrator shall annually report to
26 the Committee on Environment and Public Works and Committee on Agri-
27 culture, Nutrition and Forestry of the Senate and the Committee on Trans-
28 portation and Infrastructure, Committee on Energy and Commerce, and
29 Committee on Agriculture of the House of Representatives regarding the
30 membership and activities of the standing agriculture-related committee es-
31 tablished under subsection (e)(2)(A)(i).

32 **§ 109103. Identification and coordination of research, devel-**
33 **opment, and demonstration activities**

34 (a) CONSULTATION AND COOPERATION OF ADMINISTRATOR WITH FED-
35 ERAL AGENCY HEADS.—

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

39 (A) to identify environmental research, development, and dem-
40 onstration activities, within and outside the Federal Government,

1 that may need to be more effectively coordinated to minimize un-
2 necessary duplication of programs, projects, and research facilities;

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

7 (C) to determine the additional legislative actions that would be
8 needed to ensure such coordination to the maximum extent pos-
9 sible.

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

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

17 **§ 109104. Reporting of financial interests of EPA officers**
18 **and employees**

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

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

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

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

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

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

30 (1) define the term “known financial interest” for purposes of sub-
31 section (a); and

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

37 (d) EXEMPTION OF POSITIONS BY ADMINISTRATOR.—In the regulations
38 prescribed under subsection (c), the Administrator may identify specific po-
39 sitions of a nonpolicymaking nature within EPA and provide that officers
40 or employees occupying those positions shall be exempt from the require-
41 ments of this section.

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

3 **Subchapter II—Provisions Enacted by the**
4 **Environmental Research, Development,**
5 **and Demonstration Authorization Act of**
6 **1979**

7 **§ 109201. Grants to qualified citizens groups**

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

11 (1) has an area-based focus;

12 (2) is not single-issue oriented; and

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

17 (b) GRANTS.—The Administrator may make a grant to a qualified citi-
18 zens group in a State or region for the purpose of supporting and encourag-
19 ing participation by the qualified citizens group in—

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

23 (2) setting goals and identifying measures for improvement.

24 (c) ELIGIBILITY.—A qualified citizens group shall be eligible for assist-
25 ance under this section only if the qualified citizens group is certified by
26 the Governor in consultation with the State legislature as a bona fide orga-
27 nization entitled to receive Federal assistance to pursue the aims of the pro-
28 gram under this section. The qualified citizens group shall further dem-
29 onstrate its capacity to employ usefully the funds for the purposes of the
30 program and its broad-based representative nature.

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

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

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

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

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

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

8 (g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-
9 propriated to EPA for grants to qualified citizens groups in States and re-
10 gions \$3,000,000.

11 **§ 109202. Miscellaneous reports**

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

18 (b) INFORMATION WITH RESPECT TO MATTERS FALLING WITHIN OR
19 RELATED TO COMMITTEE JURISDICTION.—The Administrator shall keep
20 the Committee on Science and Technology of the House of Representatives
21 and the Committee on Environment and Public Works of the Senate fully
22 and currently informed with respect to matters falling within or related to
23 the jurisdiction of the committees.

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

30 **§ 109203. Staff management**

31 (a) APPOINTMENTS FOR EDUCATIONAL PROGRAMS.—

32 (1) IN GENERAL.—The Administrator may select and appoint up to
33 75 full-time permanent staff members in the Office of Research and
34 Development to pursue full-time educational programs for the purpose
35 of—

36 (A) securing an advanced degree; or

37 (B) securing academic training;

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

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

4 (3) PAY.—The Administrator may continue to pay the salary and
5 benefits of the appointees under paragraph (1) and reasonable and ap-
6 propriate relocation expenses and tuition.

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

10 (5) PERSONNEL CEILING.—Staff members appointed under para-
11 graph (1) shall not count against any EPA personnel ceiling during the
12 term of their appointment.

13 (b) POST-DOCTORAL RESEARCH FELLOWS.—

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

17 (2) PERSONNEL CEILING.—Post-doctoral research fellows appointed
18 under paragraph (1) shall not count against any EPA personnel ceil-
19 ing.

20 (c) NON-GOVERNMENT RESEARCH ASSOCIATES.—

21 (1) IN GENERAL.—The Administrator may, and is encouraged to,
22 utilize research associates from outside the Federal Government in con-
23 ducting the research, development, and demonstration programs of
24 EPA.

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

28 (d) WOMEN AND MINORITY GROUPS.—For all programs under this sec-
29 tion, the Administrator shall place special emphasis on providing opportuni-
30 ties for education and training of women and minority groups.

31 **Subchapter III—Provisions Enacted by the**
32 **Environmental Research, Development,**
33 **and Demonstration Authorization Act of**
34 **1980**

35 **§ 109301. Energy-related pollution control technologies and**
36 **environmental protection projects**

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

41 (1) division A of subtitle II;

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

3 (3) other pertinent pollution control statutes.

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

12 **§ 109302. Information about environmental research and de-**
13 **velopment activities**

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

17 **§ 109303. Reimbursement for use of facilities**

18 (a) IN GENERAL.—The Administrator may allow appropriate use of spe-
19 cial EPA research and test facilities by outside groups or individuals and
20 receive reimbursement or fees for costs incurred in connection with such use
21 when the Administrator finds it to be in the public interest. Such reimburse-
22 ment or fees shall be used by the Administrator to defray the costs of use
23 by outside groups or individuals.

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

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

30 **Subchapter IV—Provision Enacted by the**
31 **Environmental Research, Development,**
32 **and Demonstration Authorization Act of**
33 **1981**

34 **§ 109401. Continuing and long-term environmental research**
35 **and development**

36 (a) IN GENERAL.—The Administrator shall establish a separately identi-
37 fied program of continuing, long-term environmental research and develop-
38 ment for—

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

40 (2) water quality activities under the Federal Water Pollution Con-
41 trol Act (33 U.S.C. 1251 et seq.);

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

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

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

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

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

11 (8) toxic substance activities under the Toxic Substances Control Act
12 (15 U.S.C. 2601 et seq.); and

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

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

20 **Chapter 111—Provisions Applicable to**
21 **More Than 1 Subtitle or Other Law**

Sec.

111101. Oklahoma Indian country.

22 **§ 111101. Oklahoma Indian country**

23 (a) ADMINISTRATION OF STATE PROGRAMS BY THE STATE.—Notwith-
24 standing any other provision of law, if the Administrator determines that
25 a regulatory program submitted by the State of Oklahoma for approval by
26 the Administrator under a law administered by the Administrator meets ap-
27 plicable requirements of the law, and the Administrator approves the State
28 to administer the State program under the law with respect to areas in the
29 State that are not Indian country, on request of the State, the Adminis-
30 trator shall approve the State to administer the State program in the areas
31 of the State that are in Indian country, without any further demonstration
32 of authority by the State.

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

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

38 (2) the Indian tribe and the agency of the State of Oklahoma with
39 federally delegated program authority enter into a cooperative agree-
40 ment, subject to review and approval of the Administrator after notice

1 and opportunity for public hearing, under which the Indian tribe and
 2 that State agency agree to treatment of the Indian tribe as a State and
 3 to jointly plan and administer program requirements.

4 **Chapters 113 through 197—Reserved**
 5 **Chapter 199—Miscellaneous**

Sec.

199101. Interagency cooperation on prevention of environmental cancer and heart and lung disease.
 199102. Utilization of talents of older Americans in projects of pollution prevention, abatement, and control.
 199103. Indian environmental general assistance program.
 199104. EPA fees.
 199105. Availability of fees and charges deposited in the Licensing and Other Services Fund to carry out EPA programs.
 199106. Percentage of Federal funding for organizations owned by socially and economically disadvantaged individuals.
 199107. Working capital fund.
 199108. Availability of funds after expiration of period for liquidating obligations.

6 **§ 199101. Interagency cooperation on prevention of environ-**
 7 **mental cancer and heart and lung disease**

8 (a) TASK FORCE.—There shall be established a Task Force on Environ-
 9 mental Cancer and Heart and Lung Disease (referred to in this section as
 10 the “Task Force”).

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

12 (1) shall include—

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

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

20 (2) shall be chaired by the Administrator.

21 (c) DUTIES.—The Task Force shall—

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

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

28 (3) recommend research and such other measures as may be appro-
 29 priate to prevent or reduce the incidence of environmentally related
 30 cancer and heart and lung diseases; and

31 (4) coordinate research by, and stimulate cooperation between, EPA,
 32 the Department of Health and Human Services, and such other agen-

1 cies as may be appropriate to prevent environmentally related cancer
2 and heart and lung diseases.

3 **§ 199102. Utilization of talents of older Americans in**
4 **projects of pollution prevention, abatement, and**
5 **control**

6 (a) TECHNICAL ASSISTANCE TO ENVIRONMENTAL AGENCIES.—Notwith-
7 standing any other provision of law relating to Federal grants and coopera-
8 tive agreements, the Administrator may make a grant to, or enter into a
9 cooperative agreement with, a private nonprofit organization designated by
10 the Secretary of Labor under title V of the Older Americans Act of 1965
11 (42 U.S.C. 3056 et seq.) to utilize the talents of older Americans in pro-
12 grams authorized by other provisions of law administered by the Adminis-
13 trator (and consistent with those provisions of law) in providing technical
14 assistance to Federal, State, and local environmental agencies for projects
15 of pollution prevention, abatement, and control.

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

20 (1) result in the displacement of individuals currently employed by
21 the environmental agency concerned (including partial displacement
22 through reduction of nonovertime hours, wages, or employment bene-
23 fits);

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

27 (3) affect existing contracts for services.

28 (c) FUNDING.—

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

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

36 **§ 199103. Indian environmental general assistance program**

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

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

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

4 (b) DEFINITIONS.—In this section:

5 (1) INDIAN TRIBAL GOVERNMENT.—The term “Indian tribal govern-
6 ment” means any Indian tribe, band, nation, or other organized group
7 or community, including any Alaska Native village or regional or village
8 corporation (as defined in, or established pursuant to, the Alaska Na-
9 tive Claims Settlement Act (43 U.S.C. 1601 et seq.)), that is recog-
10 nized as eligible for the special services provided by the United States
11 to Indians because of their status as Indians.

12 (2) INTERTRIBAL CONSORTIUM.—The term “intertribal consortium”
13 means a partnership between 2 or more Indian tribal governments au-
14 thorized by the governing bodies of those Indian tribes to apply for and
15 receive assistance pursuant to this section.

16 (c) GENERAL ASSISTANCE PROGRAM.—

17 (1) IN GENERAL.—The Administrator shall establish an Indian envi-
18 ronmental general assistance program that provides grants to eligible
19 Indian tribal governments or intertribal consortia to cover the costs of
20 planning, developing, and establishing environmental protection pro-
21 grams consistent with other applicable provisions of law providing for
22 enforcement of such laws by Indian tribes on Indian land.

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

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

33 (d) NO REDUCTION IN AMOUNTS.—In no case shall the award of a gener-
34 al assistance grant to an Indian tribal government or intertribal consor-
35 tium under this section result in a reduction of EPA grants for environ-
36 mental programs to that tribal government or consortium. Nothing in this
37 section shall preclude an Indian tribal government or intertribal consortium
38 from receiving individual media grants or cooperative agreements. Funds
39 provided by the Administrator through the general assistance program shall
40 be used by an Indian tribal government or intertribal consortium to supple-

1 ment other funds provided by the Administrator through individual media
2 grants or cooperative agreements.

3 (e) EXPENDITURE OF GENERAL ASSISTANCE.—Any general assistance
4 under this section shall be expended for the purpose of planning, developing,
5 and establishing the capability to implement programs administered by the
6 Administrator and specified in the assistance agreement. Purposes and pro-
7 grams authorized under this section shall include the development and im-
8 plementation of solid and hazardous waste programs for Indian land. An In-
9 dian tribal government or intertribal consortium receiving general assistance
10 pursuant to this section shall utilize the funds for programs and purposes
11 to be carried out in accordance with the terms of the assistance agreement.
12 The programs and general assistance shall be carried out in accordance with
13 the purposes and requirements of applicable provisions of law (including the
14 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)).

15 (f) PROCEDURES.—

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

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

24 (g) REPORTS TO CONGRESS.—The Administrator shall submit an annual
25 report to the appropriate Committees of Congress with jurisdiction over the
26 applicable environmental laws and Indian tribes describing which Indian
27 tribes or intertribal consortia have been granted approval by the Adminis-
28 trator pursuant to law to enforce certain environmental laws and the effec-
29 tiveness of any such enforcement.

30 **§ 199104. EPA fees**

31 (a) ASSESSMENT AND COLLECTION.—The Administrator shall by regula-
32 tion assess and collect fees and charges for services and activities carried
33 out pursuant to laws administered by the Administrator.

34 (b) LIMITATION ON FEES AND CHARGES.—

35 (1) CERTAIN PROGRAMS.—The maximum aggregate amount of fees
36 and charges in excess of the amounts being collected under law in ef-
37 fect as of November 5, 1980, that may be assessed and collected pursu-
38 ant to this section in a fiscal year—

39 (A) for services and activities carried out pursuant to the Fed-
40 eral Water Pollution Control Act (33 U.S.C. 1251 et seq.) is
41 \$10,000,000; and

1 (B) for services and activities in programs within the jurisdic-
2 tion of the Committee on Energy and Commerce of the House of
3 Representatives and administered by the Administrator shall be
4 limited to—

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

8 (ii) such sums specifically authorized by Public Law 101-
9 549 (commonly known as the Clean Air Act Amendments of
10 1990).

11 (2) OTHER PROGRAMS.—Any remaining amounts required to be col-
12 lected under this section shall be collected from services and programs
13 administered by the Administrator other than those specified in sub-
14 paragraphs (A) and (B) of paragraph (1).

15 (c) RULE OF CONSTRUCTION.—Nothing in this section increases or di-
16 minishes the authority of the Administrator to promulgate regulations pur-
17 suant to section 9701 of title 31.

18 (d) USES OF FEES.—Fees and charges collected pursuant to this section
19 shall be deposited in the Treasury in a special account for environmental
20 services. Subject to appropriation Acts, such funds shall be available to the
21 Administrator to carry out the activities for which the fees and charges are
22 collected. Such funds shall remain available until expended.

23 **§ 199105. Availability of fees and charges deposited in the**
24 **Licensing and Other Services Fund to carry out**
25 **EPA programs**

26 Amounts deposited in the Licensing and Other Services Fund from fees
27 and charges assessed and collected by the Administrator for services and ac-
28 tivities carried out pursuant to the statutes administered by the Adminis-
29 trator shall be available to carry out EPA's activities in the programs for
30 which the fees or charges are made.

31 **§ 199106. Percentage of Federal funding for organizations**
32 **owned by socially and economically disadvantaged**
33 **individuals**

34 (a) IN GENERAL.—The Administrator shall, to the fullest extent possible,
35 ensure that at least 8 percent of Federal funding for prime and sub-
36 contracts awarded in support of authorized programs, including grants,
37 loans, and contracts for wastewater treatment and leaking underground
38 storage tanks grants, be made available to business concerns or other orga-
39 nizations owned or controlled by socially and economically disadvantaged in-
40 dividuals (within the meaning of paragraphs (5) and (6) of section 8(a) of

1 the Small Business Act (15 U.S.C. 637(a)), including historically black col-
2 leges and universities.

3 (b) WOMEN.—For purposes of this section, economically and socially dis-
4 advantaged individuals shall be deemed to include women.

5 **§ 199107. Working capital fund**

6 (a) ESTABLISHMENT.—There is established in the Treasury a working
7 capital fund, to be available without fiscal year limitation for expenses and
8 equipment necessary for the maintenance and operation of such administra-
9 tive services as the Administrator determines may be performed more ad-
10 vantageously as central services.

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

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

20 (1) accrued leave;

21 (2) depreciation of fund plant and equipment;

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

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

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

28 (e) RESERVE.—

29 (1) IN GENERAL.—An amount not to exceed 4 percent of the total
30 income to the working capital fund during a fiscal year may be retained
31 in the fund, to remain available until expended, to be used for the ac-
32 quisition of capital equipment and for the improvement and implemen-
33 tation of EPA financial management, automated data processing, and
34 other support systems.

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

38 **§ 199108. Availability of funds after expiration of period for**
39 **liquidating obligations**

40 For any fiscal year, the obligated balances of sums available in multiple-
41 year appropriations accounts shall remain available through the 7th fiscal

1 year after their period of availability has expired for liquidating obligations
2 made during the period of availability.

3 **Subtitle II—Air**
4 **Division A—Clean Air**
5 **Subdivision 1—General Provisions**
6 **Chapter 201—Definitions**

Sec.

201101. Definitions.

7 **§ 201101. Definitions**

8 In this division:

9 (1) AIR POLLUTANT.—

10 (A) IN GENERAL.—The term “air pollutant” means any air pol-
11 lution agent or combination of air pollution agents (including any
12 physical, chemical, biological, radioactive (including source mate-
13 rial, special nuclear material, and byproduct material) substance
14 or matter) that is emitted into or otherwise enters the ambient air.

15 (B) INCLUSIONS.—The term “air pollutant” includes any pre-
16 cursor or precursors to the formation of any air pollutant, to the
17 extent that the Administrator has identified the precursor or pre-
18 cursors for the particular purpose for which the term “air pollut-
19 ant” is used.

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

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

25 (B) An agency established by 2 or more States and having sub-
26 stantial powers or duties pertaining to the prevention and control
27 of air pollution.

28 (C)(i) A city, county, or other local government health author-
29 ity; or

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

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

37 (E) An agency of an Indian tribe.

38 (3) AIR QUALITY CONTROL REGION.—The term “air quality control
39 region” means an air quality control region designated under section
40 211107 of this title.

1 (4) APPLICABLE IMPLEMENTATION PLAN.—The term “applicable im-
2 plementation plan” means the portion (or portions) of an implementa-
3 tion plan, or most recent revision of an implementation plan, that—

4 (A) has been approved under section 211110 of this title, pro-
5 mulgated under section 211110(c) of this title, or promulgated or
6 approved pursuant to regulations promulgated under section
7 203101(d) of this title; and

8 (B) implements the relevant requirements of this division.

9 (5) CO.—The term “CO” means carbon monoxide.

10 (6) COMPLIANCE SCHEDULE.—The term “compliance schedule”
11 means a schedule of required measures including an enforceable se-
12 quence of actions or operations leading to compliance with an emission
13 limitation, other limitation, prohibition, or standard.

14 (7) CONTROL TECHNIQUE GUIDELINE.—The term “control technique
15 guideline” means a control technique guideline published by the Admin-
16 istrator under section 211108 of this title.

17 (8) DELAYED COMPLIANCE ORDER.—The term “delayed compliance
18 order” means an order issued by a State or by the Administrator to
19 an existing stationary source, postponing the date required under an
20 applicable implementation plan for compliance by the source with any
21 requirement of the applicable implementation plan.

22 (9) EMISSION LIMITATION; EMISSION STANDARD.—

23 (A) IN GENERAL.—The terms “emission limitation” and “emis-
24 sion standard” mean a requirement established by a State or the
25 Administrator that limits the quantity, rate, or concentration of
26 emissions of air pollutants on a continuous basis.

27 (B) INCLUSIONS.—The terms “emission limitation” and “emis-
28 sion standard” include—

29 (i) any requirement relating to the operation or mainte-
30 nance of a source to ensure continuous emission reduction;
31 and

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

34 (10) FEDERAL IMPLEMENTATION PLAN.—The term “Federal imple-
35 mentation plan” means a plan (or portion of a plan) that—

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

39 (B) includes enforceable emission limitations or other control
40 measures, means, or techniques (including economic incentives,

1 such as marketable permits or auctions of emissions allowances);
2 and

3 (C) provides for attainment of the relevant NAAQS.

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

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

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

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

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

18 (14) MAJOR EMITTING FACILITY; MAJOR STATIONARY SOURCE.—The
19 terms “major emitting facility” and “major stationary source” mean
20 any stationary facility or source of air pollutants that directly emits,
21 or has the potential to emit, 100 tons per year or more of any air pol-
22 lutant (including any major emitting facility or source of fugitive emis-
23 sions of any such pollutant, as determined by regulation by the Admin-
24 istrator).

25 (15) MEANS OF EMISSION LIMITATION.—

26 (A) IN GENERAL.—The term “means of emission limitation”
27 means a system of continuous emission reduction.

28 (B) INCLUSIONS.—The term “means of emission limitation” in-
29 cludes the use of specific technology or fuels with specified pollu-
30 tion characteristics.

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

34 (17) NAAQS.—The term “NAAQS” means a national ambient air
35 quality standard.

36 (18) NO_x.—The term “NO_x” means a nitrogen oxide.

37 (19) PERSON.—The term “person” includes an individual, corpora-
38 tion, partnership, association, State, municipality, political subdivision
39 of a State, and any agency, department, or instrumentality of the
40 United States and any officer, agent, or employee thereof.

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

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

8 (22) RACT/BACT/LAER CLEARINGHOUSE.—The term “RACT/
9 BACT/LAER clearinghouse” means the database maintained under
10 section 211108(h) of this title.

11 (23) STANDARD OF PERFORMANCE.—

12 (A) IN GENERAL.—The term “standard of performance” means
13 a requirement of continuous emission reduction.

14 (B) INCLUSIONS.—The term “standard of performance” in-
15 cludes any requirement relating to the operation or maintenance
16 of a source to ensure continuous emission reduction.

17 (24) STATE.—The term “State” means a State, the District of Co-
18 lumbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and
19 the Northern Mariana Islands.

20 (25) STATIONARY SOURCE.—The term “stationary source” means
21 any source of an air pollutant except emissions resulting directly from
22 an internal combustion engine for transportation purposes or from a
23 nonroad engine or nonroad vehicle (as defined in section 221101 of this
24 title).

25 (26) VOLATILE ORGANIC COMPOUND; VOC.—The terms “volatile or-
26 ganic compound” and “VOC” mean a volatile organic compound as de-
27 fined by the Administrator.

28 (27) WELFARE.—All language referring to effects on welfare in-
29 cludes—

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

32 (B) damage to and deterioration of property;

33 (C) hazards to transportation; and

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

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

39 **Chapter 203—Administrative and** 40 **Procedural Provisions**

Sec.
203101. Administration.

203102. General provisions relating to administrative proceedings and judicial review.
203103. Emergency powers.
203104. Citizen suits.
203105. Representation in litigation.

1 **§ 203101. Administration**

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

4 (1) IN GENERAL.—The Administrator may prescribe such regula-
5 tions as are necessary to carry out the Administrator’s functions under
6 this division. The Administrator may delegate to any officer or em-
7 ployee of EPA such of the Administrator’s powers and duties under
8 this division, except the making of regulations subject to section
9 203102(d) of this title, as the Administrator considers necessary or ex-
10 pedient.

11 (2) PROCEDURES AND POLICIES FOR REGIONAL OFFICERS AND EM-
12 PLOYEES.—

13 (A) IN GENERAL.—The Administrator shall promulgate regula-
14 tions establishing general applicable procedures and policies for re-
15 gional officers and employees (including a Regional Administrator)
16 to follow in carrying out a delegation under paragraph (1), if any.

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

18 (i) ensure fairness and uniformity in the criteria, proce-
19 dures, and policies applied by the various EPA regions in im-
20 plementing and enforcing this division;

21 (ii) ensure at least an adequate quality audit of each
22 State’s performance and adherence to the requirements of
23 this division in implementing and enforcing This division, par-
24 ticularly in the review of new sources and in enforcement of
25 this division; and

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

30 (b) DETAIL OF EPA PERSONNEL TO AIR POLLUTION CONTROL AGEN-
31 CIES.—On the request of an air pollution control agency, EPA personnel
32 may be detailed to the air pollution control agency for the purpose of carry-
33 ing out this division.

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

38 (d) TRIBAL AUTHORITY.—

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

1 (A) may treat Indian tribes as States under this division, except
2 for purposes of the requirement that makes available for applica-
3 tion by each State not less than 0.5 percent of annual appropria-
4 tions under section 211105 of this title; and

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

7 (2) REGULATIONS.—

8 (A) IN GENERAL.—The Administrator shall promulgate regula-
9 tions specifying the provisions of this division for which it is ap-
10 propriate to treat Indian tribes as States.

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

13 (i) the Indian tribe has a governing body carrying out sub-
14 stantial governmental duties and powers;

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

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

24 (3) TRIBAL IMPLEMENTATION PLANS.—The Administrator may pro-
25 mulgate regulations that establish the elements of tribal implementa-
26 tion plans and procedures for approval or disapproval of tribal imple-
27 mentation plans and portions of tribal implementation plans.

28 (4) TREATMENT.—In any case in which the Administrator deter-
29 mines that the treatment of Indian tribes as identical to States is inap-
30 propriate or administratively infeasible, the Administrator may provide,
31 by regulation, other means by which the Administrator will directly ad-
32 minister the provisions specified under paragraph (2) so as to achieve
33 the appropriate purpose.

34 **§ 203102. General provisions relating to administrative pro-**
35 **ceedings and judicial review**

36 (a) ADMINISTRATIVE SUBPOENAS.—

37 (1) IN GENERAL.—In connection with any determination under sec-
38 tion 211110(d) of this title, or for purposes of obtaining information
39 under section 221111(d)(3) of this title, any investigation, monitoring,
40 reporting requirement, entry, compliance inspection, or administrative
41 enforcement proceeding under this division (including under section

1 203103, 209101, 211113, 211114, 211119, 211128, 213109, 221105,
2 221106, or 221108 of this title), the Administrator may—

3 (A) issue subpoenas for the attendance and testimony of wit-
4 nesses and the production of relevant records; and

5 (B) administer oaths.

6 (2) TRADE SECRETS; SECRET PROCESSES.—Except for emission
7 data, on a showing satisfactory to the Administrator by an owner or
8 operator that records or information or any part thereof subpoenaed
9 under paragraph (1), if made public, would divulge trade secrets or se-
10 cret processes of the owner or operator, the Administrator shall con-
11 sider the record or part of a record confidential in accordance with sec-
12 tion 1905 of title 18, except that the record may be disclosed—

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

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

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

19 (4) CONTUMACY; REFUSAL TO OBEY SUBPOENA.—In case of contu-
20 macy or refusal to obey a subpoena served on any person under this
21 subsection—

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

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

30 (b) JUDICIAL REVIEW.—

31 (1) PLACE FOR REVIEW.—

32 (A) DISTRICT OF COLUMBIA CIRCUIT.—

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

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

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

40 (aa) primary or secondary NAAQS;

1 (bb) emission standard or requirement under sec-
2 tion 211112 of this title;

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

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

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

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

11 or

12 (gg) regulation issued under section 211113 or
13 211119 of this title; or

14 (II) an action of the Administrator in promulgating
15 any other nationally applicable regulation or taking any
16 other nationally applicable final action under this divi-
17 sion.

18 (B) OTHER CIRCUITS.—

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

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

23 (I) an action of the Administrator in approving or pro-
24 mulgating any—

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

27 (bb) order under section 211111(h), 211112, or
28 211119 of this title;

29 (II) an action of the Administrator revising regula-
30 tions for enhanced monitoring and compliance certifi-
31 cation programs under section 211114(a)(3) of this title;

32 or

33 (III) any other final action of the Administrator under
34 this division (including any denial or disapproval by the
35 Administrator under subdivision 2) that is locally or re-
36 gionally applicable.

37 (iii) DETERMINATION OF NATIONWIDE SCOPE OR EF-
38 FECT.—Notwithstanding clauses (i) and (ii), a petition for re-
39 view of any action described in clause (ii) may be filed only
40 in the United States Court of Appeals for the District of Co-
41 lumbia Circuit if—

1 (I) the action is based on a determination of nation-
2 wide scope or effect; and

3 (II) in taking the action, the Administrator finds and
4 publishes that the action is based on such a determina-
5 tion.

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

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

15 (A) affect the finality of the regulation or other action for pur-
16 poses of judicial review;

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

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

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

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

29 (e) ADDITIONAL EVIDENCE.—In any judicial proceeding in which review
30 is sought of a determination under this division required to be made on the
31 record after notice and opportunity for hearing, if any party applies to the
32 court for leave to adduce additional evidence, and shows to the satisfaction
33 of the court that the additional evidence is material and that there were rea-
34 sonable grounds for the failure to adduce the evidence in the proceeding be-
35 fore the Administrator, the court may order the additional evidence (and
36 evidence in rebuttal thereof) to be taken before the Administrator, in such
37 manner and on such terms and conditions as the court considers proper.
38 The Administrator may modify the Administrator's findings as to the facts
39 or make new findings by reason of the additional evidence so taken, and
40 the Administrator shall file the modified or new findings, and the Adminis-
41 trator's recommendation, if any, for the modification or setting aside of the

41

1 Administrator's original determination, with the return of the additional evi-
2 dence.

3 (d) RULEMAKING.—

4 (1) DEFINITIONS.—In this subsection:

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

8 (B) DOCKET.—The term “docket” means a rulemaking docket
9 established under paragraph (3).

10 (C) RULE.—The term “rule” means—

11 (i) the promulgation or revision of any NAAQS under sec-
12 tion 211109 of this title;

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

15 (iii) the promulgation or revision of any standard of per-
16 formance under section 211111 of this title, emission stand-
17 ard or limitation under section 211112(d) of this title, stand-
18 ard under section 211112(f) of this title, or regulation under
19 subsection (l) or (m) of section 211112 of this title;

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

22 (v) the promulgation or revision of any regulation pertain-
23 ing to any fuel or fuel additive under section 221111 of this
24 title;

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

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

29 (viii) promulgation or revision of regulations under subdivi-
30 sion 7;

31 (ix) promulgation or revision of regulations under chapter
32 213;

33 (x) promulgation or revision of regulations under section
34 221102 of this title and test procedures for new motor vehi-
35 cles or engines under section 221106 of this title, and the re-
36 vision of a standard under section 221102(a)(3) of this title;

37 (xi) promulgation or revision of regulations for noncompli-
38 ance penalties under section 211119 of this title;

39 (xii) promulgation or revision of any regulations promul-
40 gated under section 221107 of this title;

- 1 (xiii) action of the Administrator under section 211125 of
2 this title;
- 3 (xiv) the promulgation or revision of any regulation per-
4 taining to consumer and commercial products under section
5 215204(e) of this title;
- 6 (xv) the promulgation or revision of any regulation pertain-
7 ing to field citations under section 211113(e)(3) of this title;
- 8 (xvi) the promulgation or revision of any regulation per-
9 taining to urban buses or the clean-fuel vehicle, clean-fuel
10 fleet, and clean fuel programs under chapter 225;
- 11 (xvii) the promulgation or revision of any regulation per-
12 taining to nonroad engines or nonroad vehicles under section
13 221113 of this title;
- 14 (xviii) the promulgation or revision of any regulation relat-
15 ing to motor vehicle compliance program fees under section
16 221115 of this title;
- 17 (xix) the promulgation or revision of any regulation under
18 section 215204(f) of this title pertaining to marine vessels;
19 and
- 20 (xx) such other actions as the Administrator may deter-
21 mine.

22 (2) INAPPLICABILITY OF CERTAIN PROVISIONS IN TITLE 5.—Sections
23 553 to 557 and section 706 of title 5 shall not, except as expressly pro-
24 vided in this subsection, apply to a rule. This subsection shall not apply
25 in the case of any rule or circumstance described in the provision des-
26 ignated (A) or (B) of section 553(b) of title 5.

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

32 (4) NOTICE OF PROPOSED RULEMAKING.—

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

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

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

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

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

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

6 (i) shall include a summary of—

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

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

11 (III) the major legal interpretations and policy consid-
12 erations underlying the proposed rule; and

13 (ii) shall—

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

19 (II) if the proposal differs in any important respect
20 from any of these recommendations, include an expla-
21 nation of the reasons for the differences.

22 (C) INCLUSION IN DOCKET.—All data, information, and docu-
23 ments described in this paragraph on which the proposed rule re-
24 lies shall be included in the docket on the date of publication of
25 the proposed rule.

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

34 (6) INCLUSION IN DOCKET.—

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

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

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

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

22 (7) PROCEEDINGS.—In promulgating a rule—

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

25 (B) the Administrator shall give interested persons an oppor-
26 tunity to make written submissions and oral presentations of data,
27 views, or arguments;

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

29 (D) the Administrator shall keep the record of the proceeding
30 open for 30 days after completion of the proceeding to provide an
31 opportunity for submission of rebuttal and supplementary informa-
32 tion.

33 (8) PROMULGATED RULES UNDER THIS SUBSECTION.—

34 (A) ITEMS TO ACCOMPANY PROMULGATED RULE.—A promul-
35 gated rule shall be accompanied by—

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

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

1 (iii) a response to each of the significant comments, criti-
2 cisms, and new data submitted in written or oral presen-
3 tations during the comment period.

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

7 (9) JUDICIAL REVIEW.—

8 (A) RECORD.—The record for judicial review shall consist exclu-
9 sively of the material described in subparagraphs (A) and (B) of
10 paragraph (4), subparagraphs (A), (B), and (C) of paragraph (6),
11 and paragraph (8)(A).

12 (B) OBJECTIONS.—

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

17 (ii) IMPRACTICALITY OF RAISING OBJECTION; GROUNDS
18 ARISING AFTER COMMENT PERIOD.—If the person raising an
19 objection demonstrates to the Administrator that it was im-
20 practicable to raise an objection within the comment period
21 or if the grounds for an objection arose after the comment
22 period (but within the time specified for judicial review), and
23 if the objection is of central relevance to the outcome of the
24 rule, the Administrator shall convene a proceeding for recon-
25 sideration of the rule and provide the same procedural rights
26 as would have been afforded had the information been avail-
27 able at the time at which the rule was proposed. If the Ad-
28 ministrator refuses to convene such a proceeding, the person
29 may seek review of the refusal in the United States court of
30 appeals for the appropriate circuit (as provided in subsection
31 (b)). Reconsideration shall not stay the effectiveness of the
32 rule, but the Administrator or the court may stay the effec-
33 tiveness of the rule during reconsideration for not more than
34 3 months.

35 (10) PROCEDURAL DETERMINATIONS.—

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

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

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

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

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

12 (B) contrary to constitutional right, power, privilege, or immu-
13 nity;

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

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

17 (i) the failure to observe the procedure is arbitrary or ca-
18 pricious;

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

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

21 (12) STATUTORY DEADLINES.—A statutory deadline for promulga-
22 tion of a rule that requires promulgation less than 6 months after the
23 date of proposal may be extended to not more than 6 months after the
24 date of proposal by the Administrator on a determination that the ex-
25 tension is necessary to afford the public and EPA adequate opportunity
26 to carry out the purposes of this subsection.

27 (e) NO OTHER JUDICIAL REVIEW.—Nothing in this division shall be con-
28 strued to authorize judicial review of regulations or orders of the Adminis-
29 trator under this division, except as provided in this section.

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

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

39 (h) PUBLIC PARTICIPATION.—It is the intent of Congress that, consistent
40 with the policy of subchapter II of chapter 5 of title 5, the Administrator
41 in promulgating any regulation under this division, including a regulation

1 subject to a deadline, shall ensure that there is a reasonable period for pub-
2 lic participation of at least 30 days, except as otherwise expressly provided
3 in sections 211107(d), 215102(a), 215202, and 215302 of this title.

4 **§ 203103. Emergency powers**

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

14 (b) ISSUANCE OF ORDERS BY THE ADMINISTRATOR.—If it is not prac-
15 ticable to ensure prompt protection of public health or welfare or the envi-
16 ronment by commencement of a civil action under subsection (a), the Ad-
17 ministrator may issue such orders as may be necessary to protect public
18 health or welfare or the environment.

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

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

31 **§ 203104. Citizen suits**

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

- 35 (1) a schedule or timetable of compliance, emission limitation, stand-
36 ard of performance, or emission standard;
- 37 (2) a control or prohibition respecting a motor vehicle fuel or fuel
38 additive;
- 39 (3)(A) any condition or requirement of a permit under chapter 213
40 or 215;

1 (B) any condition or requirement under an applicable implementa-
2 tion plan relating to transportation control measures, air quality main-
3 tenance plans, vehicle inspection and maintenance programs or vapor
4 recovery requirements;

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

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

9 (E) subdivision 7; or

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

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

18 that is in effect under this division (including a requirement applicable by
19 reason of section 211118 of this title) or under an applicable implementa-
20 tion plan.

21 (b) IN GENERAL.—

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

24 (A) DEFINITION OF PERSON.—In this paragraph, the term
25 “person” includes—

26 (i) the United States; and

27 (ii) any other governmental instrumentality or agency to
28 the extent permitted by the Eleventh Amendment to the Con-
29 stitution.

30 (B) CIVIL ACTION.—Except as provided in subsection (c), any
31 person may commence a civil action on the person’s own behalf
32 against any person that is alleged to have violated (if there is evi-
33 dence that the alleged violation has been repeated) or to be in vio-
34 lation of—

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

37 (ii) an order issued by the Administrator or a State with
38 respect to an emission standard or limitation under this divi-
39 sion.

40 (2) FAILURE OF ADMINISTRATOR TO PERFORM NONDISCRETIONARY
41 ACT OR DUTY.—Except as provided in subsection (c), any person may

1 commence a civil action on the person's own behalf against the Admin-
2 strator where there is alleged a failure of the Administrator to perform
3 any act or duty under this division that is not discretionary with the
4 Administrator.

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

8 (A) proposes to construct or constructs any new or modified
9 major emitting facility without a permit required under chapter
10 213 or 215; or

11 (B) is alleged to have violated (if there is evidence that the al-
12 leged violation has been repeated) or to be in violation of any con-
13 dition of such a permit.

14 (4) JURISDICTION TO ENFORCE EMISSION STANDARD, EMISSION LIM-
15 ITATION, OR ORDER.—

16 (A) IN GENERAL.—A United States district court shall have ju-
17 risdiction, without regard to the amount in controversy or the citi-
18 zenship of the parties, to—

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

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

25 (B) PENALTY ASSESSMENT CRITERIA.—

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

30 (I) the size of the business;

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

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

35 (IV) the duration of the violation as established by any
36 credible evidence (including evidence other than the ap-
37 plicable test method);

38 (V) payment by the violator of penalties previously as-
39 sessed for the same violation;

40 (VI) the economic benefit of noncompliance; and

41 (VII) the seriousness of the violation.

1 (ii) CIVIL PENALTY FOR EACH DAY OF VIOLATION.—A civil
2 penalty may be assessed for each day of violation. For pur-
3 poses of determining the number of days of violation for
4 which a civil penalty may be assessed under this subsection,
5 where the Administrator or an air pollution control agency
6 has notified the source of the violation, and the plaintiff
7 makes a prima facie showing that the conduct or events giv-
8 ing rise to the violation are likely to have continued or re-
9 curred past the date of notice, the days of violation shall be
10 presumed to include the date of the notice and each day
11 thereafter until the violator establishes that continuous com-
12 pliance has been achieved, except to the extent that the viola-
13 tor can prove by a preponderance of the evidence that there
14 were intervening days during which no violation occurred or
15 that the violation was not continuing in nature.

16 (5) COMPULSION OF AGENCY ACTION.—A United States district
17 court shall have jurisdiction to compel (consistent with paragraph (2))
18 agency action unreasonably delayed, except that a civil action to compel
19 agency action under section 203102(b) of this title that is unreasonably
20 delayed may be filed only in a United States district court within the
21 circuit in which the civil action would be reviewable under section
22 203102(b) of this title. In any such civil action for unreasonable delay,
23 notice to the entities described in subsection (c)(1)(A)(i) shall be pro-
24 vided 180 days before commencing the civil action.

25 (e) NOTICE.—

26 (1) IN GENERAL.—Except as provided in paragraph (2), no civil ac-
27 tion may be commenced—

28 (A) under subsection (b)(1)(B)—

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

31 (I) the Administrator;

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

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

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

51

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

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

8 (3) MANNER OF NOTICE.—Notice under this subsection shall be
9 given in such manner as the Administrator shall prescribe by regula-
10 tion.

11 (d) PLACE FOR BRINGING CIVIL ACTION; INTERVENTION BY ADMINIS-
12 TRATOR; SERVICE OF COMPLAINT; CONSENT JUDGMENT.—

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

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

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

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

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

40 (f) NONRESTRICTION OF OTHER RIGHTS.—

1 (1) PERSONS IN GENERAL.—Nothing in this section restricts any
2 right that any person (or class of persons) may have under any statute
3 or common law to seek enforcement of any emission standard or limita-
4 tion or to seek any other relief (including relief against the Adminis-
5 trator or a State agency).

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

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

11 (B) bringing any administrative enforcement action or obtaining
12 any administrative remedy or sanction in any State or local ad-
13 ministrative agency, department, or instrumentality;
14 against the United States, any department, agency, or instrumentality
15 thereof, or any officer, agent, or employee thereof under State or local
16 law respecting control and abatement of air pollution.

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

21 (g) PENALTY FUND.—

22 (1) IN GENERAL.—

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

26 (B) USE.—Amounts in the fund are authorized to be appro-
27 priated and shall remain available until expended for use by the
28 Administrator to finance air compliance and enforcement activi-
29 ties.

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

31 (A) IN GENERAL.—Notwithstanding paragraph (1), the court in
32 any action under this section to apply civil penalties shall have dis-
33 cretion to order that the civil penalties, in lieu of being deposited
34 in the fund described in paragraph (1), be used in beneficial miti-
35 gation projects that are consistent with this division and enhance
36 public health or the environment.

37 (B) VIEW OF THE ADMINISTRATOR.—The court shall obtain the
38 view of the Administrator in exercising such discretion and select-
39 ing any such projects.

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

1 **§ 203105. Representation in litigation**

2 (a) ATTORNEY GENERAL; ATTORNEYS APPOINTED BY ADMINIS-
3 TRATOR.—The Administrator shall request the Attorney General to appear
4 and represent the Administrator in any civil action instituted under this di-
5 vision to which the Administrator is a party. Unless the Attorney General
6 notifies the Administrator that the Attorney General will appear in the civil
7 action within a reasonable time, attorneys appointed by the Administrator
8 shall appear and represent the Administrator.

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

17 **Chapters 205 through 207—Reserved**
18 **Chapter 209—Miscellaneous**

Sec.

- 209101. Federal procurement.
- 209102. Mandatory patent licensing.
- 209103. Policy review.
- 209104. Other authority and responsibilities.
- 209105. Records and audit.
- 209106. Labor standards.
- 209107. Sewage treatment grants.
- 209108. Economic impact assessment.
- 209109. Air quality monitoring.
- 209110. Air quality modeling.
- 209111. Employment effects.
- 209112. Employee protection.
- 209113. Cost of vapor recovery equipment.
- 209114. Vapor recovery for independent small business marketers of gasoline.
- 209115. Exemptions for certain territories.
- 209116. Air pollution from Outer Continental Shelf activities.
- 209117. Demonstration grant program for local governments.

19 **§ 209101. Federal procurement**

20 (a) PROHIBITION OF CONTRACTS WITH VIOLATORS.—

21 (1) IN GENERAL.—No Federal agency may enter into any contract
22 with any person that is convicted of any offense under section
23 211113(d) of this title for the procurement of goods, materials, and
24 services to perform the contract at any facility at which the violation
25 that gave rise to the conviction occurred if the facility is owned, leased,
26 or supervised by that person.

27 (2) TIME PERIOD.—The prohibition under paragraph (1) shall continue until the Administrator certifies that the condition giving rise to
28 the conviction has been corrected.
29

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

6 (4) OTHER FACILITIES.—The Administrator may extend the prohibi-
7 tion under paragraph (1) to other facilities owned or operated by the
8 convicted person.

9 (b) NOTIFICATION PROCEDURES.—The Administrator shall establish pro-
10 cedures to provide all Federal agencies with the notification necessary for
11 the purposes of subsection (a).

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

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

19 (2) sets forth procedures, sanctions, penalties, and such other provi-
20 sions as the President determines to be necessary to carry out that re-
21 quirement.

22 (d) EXEMPTIONS.—The President—

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

26 (2) shall notify Congress of the exemption.

27 **§ 209102. Mandatory patent licensing**

28 (a) IN GENERAL.—Whenever the Attorney General determines, on appli-
29 cation of the Administrator—

30 (1) that—

31 (A) in the implementation of requirement of section 211111,
32 211112, or 221102 of this title, a right under any United States
33 letters patent that is being used or intended for public or commer-
34 cial use and that is not otherwise reasonably available is necessary
35 to enable any person required to comply with the requirement to
36 comply with the requirement; and

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

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

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

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

8 **§ 209103. Policy review**

9 (a) ENVIRONMENTAL IMPACT.—The Administrator shall review and com-
10 ment in writing on the environmental impact of any matter relating to du-
11 ties and responsibilities granted pursuant to this division or other provisions
12 of the authority of the Administrator, contained in any—

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

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

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

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

21 (c) UNSATISFACTORY LEGISLATION, ACTION, OR REGULATION.—If the
22 Administrator determines that any legislation, action, or regulation de-
23 scribed in subsection (a) is unsatisfactory from the standpoint of public
24 health or welfare or environmental quality—

25 (1) the Administrator shall publish the determination; and

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

28 **§ 209104. Other authority and responsibilities**

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

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

37 **§ 209105. Records and audit**

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

41 (1) records that fully disclose—

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

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

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

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

8 (b) AUDITS.—The Administrator and the Comptroller General of the
9 United States, or any of their duly authorized representatives, shall have
10 access for the purpose of audit and examinations to any records of a recipi-
11 ent of assistance under this division that are pertinent to the assistance re-
12 ceived under this division.

13 **§ 209106. Labor standards**

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

20 (b) AUTHORITY OF THE SECRETARY OF LABOR.—The Secretary of Labor
21 shall have, with respect to the labor standards specified in this subsection
22 (a), the authority and functions set forth in Reorganization Plan No. 14
23 of 1950 (5 U.S.C. App.) and section 3145 of title 40.

24 **§ 209107. Sewage treatment grants**

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

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

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

34 (A) the treatment works will not comply with applicable stand-
35 ards under section 211111 or 211112 of this title;

36 (B) the State does not have in effect, or is not carrying out,
37 a State implementation plan approved by the Administrator that
38 expressly quantifies and provides for the increase in emissions of
39 each air pollutant from stationary and mobile sources in any area
40 to which chapter 213 or 215 applies for that pollutant, which in-
41 crease may reasonably be anticipated to result directly or indi-

1 rectly from the new sewage treatment capacity that would be cre-
2 ated by the construction;

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

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

9 (ii) would otherwise not be in conformity with the applica-
10 ble implementation plan; or

11 (D) the increase in emissions would interfere with, or be incon-
12 sistent with, the applicable implementation plan for any other
13 State.

14 (2) INCREASE IN EMISSIONS OF AIR POLLUTANT FROM STATIONARY
15 AND MOBILE SOURCES IN AN AREA TO WHICH CHAPTER 215 APPLIES.—

16 In the case of construction of a treatment works that would result, di-
17 rectly or indirectly, in an increase in emissions of any air pollutant
18 from stationary and mobile sources in an area to which chapter 215
19 applies, the quantification of emissions described in paragraph (1)(B)
20 shall include the emissions of any such pollutant resulting directly or
21 indirectly from areawide and nonmajor stationary source growth (mo-
22 bile and stationary) for each such area.

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

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

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

28 **§ 209108. Economic impact assessment**

29 (a) ACTIONS TO WHICH THIS SECTION APPLIES.—

30 (1) IN GENERAL.—This section applies to action of the Adminis-
31 trator in promulgating or revising (subject to paragraph (2))—

32 (A) any new source standard of performance under section
33 211111 of this title;

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

35 (C) any regulation under subdivision 7;

36 (D) any regulation under chapter 213;

37 (E) any regulation establishing emission standards under sec-
38 tion 221102 of this title and any other regulation promulgated
39 under that section;

40 (F) any regulation controlling or prohibiting any fuel or fuel ad-
41 ditive under section 221111(d) of this title; and

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

3 (2) LIMITATION.—Nothing in this section shall apply to any stand-
4 ard or regulation described in paragraph (1) unless the notice of pro-
5 posed rulemaking in connection with the standard or regulation is pub-
6 lished in the Federal Register. In the case of a revision of such a
7 standard or regulation, this section shall apply only to a revision that
8 the Administrator determines to be a substantial revision.

9 (b) PREPARATION OF ASSESSMENT BY ADMINISTRATOR.—

10 (1) IN GENERAL.—Before publication of notice of proposed rule-
11 making with respect to any standard or regulation to which this section
12 applies, the Administrator shall prepare an economic impact assess-
13 ment respecting the standard or regulation.

14 (2) INCLUSION IN DOCKET.—An economic impact assessment under
15 paragraph (1) shall be included in the docket required under section
16 203102(d)(3) of this title and shall be available to the public as pro-
17 vided in section 203102(d)(5) of this title. The notice of proposed rule-
18 making shall include notice of such availability and an explanation of
19 the extent to which and manner in which the Administrator has consid-
20 ered the analysis contained in the economic impact assessment in pro-
21 posing the action.

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

28 (c) ANALYSIS.—

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

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

34 (i) the effective date; and

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

37 (B) the potential inflationary or recessionary effects;

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

39 (D) the effects on consumer costs; and

40 (E) the effects on energy use.

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

5 (d) EXTENSIVENESS OF ASSESSMENT.—An economic impact assessment
6 required under this section shall be as extensive as practicable, in the judg-
7 ment of the Administrator, taking into account the time and resources avail-
8 able to EPA and other duties and authorities that the Administrator is re-
9 quired to carry out under this division.

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

11 (1) to alter the basis on which a standard or regulation is promul-
12 gated under this division;

13 (2) to preclude the Administrator from carrying out the Administra-
14 tor's responsibility under this division to protect public health and wel-
15 fare; or

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

20 (f) CITIZEN SUITS.—

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

24 (2) SOLE METHOD OF ENFORCEMENT.—The sole method for enforce-
25 ment of the Administrator's duty under this section shall be by bring-
26 ing a civil action under section 203104(b)(2) of this title for a court
27 order to compel the Administrator to perform the duty. Violation of
28 any such order shall subject the Administrator to penalties for con-
29 tempt of court.

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

36 **§ 209109. Air quality monitoring**

37 (a) IN GENERAL.—

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

1 (A) utilizes uniform air quality monitoring criteria and meth-
2 odology and measures the air quality according to a uniform air
3 quality index;

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

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

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

14 (2) OPERATION.—The operation of the air quality monitoring system
15 may be carried out by the Administrator or by such other departments,
16 agencies, or entities of the Federal Government (including the National
17 Weather Service) as the President considers appropriate. Any air qual-
18 ity monitoring system required under any applicable implementation
19 plan under section 211110 of this title shall, as soon as practicable fol-
20 lowing promulgation of regulations under this section, utilize the stand-
21 ard criteria and methodology, and measure air quality according to the
22 standard index, established under the regulations.

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

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

26 (A) IN GENERAL.—The term “exceptional event” means an
27 event that—

- 28 (i) affects air quality;
- 29 (ii) is not reasonably controllable or preventable;
- 30 (iii) is caused by human activity that is unlikely to recur
31 at a particular location or is a natural event; and
- 32 (iv) is determined by the Administrator through the process
33 established in the regulations promulgated under paragraph
34 (2) to be an exceptional event.

35 (B) EXCLUSIONS.—The term “exceptional event” does not in-
36 clude—

- 37 (i) stagnation of air masses or meteorological inversions;
- 38 (ii) a meteorological event involving high temperatures or
39 lack of precipitation; or
- 40 (iii) air pollution relating to source noncompliance.

41 (2) REGULATIONS.—

61

1 (A) PROPOSED REGULATIONS.—After consultation with Federal
2 land managers and State air pollution control agencies, the Ad-
3 ministrator shall publish in the Federal Register proposed regula-
4 tions governing the review and handling of air quality monitoring
5 data influenced by exceptional events.

6 (B) FINAL REGULATIONS.—Not later than 1 year after the date
7 on which the Administrator publishes proposed regulations under
8 subparagraph (A), and after providing an opportunity for inter-
9 ested persons to make oral presentations of views, data, and argu-
10 ments regarding the proposed regulations, the Administrator shall
11 promulgate final regulations governing the review and handling of
12 air quality monitoring data influenced by an exceptional event that
13 are consistent with paragraph (3).

14 (3) PRINCIPLES AND REQUIREMENTS.—

15 (A) PRINCIPLES.—In promulgating regulations under this sec-
16 tion, the Administrator shall follow the principles that—

- 17 (i) protection of public health is the highest priority;
18 (ii) timely information should be provided to the public in
19 any case in which the air quality is unhealthy;
20 (iii) all ambient air quality data should be included in a
21 timely manner, in an appropriate Federal air quality database
22 that is accessible to the public;
23 (iv) each State must take necessary measures to safeguard
24 public health regardless of the source of the air pollution; and
25 (v) air quality data should be carefully screened to ensure
26 that events not likely to recur are represented accurately in
27 all monitoring data and analyses.

28 (B) REQUIREMENTS.—Regulations promulgated under this sec-
29 tion shall, at a minimum, provide that—

- 30 (i) the occurrence of an exceptional event must be dem-
31 onstrated by reliable, accurate data that are promptly pro-
32 duced and provided by Federal, State, or local government
33 agencies;
34 (ii) a clear causal relationship must exist between the
35 measured exceedances of a NAAQS and the exceptional event
36 to demonstrate that the exceptional event caused a specific
37 air pollution concentration at a particular air quality monitor-
38 ing location;
39 (iii) there is a public process for determining whether an
40 event is an exceptional event; and

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

6 **§ 209110. Air quality modeling**

7 (a) CONFERENCES.—At least every 3 years, the Administrator shall con-
8 duct a conference on air quality modeling. In conducting a conference, spe-
9 cial attention shall be given to appropriate modeling necessary for carrying
10 out chapter 213.

11 (b) CONFERENCEES.—A conference conducted under this section shall provide
12 for participation by the National Academy of Sciences, representatives of
13 State and local air pollution control agencies, and appropriate Federal agen-
14 cies, including the National Science Foundation, the National Oceanic and
15 Atmospheric Administration, and the National Institute of Standards and
16 Technology.

17 (c) COMMENTS; TRANSCRIPTS.—Interested persons shall be permitted to
18 submit written comments, and a verbatim transcript of the conference pro-
19 ceedings shall be maintained. The comments and transcript shall be in-
20 cluded in the docket required to be established for purposes of promulgating
21 or revising any regulation relating to air quality modeling under chapter
22 213.

23 **§ 209111. Employment effects**

24 (a) CONTINUOUS EVALUATION OF POTENTIAL LOSS OR SHIFTS OF EM-
25 PLOYMENT.—The Administrator shall conduct continuing evaluations of po-
26 tential loss or shifts of employment that may result from the administration
27 or enforcement of the provision of this division and applicable implementa-
28 tion plans, including, where appropriate, investigating threatened plant clo-
29 sures or reductions in employment allegedly resulting from such administra-
30 tion or enforcement.

31 (b) INVESTIGATION.—

32 (1) REQUEST FOR INVESTIGATION.—Any employee, or any represent-
33 ative of an employee, who is discharged or laid off, threatened with dis-
34 charge or layoff, or whose employment is otherwise adversely affected
35 or threatened to be adversely affected because of the alleged results of
36 any requirement imposed or proposed to be imposed under this divi-
37 sion, including any requirement applicable to Federal facilities and any
38 requirement imposed by a State or political subdivision of a State, may
39 request the Administrator to investigate the matter. Any such request
40 shall be in writing, shall set forth with reasonable particularity the

1 grounds for the request, and shall be signed by the employee (or rep-
2 resentative of the employee) making the request.

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

15 (3) FINDINGS AND RECOMMENDATIONS.—

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

18 (i) make findings of fact as to the effect of the require-
19 ments on employment and on the alleged actual or potential
20 discharge, layoff, or other adverse effect on employment; and

21 (ii) make such recommendations as the Administrator con-
22 siders appropriate.

23 (B) PUBLIC AVAILABILITY.—The report, findings, and recom-
24 mendations shall be available to the public.

25 (c) SUBPOENAS; OATHS.—

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

28 (A) issue subpoenas for the attendance and testimony of wit-
29 nesses and the production of relevant records; and

30 (B) administer oaths.

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

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

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

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

4 (4) CONTUMACY; REFUSAL TO OBEY SUBPOENA.—In a case of contu-
5 macy or refusal to obey a subpoena served on any person under para-
6 graph (1)—

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

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

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

19 **§ 209112. Employee protection**

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

24 (1) commenced, caused to be commenced, or is about to commence
25 or cause to be commenced a proceeding under this division or a pro-
26 ceeding for the administration or enforcement of any requirement im-
27 posed under this division or under any applicable implementation plan;

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

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

32 (b) INVESTIGATION.—

33 (1) COMPLAINT.—An employee who believes that the employee has
34 been discharged or otherwise discriminated against by any person in
35 violation of subsection (a) may, within 30 days after the violation oc-
36 curs, file (or have any person file on the employee's behalf) a complaint
37 with the Secretary of Labor (referred to in this subsection as the "Sec-
38 retary") alleging the discharge or discrimination. On receipt of the
39 complaint, the Secretary shall notify the person named in the complaint
40 of the filing of the complaint.

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

8 (3) ORDER.—

9 (A) IN GENERAL.—Within 90 days after receipt of a complaint
10 under paragraph (1), the Secretary shall, unless the proceeding on
11 the complaint is terminated by the Secretary on the basis of a set-
12 tlement entered into by the Secretary and the person alleged to
13 have committed the violation, issue an order providing the relief
14 prescribed by subparagraph (B) or denying the relief. An order of
15 the Secretary shall be made on the record after notice and oppor-
16 tunity for public hearing. The Secretary may not enter into a set-
17 tlement terminating a proceeding on a complaint without the par-
18 ticipation and consent of the complainant.

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

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

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

24 (II) reinstate the complainant to the complainant's
25 former position together with the compensation (includ-
26 ing back pay), terms, conditions, and privileges of the
27 complainant's employment; and

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

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

37 (e) REVIEW.—

38 (1) IN GENERAL.—Any person adversely affected or aggrieved by an
39 order issued under subsection (b)(3) may obtain review of the order in
40 the United States court of appeals for the circuit in which the violation,
41 with respect to which the order was issued, allegedly occurred. The pe-

1 tition for review must be filed within 60 days from the issuance of the
2 Secretary's order. Review shall conform to chapter 7 of title 5. The
3 commencement of proceedings under this subsection shall not, unless
4 ordered by the court, operate as a stay of the Secretary's order.

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

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

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

17 (1) IN GENERAL.—Any person on whose behalf an order was issued
18 under subsection (b)(3) may commence a civil action against the person
19 to which the order was issued to require compliance with the order.
20 The appropriate United States district court shall have jurisdiction,
21 without regard to the amount in controversy or the citizenship of the
22 parties, to enforce the order.

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

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

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

34 **§ 209113. Cost of vapor recovery equipment**

35 (a) COSTS TO BE BORNE BY OWNER OF RETAIL OUTLET.—The regula-
36 tions under this division applicable to vapor recovery with respect to mobile
37 source fuels at retail outlets of such fuels shall provide that the cost of pro-
38 curement and installation of the vapor recovery shall be borne by the owner
39 of the outlet (as determined under the regulations). Except as provided in
40 subsection (b), the regulations shall provide that no lease of a retail outlet
41 by the owner thereof may provide for a payment by the lessee of the cost

1 of procurement and installation of vapor recovery equipment. The regula-
2 tions shall provide that the cost of procurement and installation of vapor
3 recovery equipment may be recovered by the owner of the outlet by means
4 of price increases in the cost of any product sold by the owner, notwith-
5 standing any provision of law.

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

12 **§209114. Vapor recovery for independent small business**
13 **marketers of gasoline**

14 (a) DEFINITIONS.—In this section:

15 (1) CONTROL.—The term “control”, in reference to control of a cor-
16 poration, means ownership of more than 50 percent of the stock of the
17 corporation.

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

24 (A)(i) is a refiner;

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

27 (iii) is otherwise directly or indirectly affiliated (as determined
28 under the regulations of the Administrator) with a refiner or with
29 a person that controls, is controlled by, or is under a common con-
30 trol with a refiner (unless the sole affiliation is by means of a sup-
31 ply contract or an agreement or contract to use a trademark,
32 trade name, service mark, or other identifying symbol or name
33 owned by the refiner or any such person); or

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

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

40 (b) MARKETERS OF GASOLINE.—The regulations under this division ap-
41 plicable to vapor recovery from fueling of motor vehicles at retail outlets of

1 gasoline shall not apply to any outlet owned by an independent small busi-
2 ness marketer of gasoline having monthly sales of less than 50,000 gallons.

3 (c) STATE REQUIREMENTS.—Nothing in subsection (a) shall be construed
4 to prohibit any State from adopting or enforcing, with respect to independ-
5 ent small business marketers of gasoline having monthly sales of less than
6 50,000 gallons, any vapor recovery requirements for mobile source fuels at
7 retail outlets. Any vapor recovery requirement that is adopted by a State
8 and submitted to the Administrator as part of its implementation plan may
9 be approved and enforced by the Administrator as part of the applicable im-
10 plementation plan for that State.

11 **§ 209115. Exemptions for certain territories**

12 (a) EXEMPTION ON PETITION.—

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

18 (A) section 211112 of this title; or

19 (B) any requirement under section 211110 of this title or chap-
20 ter 215 necessary to attain or maintain a primary NAAQS.

21 (2) BASIS FOR EXEMPTION.—An exemption may be granted under
22 paragraph (1) if the Administrator finds that compliance with the re-
23 quirement is not feasible or is unreasonable due to unique geographical,
24 meteorological, or economic factors of the territory or commonwealth
25 or to such other local factors as the Administrator considers signifi-
26 cant.

27 (3) CONSIDERATION.—A petition under paragraph (1) shall be con-
28 sidered in accordance with section 203102(d) of this title, and any ex-
29 emption under this subsection shall be considered to be final action by
30 the Administrator for the purposes of section 203102(b) of this title.

31 (4) NOTIFICATION.—The Administrator shall promptly notify the
32 Committee on Energy and Commerce and Committee on Natural Re-
33 sources of the House of Representatives and the Committee on Envi-
34 ronment and Public Works and Committee on Energy and Natural Re-
35 sources of the Senate on receipt of a petition under this subsection and
36 of the approval or rejection of the petition and the basis for the action.

37 (b) EXEMPTION OF CERTAIN POWERPLANT.—

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

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

4 (B) any regulation relating to sulfur dioxide standards or limita-
5 tions contained in a State implementation plan approved under
6 section 211110 of this title as of December 8, 1983, except as pro-
7 vided in paragraph (2).

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

12 **§ 209116. Air pollution from Outer Continental Shelf activi-**
13 **ties**

14 (a) DEFINITIONS.—In this section:

15 (1) CORRESPONDING ONSHORE AREA.—

16 (A) IN GENERAL.—The term “corresponding onshore area”
17 means, with respect to any OCS source, the onshore attainment
18 or nonattainment area that is closest to the source, unless the Ad-
19 ministrator determines that another area with more stringent re-
20 quirements with respect to the control and abatement of air pollu-
21 tion may reasonably be expected to be affected by such emissions.

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

28 (2) EXISTING OCS SOURCE.—The term “existing OCS source” means
29 any OCS source other than a new OCS source.

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

33 (4) OUTER CONTINENTAL SHELF.—The term “Outer Continental
34 Shelf” has the meaning given the term in section 2 of the Outer Con-
35 tinental Shelf Lands Act (43 U.S.C. 1331).

36 (5) OCS SOURCE.—

37 (A) IN GENERAL.—The term “OCS source” means a source on,
38 or in or on water above, the Outer Continental Shelf that is lo-
39 cated—

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

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

3 (B) INCLUSIONS.—

4 (i) IN GENERAL.—The term “OCS source” includes any
5 equipment, activity, or facility that—

6 (I) emits or has the potential to emit any air pollut-
7 ant; and

8 (II) is regulated or authorized under the Outer Con-
9 tinental Shelf Lands Act (43 U.S.C. 1331 et seq.).

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

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

16 (b) APPLICABLE REQUIREMENTS FOR CERTAIN AREAS.—

17 (1) REQUIREMENTS TO CONTROL AIR POLLUTION.—

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

24 (B) SOURCES LOCATED WITHIN 25 MILES OF THE SEAWARD
25 BOUNDARY OF A STATE.—For OCS sources that are located within
26 25 miles of the seaward boundary of a State, the requirements
27 under subparagraph (A)—

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

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

33 (C) UPDATING.—The Administrator shall update the require-
34 ments as necessary to maintain consistency with onshore regula-
35 tions and this division.

36 (2) VESSELS.—For purposes of this subsection, emissions from any
37 vessel servicing or associated with an OCS source, including emissions
38 while at the OCS source or en route to or from the OCS source within
39 25 miles of the OCS source, shall be considered emissions from the
40 OCS source.

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

5 (4) TREATMENT AS STANDARD.—Each requirement established
6 under this subsection shall be treated, for purposes of sections 203104,
7 211113, 211114, 211116, and 211119 of this title, as a standard
8 under section 211111 of this title, and a violation of any such require-
9 ment shall be considered a violation of section 211111(j) of this title.

10 (5) EXEMPTIONS.—

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

16 (B) WRITTEN FINDINGS; OTHER REQUIREMENT.—The Adminis-
17 trator shall make written findings explaining the basis of any ex-
18 emption issued pursuant to this paragraph and shall impose an-
19 other requirement equal to or as close in stringency to the original
20 requirement as possible.

21 (C) OFFSET.—The Administrator shall ensure that any increase
22 in emissions due to the granting of an exemption is offset by re-
23 ductions in actual emissions, not otherwise required by this divi-
24 sion, from the same source or other sources in the area or in the
25 corresponding onshore area.

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

29 (6) STATE PROCEDURES.—A State adjacent to an OCS source in-
30 cluded under this subsection may promulgate and submit to the Admin-
31 istrator regulations for implementing and enforcing the requirements of
32 this subsection. If the Administrator finds that the State regulations
33 are adequate, the Administrator shall delegate to that State any au-
34 thority the Administrator has under this division to implement and en-
35 force the requirements. Nothing in this subsection shall prohibit the
36 Administrator from enforcing any requirement of this section.

37 (e) REQUIREMENTS FOR OTHER OFFSHORE AREAS.—For portions of the
38 United States Outer Continental Shelf that are adjacent to the States of
39 Alabama, Mississippi, Louisiana, and Texas or to the North Slope Borough
40 of Alaska, the Secretary of the Interior shall consult with the Administrator

1 to ensure coordination of air pollution control regulation for Outer Con-
2 tinental Shelf emissions and emissions in adjacent onshore areas.

3 (d) COASTAL WATER.—

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

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

13 **§ 209117. Demonstration grant program for local govern-**
14 **ments**

15 (a) DEFINITIONS.—In this section:

16 (1) COST-EFFECTIVE TECHNOLOGIES AND PRACTICES.—The term
17 “cost-effective technologies and practices” has the meaning given the
18 term in section 401 of the Energy Independence and Security Act of
19 2007 (42 U.S.C. 17061).

20 (2) OPERATING COST SAVINGS.—The term “operating cost savings”
21 has the meaning given the term in section 401 of the Energy Independ-
22 ence and Security Act of 2007 (42 U.S.C. 17061).

23 (b) GRANT PROGRAM.—

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

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

29 (B) achieve operational cost savings through the application of
30 cost-effective technologies and practices, as verified by the Admin-
31 istrator.

32 (2) COST SHARING.—

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

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

1 (3) MAXIMUM AMOUNT.—The amount of a grant under this sub-
2 section shall not exceed \$1,000,000.

3 (c) GUIDELINES.—

4 (1) IN GENERAL.—The Administrator shall issue guidelines to imple-
5 ment the grant program established under subsection (b).

6 (2) REQUIREMENTS.—The guidelines under paragraph (1) shall es-
7 tablish—

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

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

14 (C) a requirement that each local government that receives a
15 grant under this section shall achieve facility-wide cost savings,
16 through renovation of existing local government buildings using
17 cost-effective technologies and practices, of at least 40 percent as
18 compared with the baseline operational costs of the buildings be-
19 fore the renovation (as calculated assuming a 3-year, weather-nor-
20 malized average).

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

26 (e) REPORTS.—

27 (1) IN GENERAL.—The Administrator shall annually submit to Con-
28 gress a report that—

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

31 (B) includes any recommendations for further action that the
32 Administrator may have.

33 (2) FINAL REPORT.—The Administrator shall issue a final report at
34 the conclusion of the program that includes findings, a summary of
35 total cost savings achieved, and recommendations for further action.

36 (f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-
37 propriated to carry out this section \$20,000,000 for each of fiscal years
38 2007 to 2012.

39 (g) TERMINATION.—The program under this section shall terminate on
40 September 30, 2012.

1 **Subdivision 2—Air Pollution Prevention**
 2 **and Control**
 3 **Chapter 211—Air Quality And Emission**
 4 **Limitations**

Sec.

- 211101. Findings; purposes; primary goal.
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- 211104. Research relating to fuels and vehicles.
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- 211125. Interstate pollution abatement.
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- 211127. State boards.
- 211128. Solid waste combustion
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- 211130. Land use authority.

5 **§ 211101. Findings; purposes; primary goal**

- 6 (a) FINDINGS.—Congress finds that—
- 7 (1) the predominant part of the Nation’s population is located in its
- 8 rapidly expanding metropolitan and other urban areas, which generally
- 9 cross the boundary lines of local jurisdictions and often extend into 2
- 10 or more States;
- 11 (2) the growth in the amount and complexity of air pollution brought
- 12 about by urbanization, industrial development, and the increasing use
- 13 of motor vehicles has resulted in mounting dangers to the public health
- 14 and welfare, including injury to agricultural crops and livestock, dam-
- 15 age to and the deterioration of property, and hazards to air and ground
- 16 transportation;
- 17 (3) air pollution prevention (that is, the reduction or elimination,
- 18 through any measures, of the amount of pollutants produced or created
- 19 at the source) and air pollution control at its source are the primary
- 20 responsibility of States and local governments; and

1 (4) Federal financial assistance and leadership are essential for the
2 development of cooperative Federal, State, regional, and local programs
3 to prevent and control air pollution.

4 (b) PURPOSES.—The purposes of this subdivision are—

5 (1) to protect and enhance the quality of the Nation's air resources
6 so as to promote the public health and welfare and the productive ca-
7 pacity of its population;

8 (2) to initiate and accelerate a national research and development
9 program to achieve the prevention and control of air pollution;

10 (3) to provide technical and financial assistance to State and local
11 governments in connection with the development and execution of their
12 air pollution prevention and control programs; and

13 (4) to encourage and assist the development and operation of re-
14 gional air pollution prevention and control programs.

15 (c) PRIMARY GOAL.—A primary goal of this division is to encourage or
16 otherwise promote reasonable Federal, State, and local governmental ac-
17 tions, consistent with this division, for pollution prevention.

18 **§ 211102. Cooperative activities**

19 (a) INTERSTATE COOPERATION; UNIFORM STATE LAWS; STATE COM-
20 PACTS.—The Administrator shall encourage—

21 (1) cooperative activities by States and local governments for the
22 prevention and control of air pollution;

23 (2) enactment of improved and, so far as practicable in the light of
24 varying conditions and needs, uniform State and local laws relating to
25 the prevention and control of air pollution; and

26 (3) the making of agreements and compacts between States for the
27 prevention and control of air pollution.

28 (b) FEDERAL COOPERATION.—The Administrator shall cooperate with
29 and encourage cooperative activities by all Federal departments and agen-
30 cies having functions relating to the prevention and control of air pollution,
31 so as to ensure the utilization in the Federal air pollution control program
32 of all appropriate and available facilities and resources within the Federal
33 Government.

34 (c) CONSENT OF CONGRESS TO COMPACTS.—

35 (1) IN GENERAL.—The consent of Congress is given to 2 or more
36 States to negotiate and enter into agreements or compacts, not in con-
37 flict with any law or treaty of the United States, for—

38 (A) cooperative effort and mutual assistance for the prevention
39 and control of air pollution and the enforcement of their respective
40 laws relating thereto; and

1 (B) the establishment of such agencies, joint or otherwise, as
2 the States consider desirable for making effective such agreements
3 or compacts.

4 (2) NO BINDING EFFECT WITHOUT APPROVAL BY CONGRESS.—No
5 agreement or compact under paragraph (1) shall be binding or obliga-
6 tory on any State a party thereto unless and until the agreement or
7 compact is approved by Congress.

8 (3) INTENT OF CONGRESS.—It is the intent of Congress that no
9 agreement or compact entered into between States after November 21,
10 1967, that relates to the control and abatement of air pollution in an
11 air quality control region shall provide for participation by a State that
12 is not included (in whole or in part) in that air quality control region.

13 **§ 211103. Research, investigation, training, and other activi-**
14 **ties**

15 (a) RESEARCH AND DEVELOPMENT PROGRAM FOR PREVENTION AND
16 CONTROL OF AIR POLLUTION.—

17 (1) IN GENERAL.—The Administrator shall establish a national re-
18 search and development program for the prevention and control of air
19 pollution.

20 (2) ACTIVITIES.—As part of the program, the Administrator shall—

21 (A) conduct, and promote the coordination and acceleration of,
22 research, investigations, experiments, demonstrations, surveys, and
23 studies relating to the causes, effects (including health and welfare
24 effects), extent, prevention, and control of air pollution;

25 (B) encourage, cooperate with, and render technical services and
26 provide financial assistance to air pollution control agencies and
27 other appropriate public or private agencies, institutions, and or-
28 ganizations, and individuals in the conduct of such activities;

29 (C) conduct investigations and research and make surveys con-
30 cerning any specific problem of air pollution in cooperation with
31 any air pollution control agency with a view to recommending a
32 solution of the problem, if—

33 (i) the Administrator is requested to do so by the agency;

34 or

35 (ii) in the Administrator's judgment, the problem may af-
36 fect any community or communities in a State other than
37 that in which the source of the matter causing or contributing
38 to the pollution is located;

39 (D) establish technical advisory committees composed of recog-
40 nized experts in various aspects of air pollution to assist in the

1 examination and evaluation of research progress and proposals
2 and to avoid duplication of research; and

3 (E) conduct and promote coordination and acceleration of train-
4 ing for individuals relating to the causes, effects, extent, preven-
5 tion, and control of air pollution.

6 (b) ACTIVITIES.—

7 (1) IN GENERAL.—In carrying out subsection (a), the Administrator
8 may—

9 (A) collect and make available, through publications and other
10 appropriate means—

11 (i) the results of research activities and other activities
12 under subsection (a); and

13 (ii) other information (including appropriate recommenda-
14 tions by the Administrator in connection therewith) pertain-
15 ing to those research activities and other activities;

16 (B) cooperate with other Federal departments and agencies,
17 with air pollution control agencies, with other public and private
18 agencies, institutions, and organizations, and with any industries
19 involved, in the preparation and conduct of those research activi-
20 ties and other activities;

21 (C) make grants to air pollution control agencies, to other pub-
22 lic or nonprofit private agencies, institutions, and organizations,
23 and to individuals, for purposes stated in subsection (a)(2)(A);

24 (D) contract with public or private agencies, institutions, and
25 organizations, and with individuals, without regard to subsection
26 (a) or (b) of section 3324 of title 31 or section 6101 of title 5;

27 (E) establish and maintain research fellowships in EPA and at
28 public or nonprofit private educational institutions or research or-
29 ganizations;

30 (F) collect and disseminate, in cooperation with other Federal
31 departments and agencies, and with other public or private agen-
32 cies, institutions, and organizations having related responsibilities,
33 basic data on chemical, physical, and biological effects of varying
34 air quality and other information pertaining to air pollution and
35 the prevention and control of air pollution;

36 (G) develop effective and practical processes, methods, and
37 prototype devices for the prevention or control of air pollution; and

38 (H) construct facilities, provide equipment, and employ staff as
39 necessary to carry out this division.

40 (2) TRAINING.—

1 (A) IN GENERAL.—In carrying out subsection (a), the Adminis-
2 trator shall—

3 (i) provide training for, and make training grants to, per-
4 sonnel of air pollution control agencies and other persons with
5 suitable qualifications; and

6 (ii) make grants to air pollution control agencies, to other
7 public or nonprofit private agencies, institutions, and organi-
8 zations for the purposes stated in subsection (a)(2)(E).

9 (B) FEES.—Reasonable fees may be charged for training pro-
10 vided to persons other than personnel of air pollution control agen-
11 cies, but training shall be provided to personnel of air pollution
12 control agencies without charge.

13 (c) AIR POLLUTANT SAMPLING, MEASUREMENT, MONITORING, ANALY-
14 SIS, AND MODELING.—

15 (1) IN GENERAL.—In carrying out subsection (a), the Administrator
16 shall conduct a program of research, testing, and development of meth-
17 ods for sampling, measurement, monitoring, analysis, and modeling of
18 air pollutants.

19 (2) ELEMENTS.—The program under paragraph (1) shall include the
20 following elements:

21 (A) Consideration of individual air pollutants and complex mix-
22 tures of air pollutants and their chemical transformations in the
23 atmosphere.

24 (B) Establishment of a national network to—

25 (i) monitor, collect, and compile data with quantification of
26 certainty in the status and trends of air emissions, deposition,
27 air quality, surface water quality, forest condition, and im-
28 pairment of visibility; and

29 (ii) ensure the comparability of air quality data collected in
30 different States and obtained from different nations.

31 (C) Development of improved methods and technologies for
32 sampling, measurement, monitoring, analysis, and modeling to in-
33 crease understanding of the sources of ozone precursors, ozone
34 formation, ozone transport, regional influences on urban ozone, re-
35 gional ozone trends, and interactions of ozone with other pollut-
36 ants.

37 (D) Submission of periodic reports to Congress, not less than
38 once every 5 years, that evaluate and assess the effectiveness of
39 air pollution control regulations and programs using monitoring
40 and modeling data obtained pursuant to this subsection.

1 (3) EMPHASIS.—In developing methodologies and technologies under
2 paragraph (2)(C), the Administrator shall place emphasis on techniques
3 that—

4 (A) improve the ability to inventory emissions of volatile organic
5 compounds and nitrogen oxides that contribute to urban air pollu-
6 tion, including anthropogenic and natural sources;

7 (B) improve the understanding of the mechanism through which
8 anthropogenic and biogenic volatile organic compounds react to
9 form ozone and other oxidants; and

10 (C) improve the ability to identify and evaluate region-specific
11 prevention and control options for ozone pollution.

12 (d) ENVIRONMENTAL HEALTH EFFECTS RESEARCH.—

13 (1) IN GENERAL.—The Administrator, in consultation with the Sec-
14 retary of Health and Human Services, shall conduct a research pro-
15 gram on the short-term and long-term effects of air pollutants, includ-
16 ing wood smoke, on human health. In conducting the research pro-
17 gram, the Administrator—

18 (A) shall conduct studies, including epidemiological, clinical, and
19 laboratory and field studies, as necessary to identify and evaluate
20 exposure to and effects of air pollutants on human health;

21 (B) may utilize, on a reimbursable basis, the facilities of exist-
22 ing Federal scientific laboratories and research centers; and

23 (C) shall consult with other Federal agencies to ensure that
24 similar research being conducted in other agencies is coordinated
25 to avoid duplication.

26 (2) METHODS AND TECHNIQUES TO IDENTIFY AND ASSESS RISKS.—
27 In conducting the research program, the Administrator shall develop
28 methods and techniques necessary to identify and assess the risks to
29 human health from both routine and accidental exposures to individual
30 air pollutants and combinations of air pollutants.

31 (3) ELEMENTS.—The research program shall include the following
32 elements:

33 (A) An interagency task force to coordinate the research pro-
34 gram.

35 (B) An evaluation of each of the hazardous air pollutants listed
36 under section 211112(b) of this title, to decide, on the basis of
37 available information, their relative priority for preparation of en-
38 vironmental health assessments pursuant to subparagraph (C).

39 (C) Preparation of environmental health assessments for each of
40 the hazardous air pollutants listed under section 211112(b) of this
41 title.

1 (4) TASK FORCE.—The task force established under paragraph
2 (3)(A) shall include representatives of the National Institute of Envi-
3 ronmental Health Sciences, EPA, the Agency for Toxic Substances and
4 Disease Registry, the National Toxicology Program, the National Insti-
5 tute of Standards and Technology, the National Science Foundation,
6 the Surgeon General, and the Department of Energy. The task force
7 shall be chaired by a representative of EPA.

8 (5) EVALUATION.—The evaluation under paragraph (3)(B) shall be
9 based on reasonably anticipated toxicity to humans and exposure fac-
10 tors such as frequency of occurrence as an air pollutant and volume
11 of emissions in populated areas. The evaluation shall be reviewed by
12 the task force established under paragraph (3)(A).

13 (6) ENVIRONMENTAL HEALTH ASSESSMENTS.—

14 (A) IN GENERAL.—The Administrator shall prepare an environ-
15 mental health assessment for each hazardous air pollutant de-
16 scribed in subparagraphs (B) and (C) of paragraph (3). Not fewer
17 than 24 environmental health assessments shall be completed and
18 published annually.

19 (B) GUIDELINES.—An environmental health assessment shall be
20 prepared in accordance with guidelines developed by the Adminis-
21 trator in consultation with the task force established under para-
22 graph (3)(A) and EPA's Science Advisory Board.

23 (C) CONTENTS.—An environmental health assessment shall in-
24 clude—

25 (i) an examination, summary, and evaluation of available
26 toxicological and epidemiological information for an air pollut-
27 ant to ascertain the levels of human exposure that pose a sig-
28 nificant threat to human health and the associated acute,
29 subacute, and chronic adverse health effects;

30 (ii) a determination of gaps in available information related
31 to human health effects and exposure levels; and

32 (iii) where appropriate, an identification of additional ac-
33 tivities, including toxicological and inhalation testing, needed
34 to identify the types or levels of exposure that may present
35 significant risk of adverse health effects in humans.

36 (e) ECOSYSTEM RESEARCH.—

37 (1) IN GENERAL.—In carrying out subsection (a), the Administrator,
38 in cooperation, where appropriate, with the Under Secretary of Com-
39 merce for Oceans and Atmosphere, the Director of the Fish and Wild-
40 life Service, and the Secretary of Agriculture, shall conduct a research
41 program to improve understanding of the short-term and long-term

1 causes, effects, and trends of ecosystems damage from air pollutants
2 on ecosystems.

3 (2) ELEMENTS.—The program shall include the following elements:

4 (A) Identification of regionally representative and critical eco-
5 systems for research.

6 (B) Evaluation of risks to ecosystems exposed to air pollutants,
7 including characterization of the causes and effects of chronic and
8 episodic exposures to air pollutants and determination of the re-
9 versibility of those effects.

10 (C) Development of improved atmospheric dispersion models
11 and monitoring systems and networks for evaluating and quantify-
12 ing exposure to and effects of multiple environmental stresses as-
13 sociated with air pollution.

14 (D) Evaluation of the effects of air pollution on water quality,
15 including assessments of the short-term and long-term ecological
16 effects of acid deposition and other atmospherically derived pollut-
17 ants on surface water (including wetland and estuaries) and
18 groundwater.

19 (E) Evaluation of the effects of air pollution on forests, mate-
20 rials, crops, biological diversity, soils, and other terrestrial and
21 aquatic systems exposed to air pollutants.

22 (F) Estimation of the associated economic costs of ecological
23 damage that have occurred as a result of exposure to air pollut-
24 ants.

25 (3) ESTUARINE RESEARCH RESERVES.—Consistent with the purpose
26 of the program, the Administrator may use the estuarine research re-
27 serves established pursuant to section 315 of the Coastal Zone Manage-
28 ment Act of 1972 (16 U.S.C. 1461) to carry out the research.

29 (f) LIQUEFIED GASEOUS FUELS SPILL TEST FACILITY.—

30 (1) IN GENERAL.—The Administrator, in consultation with the Sec-
31 retary of Energy and the Federal Coordinating Council for Science,
32 Engineering, and Technology, shall oversee an experimental and analyt-
33 ical research effort, with the experimental research to be carried out
34 at the Liquefied Gaseous Fuels Spill Test Facility.

35 (2) LIST OF CHEMICALS; SCHEDULE FOR FIELD TESTING.—In con-
36 sultation with the Secretary of Energy, the Administrator shall develop
37 a list of chemicals and a schedule for field testing at the Liquefied Gas-
38 eous Fuels Spill Test Facility.

39 (3) NUMBER OF CHEMICALS.—Analysis of a minimum of 10 chemi-
40 cals per year shall be carried out, with the selection of a minimum of
41 2 chemicals for field testing each year.

1 (4) PRIORITY.—Highest priority shall be given to chemicals that
2 would present the greatest potential risk to human health as a result
3 of an accidental release—

- 4 (A) from a fixed site; or
5 (B) related to the transport of the chemicals.

6 (5) PURPOSE.—The purpose of the research shall be to—

7 (A) develop improved predictive models for atmospheric disper-
8 sion that, at a minimum—

9 (i) describe dense gas releases in complex terrain including
10 man-made structures or obstacles with variable winds;

11 (ii) improve understanding of the effects of turbulence on
12 dispersion patterns; and

13 (iii) consider realistic behavior of aerosols by including
14 physicochemical reactions with water vapor, ground deposi-
15 tion, and removal by water spray;

16 (B) evaluate existing and future atmospheric dispersion models
17 by—

18 (i) the development of a rigorous, standardized methodol-
19 ogy for dense gas models; and

20 (ii) the application of the methodology to current dense gas
21 dispersion models using data generated from field experi-
22 ments; and

23 (C) evaluate the effectiveness of hazard mitigation and emer-
24 gency response technology for fixed site and transportation related
25 accidental releases of toxic chemicals.

26 (6) MODELS.—Models pertaining to accidental release shall be evalu-
27 ated and improved periodically for their utility in planning and imple-
28 menting evacuation procedures and other mitigative strategies designed
29 to minimize human exposure to hazardous air pollutants released acci-
30 dentally.

31 (7) USE OF FACILITY.—The Secretary of Energy shall make avail-
32 able to interested persons (including other Federal agencies and busi-
33 nesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to
34 conduct research and other activities in connection with the activities
35 described in this subsection.

36 (g) POLLUTION PREVENTION AND EMISSION CONTROL.—

37 (1) IN GENERAL.—In carrying out subsection (a), the Administrator
38 shall conduct a basic engineering research and technology program to
39 develop, evaluate, and demonstrate nonregulatory strategies and tech-
40 nologies for air pollution prevention.

1 (2) PRIORITY; PARTICIPATION.—The strategies and technologies
2 shall be developed with priority on pollutants that pose a significant
3 risk to human health and the environment, and with opportunities for
4 participation by industry, public interest groups, scientists, and other
5 interested persons in the development of the strategies and tech-
6 nologies.

7 (3) ELEMENTS.—

8 (A) IN GENERAL.—The program shall include the following ele-
9 ments:

10 (i) Improvements in nonregulatory strategies and tech-
11 nologies for preventing or reducing multiple air pollutants, in-
12 cluding sulfur oxides, nitrogen oxides, heavy metals, PM-10
13 (particulate matter), carbon monoxide, and carbon dioxide,
14 from stationary sources, including fossil fuel powerplants.

15 (ii) Improvements in nonregulatory strategies and tech-
16 nologies for reducing air emissions from area sources.

17 (iii) Improvements in nonregulatory strategies and tech-
18 nologies for preventing, detecting, and correcting accidental
19 releases of hazardous air pollutants.

20 (iv) Improvements in nonregulatory strategies and tech-
21 nologies that dispose of tires in ways that avoid adverse air
22 quality impacts.

23 (B) PREVENTION OR REDUCTION OF MULTIPLE AIR POLLUT-
24 ANTS.—The strategies and technologies described in subparagraph
25 (A)(i) shall include improvements in the relative cost effectiveness
26 and long-range implications of various air pollutant reduction and
27 nonregulatory control strategies such as energy conservation, in-
28 cluding end-use efficiency, and fuel-switching to cleaner fuels. The
29 strategies and technologies shall be considered for existing and
30 new facilities.

31 (4) EFFECT OF SUBSECTION.—Nothing in this subsection shall be
32 construed to authorize the imposition on any person of air pollution
33 control requirements.

34 (5) CONSULTATION.—The Administrator shall consult with other ap-
35 propriate Federal agencies to ensure coordination and to avoid duplica-
36 tion of activities authorized under this subsection.

37 (h) NIEHS STUDIES.—

38 (1) BASIC RESEARCH PROGRAM.—

39 (A) IN GENERAL.—The Director of the National Institute of
40 Environmental Health Sciences may conduct a program of basic

1 research to identify, characterize, and quantify risks to human
2 health from air pollutants.

3 (B) MEANS OF RESEARCH.—The research shall be conducted
4 primarily through a combination of university and medical school-
5 based grants and through intramural studies and contracts.

6 (2) PHYSICIAN EDUCATION AND TRAINING PROGRAM.—The Director
7 of the National Institute of Environmental Health Sciences shall con-
8 duct a program for the education and training of physicians in environ-
9 mental health.

10 (3) NO CONFLICT.—The Director shall ensure that the programs
11 shall not conflict with research undertaken by the Administrator.

12 (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to
13 be appropriated to the National Institute of Environmental Health Sci-
14 ences such sums as are necessary to carry out this subsection.

15 (i) COORDINATION OF RESEARCH.—

16 (1) IN GENERAL.—The Administrator shall develop and implement
17 a plan for identifying areas in which activities authorized under this
18 section can be carried out in conjunction with other Federal ecological
19 and air pollution research efforts.

20 (2) CONTENTS.—The plan shall include—

21 (A) an assessment of ambient monitoring stations and networks
22 to determine cost effective ways to expand monitoring capabilities
23 in both urban and rural environments;

24 (B) a consideration of the extent of the feasibility and scientific
25 value of conducting the research program under subsection (e) to
26 include consideration of the effects of atmospheric processes and
27 air pollution effects; and

28 (C) a methodology for evaluating and ranking pollution preven-
29 tion technologies, such as those developed under subsection (g), in
30 terms of their ability to reduce cost-effectively the emissions of air
31 pollutants and other airborne chemicals of concern.

32 (3) REPORTS.—Every 4 years, the Administrator shall report to
33 Congress on the progress made in implementing the plan developed
34 under this subsection, and shall include in the report any revisions of
35 the plan.

36 (j) NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.—

37 (1) DEFINITIONS.—In this subsection:

38 (A) ACID PRECIPITATION.—The term “acid precipitation”
39 means the wet or dry deposition from the atmosphere of acid
40 chemical compounds.

1 (B) COMPREHENSIVE PLAN.—The term “comprehensive plan”
2 means the comprehensive research plan prepared under paragraph
3 (3).

4 (C) TASK FORCE.—The term “Task Force” means the Acid
5 Precipitation Task Force formed under paragraph (2).

6 (2) TASK FORCE.—There shall be formed an Acid Precipitation Task
7 Force consisting of the Administrator, the Secretary of Energy, the
8 Secretary of the Interior, the Secretary of Agriculture, the Adminis-
9 trator of the National Oceanic and Atmospheric Administration, the
10 Administrator of the National Aeronautics and Space Administration,
11 and such additional members as the President may select. The Presi-
12 dent shall appoint a chairman for the Task Force from among its
13 members.

14 (3) CONVENING OF TASK FORCE.—The Task Force shall convene as
15 necessary, but not less than twice during each fiscal year.

16 (4) COMPREHENSIVE RESEARCH PLAN.—

17 (A) IN GENERAL.—The Task Force shall prepare a comprehen-
18 sive research plan setting forth a coordinated program—

19 (i) to identify the causes and effects of acid precipitation;
20 and

21 (ii) to identify actions to limit or ameliorate the harmful
22 effects of acid precipitation.

23 (B) SCOPE.—The comprehensive plan shall include programs
24 for—

25 (i) identifying the sources of atmospheric emissions contrib-
26 uting to acid precipitation;

27 (ii) establishing and operating a nationwide long-term mon-
28 itoring network to detect and measure levels of acid precipita-
29 tion;

30 (iii) research in atmospheric physics and chemistry to fa-
31 cilitate understanding of the processes by which atmospheric
32 emissions are transformed into acid precipitation;

33 (iv) development and application of atmospheric transport
34 models to enable prediction of long-range transport of sub-
35 stances causing acid precipitation;

36 (v) defining geographic areas of impact through deposition
37 monitoring, identification of sensitive areas, and identification
38 of areas at risk;

39 (vi) broadening of impact databases through collection of
40 existing data on water and soil chemistry and through tem-
41 poral trend analysis;

- 1 (vii) development of dose-response functions with respect to
2 soils, soil organisms, aquatic and amphibious organisms, crop
3 plants, and forest plants;
- 4 (viii) establishing and carrying out system studies with re-
5 spect to plant physiology, aquatic ecosystems, soil chemistry
6 systems, soil microbial systems, and forest ecosystems;
- 7 (ix) economic assessments of—
- 8 (I) the environmental impacts caused by acid precipi-
9 tation on crops, forests, fisheries, and recreational and
10 aesthetic resources and structures; and
- 11 (II) alternative technologies to remedy or otherwise
12 ameliorate the harmful effects which may result from
13 acid precipitation;
- 14 (x) documenting all current Federal activities related to re-
15 search on acid precipitation and ensuring that those activities
16 are coordinated in ways that prevent needless duplication and
17 waste of financial and technical resources;
- 18 (xi) effecting cooperation in acid precipitation research and
19 development programs, ongoing and planned, with the af-
20 fected and contributing States and with other sovereign na-
21 tions having a commonality of interest;
- 22 (xii) subject to subparagraph (E)(i), management by the
23 Task Force of financial resources committed to Federal acid
24 precipitation research and development;
- 25 (xiii) subject to subparagraph (E)(ii), management of the
26 technical aspects of Federal acid precipitation research and
27 development programs, including—
- 28 (I) the planning and management of research and de-
29 velopment programs and projects;
- 30 (II) the selection of contractors and grantees to carry
31 out the programs and projects; and
- 32 (III) the establishment of peer review procedures to
33 ensure the quality of research and development programs
34 and their products; and
- 35 (xiv) analyzing the information available regarding acid
36 precipitation in order to present periodic recommendations to
37 Congress and the appropriate agencies about actions to be
38 taken by Congress and the agencies to alleviate acid precipita-
39 tion and its effects.

1 (C) BASIS FOR AUTHORIZATIONS AND APPROPRIATIONS.—The
2 comprehensive plan shall constitute the basis on which requests for
3 authorizations and appropriations are to be made.

4 (D) IMPLEMENTATION.—The comprehensive plan—

5 (i) shall be carried out in accordance with, and meet the
6 program objectives specified in, clauses (i) through (xi) of
7 subparagraph (B);

8 (ii) shall be managed in accordance with clauses (xii)
9 through (xiv) of subparagraph (B); and

10 (iii) shall be funded by annual appropriations, subject to
11 annual authorizations.

12 (E) RULES OF CONSTRUCTION.—

13 (i) MANAGEMENT OF FINANCIAL RESOURCES.—Subpara-
14 graph (B)(xii) shall not be construed as modifying, or as au-
15 thORIZING the Task Force or the comprehensive plan to mod-
16 ify, any provision of an appropriation Act (or any other provi-
17 sion of law relating to the use of appropriated funds) that
18 specifies—

19 (I) the department or agency to which funds are ap-
20 propriated; or

21 (II) the obligations of a department or agency with re-
22 spect to the use of those funds.

23 (ii) MANAGEMENT OF TECHNICAL ASPECTS OF PRO-
24 GRAMS.—Subparagraph (B)(xiii) shall not be construed as
25 modifying, or as authorizing the Task Force or the compre-
26 hensive plan to modify, any provision of law relating to or in-
27 volving a department or agency that specifies—

28 (I) procurement practices for the selection, award, or
29 management of contracts or grants by the department or
30 agency; or

31 (II) program activities, limitations, obligations, or re-
32 sponsibilities of the department or agency.

33 (5) OTHER RESPONSIBILITIES OF THE TASK FORCE.—

34 (A) IN GENERAL.—The responsibilities of the Task Force shall
35 include the following:

36 (i) Coordination with participating Federal agencies, aug-
37 menting the agencies' research and monitoring efforts and
38 sponsoring additional research in the scientific community as
39 necessary to ensure the availability and quality of data and
40 methodologies needed to evaluate the status and effectiveness
41 of the acid deposition control program.

1 (ii) Publication and maintenance of a national acid lakes
2 registry that tracks the condition and change over time of a
3 statistically representative sample of lakes in regions that are
4 known to be sensitive to surface water acidification.

5 (iii) Biennial submission of a unified budget recommenda-
6 tion to the President for activities of the Federal Government
7 in connection with the research program described in this
8 subsection.

9 (iv) Biennial submission of a report to Congress describing
10 the results of the Task Force's investigations and analyses.

11 (B) RESEARCH AND MONITORING EFFORTS.—Research and
12 monitoring efforts under subparagraph (A)(i) shall include—

13 (i) continuous monitoring of emissions of precursors of acid
14 deposition;

15 (ii) maintenance, upgrading, and application of models,
16 such as the Regional Acid Deposition Model, that describe the
17 interactions of emissions with the atmosphere, and models
18 that describe the response of ecosystems to acid deposition;
19 and

20 (iii) analysis of the costs, benefits, and effectiveness of the
21 acid deposition control program.

22 (C) REPORTS.—

23 (i) TECHNICAL INFORMATION.—The reporting of technical
24 information about acid deposition in a report under subpara-
25 graph (A)(iv) shall be provided in a format that facilitates
26 communication with policymakers and the public.

27 (ii) CONTENTS OF BIENNIAL REPORT.—A report under
28 subparagraph (A)(iv) shall include—

29 (I) actual and projected emissions and acid deposition
30 trends;

31 (II) average ambient concentrations of acid deposition
32 precursors and their transformation products;

33 (III) the status of ecosystems (including forests and
34 surface water), materials, and visibility affected by acid
35 deposition;

36 (IV) the causes and effects of such deposition, includ-
37 ing changes in surface water quality and forest and soil
38 conditions;

39 (V) the occurrence and effects of episodic acidification,
40 particularly with respect to high elevation watersheds;
41 and

1 (VI) the confidence level associated with each conclu-
2 sion to aid policymakers in use of the information.

3 (iii) ADDITIONAL CONTENTS OF QUADRENNIAL REPORT.—
4 Every 4 years, a report under subparagraph (A)(iv) shall in-
5 clude—

6 (I) the reduction in deposition rates that must be
7 achieved to prevent adverse ecological effects; and

8 (II) the costs and benefits of the acid deposition con-
9 trol program created by subdivision 5.

10 (6) EFFECT OF SUBSECTION.—Nothing in this subsection shall be
11 deemed to—

12 (A) grant any new regulatory authority;

13 (B) limit, expand, or otherwise modify any regulatory authority
14 under existing law; or

15 (C) establish new criteria, standards, or requirements for regu-
16 lation under existing law.

17 (k) AIR POLLUTION CONFERENCES.—

18 (1) IN GENERAL.—If, in the judgment of the Administrator, an air
19 pollution problem of substantial significance may result from discharge
20 or discharges into the atmosphere, the Administrator may call a con-
21 ference concerning the potential air pollution problem to be held in or
22 near 1 or more of the places where the discharge or discharges are oc-
23 ccurring or will occur.

24 (2) OPPORTUNITY TO BE HEARD.—All interested persons shall be
25 given an opportunity to be heard at a conference under paragraph (1),
26 orally or in writing, and shall be permitted to appear in person or by
27 representative in accordance with procedures prescribed by the Admin-
28 istrator.

29 (3) FINDINGS.—

30 (A) IN GENERAL.—If the Administrator finds, on the basis of
31 the evidence presented at a conference, that the discharge or dis-
32 charges if permitted to take place or continue are likely to cause
33 or contribute to air pollution subject to abatement under this part,
34 the Administrator shall send the findings, together with recom-
35 mendations concerning the measures that the Administrator finds
36 reasonable and suitable to prevent the pollution, to—

37 (i) the person or persons whose actions will result in the
38 discharge or discharges;

39 (ii) air pollution agencies of the State or States and of the
40 municipality or municipalities where the discharge or dis-
41 charges will originate; and

1 (iii) the interstate air pollution control agency, if any, in
2 the jurisdictional area of which any such municipality is lo-
3 cated.

4 (B) EFFECT.—Findings and recommendations under subpara-
5 graph (A) shall be advisory only, but shall be admitted with the
6 record of the conference as part of the proceedings under sub-
7 sections (b), (c), (d), (e), and (f) of section 211108 of this title.

8 **§ 211104. Research relating to fuels and vehicles**

9 (a) IN GENERAL.—

10 (1) SPECIAL EMPHASIS.—The Administrator shall give special em-
11 phasis to research and development into new and improved methods,
12 having industry-wide application, for the prevention and control of air
13 pollution resulting from the combustion of fuels.

14 (2) ACTIVITIES.—In furtherance of research and development under
15 paragraph (1), the Administrator shall—

16 (A) conduct and accelerate research programs directed toward
17 development of improved, cost-effective techniques for—

- 18 (i) control of combustion byproducts of fuels;
19 (ii) removal of potential air pollutants from fuels prior to
20 combustion;
21 (iii) control of emissions from the evaporation of fuels;
22 (iv) improving the efficiency of fuels combustion so as to
23 decrease atmospheric emissions; and
24 (v) producing synthetic or new fuels that, when used, result
25 in decreased atmospheric emissions;

26 (B) provide for Federal grants to public or nonprofit agencies,
27 institutions, and organizations and to individuals, and contracts
28 with public or private agencies, institutions, or persons, for pay-
29 ment of—

30 (i) part of the cost of acquiring, constructing, or otherwise
31 securing for research and development purposes, new or im-
32 proved devices or methods having industrywide application of
33 preventing or controlling discharges into the air of various
34 types of pollutants;

35 (ii) part of the cost of programs to develop low emission
36 alternatives to the present internal combustion engine;

37 (iii) the cost to purchase vehicles and vehicle engines, or
38 portions thereof, for research, development, and testing pur-
39 poses; and

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1 (iv) carrying out the other provisions of this section, with-
2 out regard to subsection (a) or (b) of section 3324 of title 31
3 or section 6101 of title 5;

4 (C) determine, by laboratory and pilot plant testing, the results
5 of air pollution research and studies in order to develop new or
6 improved processes and plant designs to the point where the pro-
7 cesses and plant designs can be demonstrated on a large and prac-
8 tical scale;

9 (D) construct, operate, and maintain, or assist in meeting the
10 cost of the construction, operation, and maintenance of, new or
11 improved demonstration plants or processes that have promise of
12 accomplishing the purposes of this division; and

13 (E) study new or improved methods for the recovery and mar-
14 keting of commercially valuable byproducts resulting from the re-
15 moval of pollutants.

16 (3) RESEARCH OR DEMONSTRATION CONTRACTS.—A research or
17 demonstration contract awarded pursuant to this subsection (including
18 a contract for construction) may be made in accordance with, and sub-
19 ject to the limitations provided with respect to research contracts of the
20 military departments in, section 2353 of title 10, except that the deter-
21 mination, approval, and certification required by that subsection shall
22 be made by the Administrator.

23 (4) LIMITATION ON GRANT AMOUNT.—No grant may be made under
24 paragraph (2)(B) in excess of \$1,500,000.

25 (b) POWERS OF ADMINISTRATOR.—In carrying out this section, the Ad-
26 ministrator may—

27 (1) conduct and accelerate research and development of cost-effective
28 instrumentation techniques to facilitate determination of the quantity
29 and quality of air pollutant emissions, including automotive emissions;

30 (2) utilize, on a reimbursable basis, the facilities of existing Federal
31 scientific laboratories;

32 (3) establish and operate necessary facilities and test sites at which
33 to carry on the research, testing, development, and programming nec-
34 essary to effectuate this section;

35 (4) acquire secret processes, technical data, inventions, patent appli-
36 cations, patents, licenses, and interests in land, plants, and facilities,
37 and other property or rights by purchase, license, lease, or donation;
38 and

39 (5) cause on-site inspections to be made of promising domestic and
40 foreign projects, and cooperate and participate in their development in
41 instances in which the purposes of this division will be served thereby.

1 (e) CLEAN ALTERNATIVE FUELS.—The Administrator shall conduct a re-
2 search program to identify, characterize, and predict air emissions related
3 to the production, distribution, storage, and use of clean alternative fuels
4 to determine the risks and benefits to human health and the environment
5 relative to those from using conventional gasoline and diesel fuels. The Ad-
6 ministrator shall consult with other Federal agencies to ensure coordination
7 and to avoid duplication of activities authorized under this subsection.

8 **§ 211105. Grants for support of air pollution planning and**
9 **control programs**

10 (a) DEFINITION OF IMPLEMENT.—In this section, the term “implement”,
11 in the context of implementation of a program or of a primary or secondary
12 NAAQS, means to engage in any activity related to the planning, develop-
13 ing, establishing, carrying out, improving, or maintaining of the program or
14 primary or secondary NAAQS.

15 (b) IN GENERAL.—

16 (1) GRANTS.—

17 (A) IN GENERAL.—The Administrator may make a grant to an
18 air pollution control agency described in subparagraph (A), (B),
19 (C), (D), or (E) of section 201101 of this title in an amount up
20 to $\frac{3}{5}$ of the cost of implementing programs for the prevention and
21 control of air pollution or implementation of primary and second-
22 ary NAAQses.

23 (B) FAILURE TO CONTRIBUTE MINIMUM REQUIRED AMOUNT.—
24 Subject to subsections (c) and (d), an air pollution control agency
25 that receives a grant under subparagraph (A) shall contribute the
26 required $\frac{2}{5}$ minimum. If an air pollution control agency fails to
27 meet and maintain the required level, the Administrator shall re-
28 duce the amount of the Federal contribution accordingly.

29 (C) AIR QUALITY CONTROL REGIONS OR PORTIONS THEREOF
30 FOR WHICH THERE IS AN APPLICABLE IMPLEMENTATION PLAN.—
31 With respect to any air quality control region or portion thereof
32 for which there is an applicable implementation plan under section
33 211110 of this title, a grant under subparagraph (A) may be
34 made only to an air pollution control agency that has substantial
35 responsibilities for carrying out the applicable implementation
36 plan.

37 (2) AIR POLLUTION CONTROL AGENCIES ESTABLISHED BY 2 OR
38 MORE STATES OR MUNICIPALITIES.—Before approving any grant under
39 this subsection to any air pollution control agency described in sub-
40 paragraph (B) or (D) of section 201101(2) of this title, the Adminis-
41 trator shall receive assurances that the air pollution control agency—

1 (A) provides for adequate representation of appropriate State,
2 interstate, local, and (when appropriate) international interests in
3 the air quality control region; and

4 (B) has the capability of developing a comprehensive air quality
5 plan for the air quality control region, which plan shall include—

6 (i) (when appropriate) a recommended system of alerts to
7 avert and reduce the risk of situations in which there may be
8 imminent and serious danger to the public health or welfare
9 from air pollutants; and

10 (ii) the various aspects relevant to the establishment of air
11 quality standards for that air quality control region, including
12 the concentration of industries, other commercial establish-
13 ments, population, and naturally occurring factors that affect
14 those air quality standards.

15 (c) TERMS AND CONDITIONS; LIMITATION ON GRANT AMOUNTS.—

16 (1) TERMS AND CONDITIONS.—From the sums available for the pur-
17 poses of subsection (b) for any fiscal year, the Administrator shall from
18 time to time make grants to air pollution control agencies on such
19 terms and conditions as the Administrator may find necessary to carry
20 out this section. In establishing regulations for the granting of such
21 funds the Administrator shall, so far as practicable, give due consider-
22 ation to—

23 (A) the population;

24 (B) the extent of the actual or potential air pollution problem;
25 and

26 (C) the financial need of the respective air pollution control
27 agencies.

28 (2) LIMITATION ON GRANT AMOUNTS.—Not more than 10 percent of
29 the total of funds appropriated or allocated for the purposes of sub-
30 section (b) shall be granted for programs in any 1 State. In the case
31 of a grant for a program in an area crossing State boundaries, the Ad-
32 ministrator shall determine the portion of the grant that is chargeable
33 to the percentage limitation under this subsection for each State into
34 which the area extends.

35 (3) MINIMUM AMOUNT.—Subject to paragraph (1), no State shall
36 have made available to it for application less than 0.5 percent of the
37 annual appropriation for grants under this section for grants to air pol-
38 lution control agencies within the State.

39 (d) MAINTENANCE OF EFFORT.—

40 (1) EXPENDITURES.—

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1 (A) IN GENERAL.—Except as provided in paragraph (2), no air
2 pollution control agency shall receive any grant under this section
3 during any fiscal year when its expenditures of non-Federal funds
4 for recurrent expenditures for air pollution control programs will
5 be less than its expenditures were for such programs during the
6 preceding fiscal year. In order for the Administrator to award
7 grants under this section in a timely manner each fiscal year, the
8 Administrator shall compare an air pollution control agency's pro-
9 spective expenditure level to that of its 2d preceding fiscal year.

10 (B) CONSIDERATION OF EXEMPTIONS.—In prescribing regula-
11 tions that define applicable nonrecurrent and recurrent expendi-
12 tures, the Administrator shall give due consideration to exempting
13 an air pollution control agency from the limitations of this para-
14 graph and subsection (b) due to increases experienced by that air
15 pollution control agency from time to time in its annual expendi-
16 tures for purposes acceptable to the Administrator for that fiscal
17 year.

18 (2) NONSELECTIVE REDUCTION IN EXPENDITURES.—The Adminis-
19 trator may award a grant to an air pollution control agency that does
20 not meet the requirements of paragraph (1) if the Administrator, after
21 notice and opportunity for public hearing, determines that a reduction
22 in expenditures is attributable to a nonselective reduction in the ex-
23 penditures in the programs of all executive branch agencies of the ap-
24 plicable unit of government.

25 (3) USE TO SUPPLEMENT OR INCREASE NON-FEDERAL FUNDS.—No
26 air pollution control agency shall receive any grant under this section
27 with respect to the maintenance of a program for the prevention and
28 control of air pollution unless the Administrator is satisfied that such
29 a grant will be used to supplement and, to the extent practicable, in-
30 crease the level of State, local, or other non-Federal funds.

31 (4) CONSULTATION.—No grant shall be made under this section
32 until the Administrator has consulted with the appropriate official as
33 designated by the Governor or Governors of the State or States af-
34 fected.

35 (e) REDUCTION OF PAYMENTS.—The Administrator, with the concu-
36 rrence of any recipient of a grant under this section, may reduce the pay-
37 ments to the recipient by the amount of the pay, allowances, traveling ex-
38 penses, and any other costs in connection with the detail of any officer or
39 employee to the recipient under section 203101 of this title, when the detail
40 is for the convenience of, and at the request of, the recipient and for the
41 purpose of carrying out this division. The amount by which such payments

1 have been reduced shall be available for payment of such costs by the Ad-
2 ministrator, but shall, for the purpose of determining the amount of any
3 grant to a recipient under subsection (b), be deemed to have been paid to
4 the recipient.

5 (f) NOTICE AND OPPORTUNITY FOR HEARING.—No application by a
6 State for a grant under this section may be disapproved by the Adminis-
7 trator without prior notice and opportunity for a public hearing in the af-
8 fected State, and no commitment or obligation of any funds under any such
9 grant may be revoked or reduced without prior notice and opportunity for
10 a public hearing in the affected State (or in 1 of the affected States if more
11 than 1 State is affected).

12 **§ 211106. Interstate air quality agencies**

13 (a) IN GENERAL.—For the purpose of developing implementation plans
14 for any interstate air quality control region designated pursuant to section
15 211107 of this title or of implementing section 215108 or 215205 of this
16 title, the Administrator may pay, for 2 years, up to 100 percent of the air
17 quality planning program costs of—

- 18 (1) any commission established under either of those sections; or
19 (2) any agency designated by the Governors of the affected States,
20 which agency—

21 (A) shall be capable of recommending to the Governors plans
22 for implementation of primary and secondary NAAQSeS; and

23 (B) shall include representation from the States and appropriate
24 political subdivisions within the air quality control region.

25 (b) SUBSEQUENT YEARS.—After the initial 2-year period, the Adminis-
26 trator may make grants to a commission or agency described in subsection
27 (a) in an amount up to $\frac{3}{5}$ of the air quality implementation program costs
28 of the commission or agency.

29 **§ 211107. Air quality control regions**

30 (a) STATE RESPONSIBILITY.—Each State shall have the primary respon-
31 sibility for ensuring air quality within the entire geographic area comprising
32 the State by submitting an implementation plan for the State that specifies
33 the manner in which primary and secondary NAAQSeS will be achieved and
34 maintained within each air quality control region in the State.

35 (b) DESIGNATED AIR QUALITY CONTROL REGIONS.—For purposes of de-
36 veloping and carrying out State implementation plans under section 211110
37 of this title—

- 38 (1) an air quality control region designated under this section before
39 December 31, 1970, or a region designated after that date under sub-
40 section (c), shall be an air quality control region; and

1 (2) the portion of a State that is not part of any such designated
2 region shall be an air quality control region, but that portion may be
3 subdivided by the State into 2 or more air quality control regions with
4 the approval of the Administrator.

5 (c) DESIGNATION BY THE ADMINISTRATOR.—After consultation with ap-
6 propriate State and local authorities, the Administrator shall designate as
7 an air quality control region any interstate area or major intrastate area
8 that the Administrator considers necessary or appropriate for the attain-
9 ment and maintenance of ambient air quality standards. The Administrator
10 shall immediately notify the Governors of the affected States of any designa-
11 tion made under this subsection.

12 (d) DESIGNATIONS.—

13 (1) DESIGNATIONS GENERALLY.—

14 (A) SUBMISSION BY GOVERNORS OF INITIAL DESIGNATIONS
15 FOLLOWING PROMULGATION OF NEW OR REVISED STANDARDS.—

16 (i) IN GENERAL.—By such date as the Administrator may
17 reasonably require, but not later than 1 year after promulga-
18 tion of a new or revised NAAQS for any pollutant under sec-
19 tion 211109 of this title, the Governor of each State shall
20 (and at any other time the Governor of a State considers ap-
21 propriate the Governor may) submit to the Administrator a
22 list of all areas (or portions thereof) in the State, designating
23 as—

24 (I) nonattainment, any area that does not meet (or
25 that contributes to ambient air quality in a nearby area
26 that does not meet) the primary or secondary NAAQS
27 for the pollutant;

28 (II) attainment, any area (other than an area identi-
29 fied in subclause (I)) that meets the primary or second-
30 ary NAAQS for the pollutant; or

31 (III) unclassifiable, any area that cannot be classified
32 on the basis of available information as meeting or not
33 meeting the primary or secondary NAAQS for the pollut-
34 ant.

35 (ii) TIMING.—The Administrator may not require a Gov-
36 ernor to submit a list required under clause (i) sooner than
37 120 days after promulgating a new or revised NAAQS.

38 (B) PROMULGATION OF DESIGNATIONS BY THE ADMINIS-
39 TRATOR.—

40 (i) IN GENERAL.—On promulgation or revision of a
41 NAAQS, the Administrator shall promulgate the designations

1 of all areas (or portions thereof) submitted under subpara-
2 graph (A) as expeditiously as practicable, but in no case later
3 than 2 years after the date of promulgation of the new or re-
4 vised NAAQS. The 2-year period may be extended for up to
5 1 year if the Administrator has insufficient information to
6 promulgate the designations.

7 (ii) MODIFICATIONS.—In making the promulgations re-
8 quired under clause (i), the Administrator may make such
9 modifications as the Administrator considers necessary to the
10 designations of the areas (or portions thereof) submitted
11 under subparagraph (A)(i) (including to the boundaries of the
12 areas or portions thereof). Whenever the Administrator in-
13 tends to make a modification, the Administrator shall notify
14 the State and provide the State with an opportunity to dem-
15 onstrate why any proposed modification is inappropriate. The
16 Administrator shall give the notification not later than 120
17 days before the date the Administrator promulgates the des-
18 ignation, including any modification to the designation. If the
19 Governor fails to submit the list in whole or in part, as re-
20 quired under subparagraph (A), the Administrator shall pro-
21 mulgate the designation that the Administrator considers ap-
22 propriate for any area (or portion thereof) not designated by
23 the State.

24 (iii) SUBMISSION OF LIST ON GOVERNOR'S OWN MOTION.—
25 If the Governor of any State, on the Governor's own motion,
26 submits a list of areas (or portions thereof) in the State des-
27 ignated as nonattainment, attainment, or unclassifiable, the
28 Administrator shall act on the designations in accordance
29 with the procedures under paragraph (3).

30 (iv) EFFECTIVE PERIOD.—A designation for an area (or
31 portion thereof) made pursuant to this subsection shall re-
32 main in effect until the area (or portion thereof) is redesign-
33 ated pursuant to paragraph (3) or (4).

34 (C) DESIGNATIONS BY OPERATION OF LAW.—

35 (i) NONATTAINMENT.—Any area designated with respect to
36 any air pollutant under subparagraph (A), (B), or (C) of sec-
37 tion 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1))
38 (as in effect on November 14, 1990) is designated, by oper-
39 ation of law, as a nonattainment area for that air pollutant
40 within the meaning of subparagraph (A)(i)(I).

1 (ii) ATTAINMENT.—Any area designated with respect to
2 any air pollutant under subparagraph (E) of section
3 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as
4 in effect on November 14, 1990) is designated by operation
5 of law, as an attainment area for that air pollutant within the
6 meaning of subparagraph (A)(i)(II).

7 (iii) UNCLASSIFIABLE.—Any area designated with respect
8 to any air pollutant under subparagraph (D) of section
9 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as
10 in effect on November 14, 1990) is designated, by operation
11 of law, as an unclassifiable area for that air pollutant within
12 the meaning of subparagraph (A)(i)(III).

13 (2) PUBLICATION OF DESIGNATIONS AND REDESIGNATIONS.—

14 (A) NOTICE.—The Administrator shall publish a notice in the
15 Federal Register promulgating any designation under paragraph
16 (1) or (5), announcing any designation under paragraph (4), or
17 promulgating any redesignation under paragraph (3).

18 (B) NONAPPLICABILITY OF OTHER LAW.—Promulgation or an-
19 nouncement of a designation under paragraph (1), (4) or (5) shall
20 not be subject to sections 553 to 557 of title 5, except that noth-
21 ing in this subparagraph shall be construed as precluding such
22 public notice and comment whenever possible.

23 (3) REDESIGNATION.—

24 (A) NOTIFICATION.—Subject to subparagraph (E), on the basis
25 of air quality data, planning and control considerations, or any
26 other air quality-related considerations that the Administrator con-
27 siders appropriate, the Administrator may at any time publicly no-
28 tify the Governor of any State that available information indicates
29 that the designation of any area or portion of an area within the
30 State or interstate area should be revised. In issuing such a notifi-
31 cation to the Governor, the Administrator shall provide such infor-
32 mation as the Administrator may have available explaining the
33 basis for the notification.

34 (B) SUBMISSION OF REDESIGNATION.—Not later than 120 days
35 after receiving a notification under subparagraph (A), the Gov-
36 ernor shall submit to the Administrator such redesignation, if any,
37 of the appropriate area (or areas) or portion thereof within the
38 State or interstate area, as the Governor considers appropriate.

39 (C) PROMULGATION OF REDESIGNATION.—Not later than 120
40 days after the date described in subparagraph (B) (or paragraph
41 (1)(B)(iii)), the Administrator shall promulgate the redesignation,

1 if any, of the area or portion thereof, submitted by the Governor
2 in accordance with subparagraph (B), making such modifications
3 as the Administrator considers necessary, in the same manner and
4 under the same procedure as is applicable under clause (ii) of
5 paragraph (1)(B), except that “60 days” shall be substituted for
6 “120 days” in that clause. If the Governor does not submit, in ac-
7 cordance with subparagraph (B), a redesignation for an area (or
8 portion thereof) identified by the Administrator under subpara-
9 graph (A), the Administrator shall promulgate such redesignation,
10 if any, as the Administrator considers appropriate.

11 (D) REDESIGNATION ON GOVERNOR’S OWN MOTION.—The Gov-
12 ernor of any State may, on the Governor’s own motion, submit to
13 the Administrator a revised designation of any area or portion
14 thereof within the State. Within 18 months after receipt of a com-
15 plete State redesignation submittal, the Administrator shall ap-
16 prove or deny the redesignation. The submission of a redesignation
17 by a Governor shall not affect the effectiveness or enforceability
18 of the applicable State implementation plan.

19 (E) REDESIGNATION OF NONATTAINMENT TO ATTAINMENT.—
20 The Administrator may not promulgate a redesignation of a non-
21 attainment area (or portion thereof) to attainment unless—

22 (i) the Administrator determines that the area has attained
23 the NAAQS;

24 (ii) the Administrator has fully approved the applicable
25 State implementation plan for the area under section
26 211110(i) of this title;

27 (iii) the Administrator determines that the improvement in
28 air quality is due to permanent and enforceable reductions in
29 emissions resulting from implementation of the applicable
30 State implementation plan and applicable Federal air pollut-
31 ant control regulations and other permanent and enforceable
32 reductions;

33 (iv) the Administrator has fully approved a maintenance
34 plan for the area as meeting the requirements of section
35 215106 of this title; and

36 (v) the State containing the area has met all requirements
37 applicable to the area under section 211110 of this title and
38 chapter 215.

39 (F) NO REDESIGNATION FROM NONATTAINMENT TO UN-
40 CLASSIFIABLE.—The Administrator shall not promulgate any re-

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1 designation of any area (or portion thereof) from nonattainment
2 to unclassifiable.

3 (4) NONATTAINMENT DESIGNATIONS FOR OZONE, CARBON MON-
4 OXIDE, AND PARTICULATE MATTER (PM-10).—

5 (A) OZONE AND CARBON MONOXIDE.—

6 (i) SUBMISSIONS BY GOVERNORS.—The Governor of each
7 State shall submit to the Administrator a list that designates,
8 affirms or reaffirms the designation of, or redesignates all
9 areas (or portions thereof) of the Governor's State as attain-
10 ment, nonattainment, or unclassifiable with respect to the
11 NAAQSeS for ozone and carbon monoxide.

12 (ii) PROMULGATION.—The Administrator shall promulgate
13 the designations required under clause (i), making such modi-
14 fications as the Administrator considers necessary, in the
15 same manner and under the same procedure as is applicable
16 under clause (ii) of paragraph (1)(B), except that "60 days"
17 shall be substituted for "120 days" in that clause. If the Gov-
18 ernor does not submit, in accordance with clause (i) of this
19 subparagraph, a designation for an area (or portion thereof),
20 the Administrator shall promulgate the designation that the
21 Administrator considers appropriate.

22 (iii) NO REDESIGNATION AS ATTAINMENT.—No nonattain-
23 ment area may be redesignated as an attainment area under
24 this subparagraph.

25 (iv) AREAS CLASSIFIED AS A SERIOUS AREA, SEVERE AREA,
26 OR EXTREME AREA.—Notwithstanding paragraph (1)(C)(ii),
27 if an ozone or carbon monoxide nonattainment area located
28 within a metropolitan statistical area or consolidated metro-
29 politan statistical area (as established by the Bureau of the
30 Census) is classified under chapter 215 as a serious area, se-
31 vere area, or extreme area, the boundaries of the area are re-
32 vised (on the date that is 45 days after such classification)
33 by operation of law to include the entire metropolitan statis-
34 tical area or consolidated metropolitan statistical area, as the
35 case may be, unless within that 45-day period the Governor
36 (in consultation with State and local air pollution control
37 agencies) notifies the Administrator that additional time is
38 necessary to evaluate the application of clause (v). When a
39 Governor has submitted such a notice to the Administrator,
40 the boundary revision shall occur on the date that is 8
41 months after the date of the classification unless the Gov-

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1 ernor makes the finding described in clause (v), and the Ad-
2 ministrator concurs in the finding, within that period. Except
3 as otherwise provided in this paragraph, a boundary revision
4 under this clause or clause (v) shall apply for purposes of any
5 State implementation plan revision.

6 (v) EXCLUSION OF PORTION OF AREA.—Whenever the Gov-
7 ernor of a State has submitted a notice under clause (iv), the
8 Governor, in consultation with State and local air pollution
9 control agencies, shall undertake a study to evaluate whether
10 the entire metropolitan statistical area or consolidated metro-
11 politan statistical area should be included within the non-
12 attainment area. Whenever a Governor finds and dem-
13 onstrates to the satisfaction of the Administrator, and the
14 Administrator concurs in the finding, that with respect to a
15 portion of a metropolitan statistical area or consolidated met-
16 ropolitan statistical area, sources in the portion do not con-
17 tribute significantly to violation of the NAAQS, the Adminis-
18 trator shall approve the Governor’s request to exclude that
19 portion from the nonattainment area. In making the finding,
20 the Governor and the Administrator shall consider factors
21 such as population density, traffic congestion, commercial de-
22 velopment, industrial development, meteorological conditions,
23 and pollution transport.

24 (B) PM-10 DESIGNATIONS.—

25 (i) IN GENERAL.—By operation of law, until redesignation
26 by the Administrator pursuant to paragraph (3)—

27 (I) each area identified in 52 Fed. Reg. 29383 (Au-
28 gust 7, 1987) as a Group I area (except to the extent
29 that such identification was modified by the Adminis-
30 trator before November 15, 1990) is designated non-
31 attainment for PM-10;

32 (II) any area containing a site for which air quality
33 monitoring data show a violation of the NAAQS for PM-
34 10 before January 1, 1989 (as determined under part
35 50, appendix K of title 40, Code of Federal Regulations),
36 is designated nonattainment for PM-10; and

37 (III) each area not described in subclause (I) or (II)
38 is designated unclassifiable for PM-10.

39 (ii) CONTINUANCE IN EFFECT OF CERTAIN DESIGNA-
40 TIONS.—Any designation for particulate matter (measured in
41 terms of total suspended particulates) that the Administrator

1 promulgated pursuant to section 107(d) of the Clean Air Act
2 (42 U.S.C. 7407(d)) (as in effect on November 14, 1990)
3 shall remain in effect for purposes of implementing the maxi-
4 mum allowable increases in concentrations of particulate mat-
5 ter (measured in terms of total suspended particulates) pur-
6 suant to section 213105(b) of this title, until the Adminis-
7 trator determines that such designation is no longer necessary
8 for that purpose.

9 (5) DESIGNATIONS FOR LEAD.—The Administrator may, at any time
10 that the Administrator considers appropriate, require a State to des-
11 ignate areas (or portions thereof) with respect to the NAAQS for lead
12 in effect as of November 15, 1990, in accordance with the procedures
13 under subparagraphs (A) and (B) of paragraph (1), except that in ap-
14 plying subparagraph (B)(i) of paragraph (1), the phrase “2 years after
15 the date of promulgation of the new or revised NAAQS” shall be re-
16 placed by the phrase “1 year after the date on which the Administrator
17 notifies the State of the requirement to designate areas with respect
18 to the NAAQS for lead”.

19 (6) DESIGNATIONS FOR JULY 1997 PM_{2.5} NAAQS.—

20 (A) SUBMISSION.—Notwithstanding any other provision of law,
21 the Governor of each State shall submit designations described in
22 paragraph (1) for the July 1997 PM_{2.5} NAAQSeS for each area
23 within the State, based on air quality monitoring data collected in
24 accordance with any applicable Federal reference methods for the
25 relevant areas.

26 (B) PROMULGATION.—Notwithstanding any other provision of
27 law, the Administrator shall, consistent with paragraph (1), pro-
28 mulgate the designations described in subparagraph (A) for each
29 area of each State for the July 1997 PM_{2.5} NAAQSeS.

30 (7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

31 (A) IN GENERAL.—Notwithstanding any other provision of law,
32 not later than 3 years after the date on which the Administrator
33 promulgates the designations described in paragraph (6)(B) for a
34 State, the State shall submit, for the entire State, the State imple-
35 mentation plan revisions to meet the requirements promulgated by
36 the Administrator under section 213202(e)(1) of this title (re-
37 ferred to in this paragraph as “regional haze requirements”).

38 (B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this
39 paragraph precludes the implementation of the agreements and
40 recommendations stemming from the Grand Canyon Visibility
41 Transport Commission Report dated June 1996, including the

1 submission of State implementation plan revisions by the States
2 of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Or-
3 egon, Utah, or Wyoming for implementation of regional haze re-
4 quirements applicable to those States.

5 (e) REDESIGNATION OF AIR QUALITY CONTROL REGIONS.—

6 (1) IN GENERAL.—Except as otherwise provided in paragraph (2),
7 the Governor of each State may, with the approval of the Adminis-
8 trator, redesignate from time to time the air quality control regions
9 within the State for purposes of efficient and effective air quality man-
10 agement. On such redesignation, the list under subsection (d) shall be
11 modified accordingly.

12 (2) SIGNIFICANT EFFECT ON AIR POLLUTION CONCENTRATIONS IN
13 ANOTHER STATE.—In the case of an air quality control region in a
14 State, or part of an air quality control region, that the Administrator
15 finds may significantly affect air pollution concentrations in another
16 State, the Governor of the State in which that region or part of a re-
17 gion is located may redesignate from time to time the boundaries of
18 so much of the air quality control region as is located within that State
19 only with the approval of the Administrator and with the consent of
20 all Governors of all States that the Administrator determines may be
21 significantly affected.

22 **§ 211108. Air quality criteria and control techniques**

23 (a) AIR POLLUTANT LIST; AIR QUALITY CRITERIA.—

24 (1) AIR POLLUTANT LIST.—For the purpose of establishing primary
25 and secondary NAAQSeS, the Administrator shall publish and shall
26 from time to time revise a list that includes each air pollutant—

27 (A) emissions of which, in the Administrator's judgment, cause
28 or contribute to air pollution that may reasonably be anticipated
29 to endanger public health or welfare;

30 (B) the presence of which in the ambient air results from nu-
31 merous or diverse mobile or stationary sources; and

32 (C) for which air quality criteria had not been issued before De-
33 cember 31, 1970, but for which the Administrator plans to issue
34 air quality criteria under this section.

35 (2) AIR QUALITY CRITERIA.—

36 (A) IN GENERAL.—The Administrator shall issue air quality cri-
37 teria for an air pollutant within 12 months after the Adminis-
38 trator includes the air pollutant in a list under paragraph (1). Air
39 quality criteria for an air pollutant shall accurately reflect the lat-
40 est scientific knowledge useful in indicating the kind and extent
41 of all identifiable effects on public health or welfare that may be

1 expected from the presence of the pollutant in the ambient air, in
2 varying quantities.

3 (B) INFORMATION TO BE INCLUDED.—The criteria for an air
4 pollutant, to the extent practicable, shall include information on—

5 (i) the variable factors (including atmospheric conditions)
6 that of themselves or in combination with other factors may
7 alter the effects on public health or welfare of the air pollut-
8 ant;

9 (ii) the types of air pollutants that, when present in the at-
10 mosphere, may interact with the air pollutant to produce an
11 adverse effect on public health or welfare; and

12 (iii) any known or anticipated adverse effects on welfare.

13 (b) AIR POLLUTION CONTROL TECHNIQUES.—

14 (1) ISSUANCE OF INFORMATION.—

15 (A) IN GENERAL.—Simultaneously with the issuance of criteria
16 under subsection (a), the Administrator shall, after consultation
17 with appropriate advisory committees and Federal departments
18 and agencies, issue to the States and appropriate air pollution con-
19 trol agencies information on air pollution control techniques.

20 (B) INFORMATION TO BE INCLUDED.—The information issued
21 under subparagraph (A) shall include—

22 (i) data relating to the cost of installation and operation,
23 energy requirements, emission reduction benefits, and envi-
24 ronmental impact of the emission control technology;

25 (ii) such data as are available on available technology and
26 alternative methods of prevention and control of air pollution;
27 and

28 (iii) data on alternative fuels, processes, and operating
29 methods that will result in elimination or significant reduction
30 of emissions.

31 (2) CONSULTING COMMITTEES.—To assist in the development of in-
32 formation on pollution control techniques, the Administrator may es-
33 tablish a standing consulting committee for each air pollutant included
34 in a list published pursuant to subsection (a)(1), which shall be com-
35 prised of technically qualified individuals representative of State and
36 local governments, industry, and the academic community. Each such
37 committee shall submit, as appropriate, to the Administrator informa-
38 tion related to that required by paragraph (1).

39 (c) REVIEW, MODIFICATION, AND REISSUANCE OF CRITERIA OR INFOR-
40 MATION.—The Administrator shall from time to time review, and, as appro-
41 priate, modify and reissue any criteria or information on control techniques

1 issued pursuant to this section. The criteria shall include a discussion of ni-
2 tric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcino-
3 genic and potentially carcinogenic derivatives of nitrogen oxides.

4 (d) ANNOUNCEMENT IN FEDERAL REGISTER; PUBLIC AVAILABILITY.—
5 The issuance of air quality criteria and information on air pollution control
6 techniques shall be announced in the Federal Register, and copies shall be
7 made available to the general public.

8 (e) TRANSPORTATION PLANNING AND GUIDELINES.—

9 (1) IN GENERAL.—The Administrator shall, after consultation with
10 the Secretary of Transportation, and after providing public notice and
11 opportunity for comment, and with State and local officials, periodically
12 as necessary to maintain a continuous transportation-air quality plan-
13 ning process, update the June 1978 Transportation-Air Quality Plan-
14 ning Guidelines and publish guidance on the development and imple-
15 mentation of transportation and other measures necessary to dem-
16 onstrate and maintain attainment of NAAQSEs.

17 (2) INFORMATION TO BE INCLUDED.—The guidelines shall include
18 information on—

19 (A) methods to identify and evaluate alternative planning and
20 control activities;

21 (B) methods of reviewing plans on a regular basis as conditions
22 change or new information is presented;

23 (C) identification of funds and other resources necessary to im-
24 plement the plan, including interagency agreements on providing
25 such funds and resources;

26 (D) methods to ensure participation by the public in all phases
27 of the planning process; and

28 (E) such other methods as the Administrator determines to be
29 necessary to carry out a continuous planning process.

30 (f) INFORMATION REGARDING TRANSPORTATION CONTROL MEASURES.—

31 (1) IN GENERAL.—The Administrator shall publish and make avail-
32 able to appropriate Federal, State, and local environmental and trans-
33 portation agencies from time to time—

34 (A) information prepared, as appropriate, in consultation with
35 the Secretary of Transportation, and after providing public notice
36 and opportunity for comment, regarding the formulation and emis-
37 sion reduction potential of transportation control measures related
38 to criteria pollutants and their precursors, including—

39 (i) programs for improved public transit;

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- 1 (ii) restriction of certain roads or lanes to, or construction
2 of roads or lanes for use by, passenger buses or high occu-
3 pancy vehicles;
- 4 (iii) employer-based transportation management plans, in-
5 cluding incentives;
- 6 (iv) trip-reduction ordinances;
- 7 (v) traffic flow improvement programs that achieve emis-
8 sion reductions;
- 9 (vi) fringe and transportation corridor parking facilities
10 serving multiple occupancy vehicle programs or transit serv-
11 ice;
- 12 (vii) programs to limit or restrict vehicle use in downtown
13 areas or other areas of emission concentration particularly
14 during periods of peak use;
- 15 (viii) programs for the provision of all forms of high-occu-
16 pancy, shared-ride services;
- 17 (ix) programs to limit portions of road surfaces or certain
18 sections of a metropolitan area to the use of non-motorized
19 vehicles or pedestrian use, as to both time and place;
- 20 (x) programs for secure bicycle storage facilities and other
21 facilities, including bicycle lanes, for the convenience and pro-
22 tection of bicyclists, in both public and private areas;
- 23 (xi) programs to control extended idling of vehicles;
- 24 (xii) programs to reduce motor vehicle emissions, consistent
25 with subdivision 3, that are caused by extreme cold start con-
26 ditions;
- 27 (xiii) employer-sponsored programs to permit flexible work
28 schedules;
- 29 (xiv) programs and ordinances to facilitate non-automobile
30 travel and the provision and utilization of mass transit and
31 to generally reduce the need for single-occupant vehicle travel,
32 as part of transportation planning and development efforts of
33 a locality, including programs and ordinances applicable to
34 new shopping centers, special events, and other centers of ve-
35 hicle activity;
- 36 (xv) programs for new construction and major reconstruc-
37 tions of paths, tracks, or areas solely for the use by pedes-
38 trian or other non-motorized means of transportation when
39 economically feasible and in the public interest; and

1 (xvi) programs to encourage the voluntary removal from
2 use and the marketplace of pre-1980 model year light-duty
3 vehicles and pre-1980 model year light-duty trucks;

4 (B) information on additional methods or strategies that will
5 contribute to the reduction of mobile source related pollutants dur-
6 ing periods in which any primary ambient air quality standard will
7 be exceeded and during episodes for which an air pollution alert,
8 warning, or emergency has been declared;

9 (C) information on other measures that may be employed to re-
10 duce the impact on public health or protect the health of sensitive
11 or susceptible individuals or groups; and

12 (D) information on the extent to which any process, procedure,
13 or method to reduce or control an air pollutant may cause an in-
14 crease in the emissions or formation of any other pollutant.

15 (2) ASSESSMENT.—In publishing information under paragraph (1)
16 the Administrator shall include an assessment of—

17 (A) the relative effectiveness of the processes, procedures, and
18 methods described in paragraph (1);

19 (B) the potential effect of those processes, procedures, and
20 methods on transportation systems and the provision of transpor-
21 tation services; and

22 (C) the environmental, energy, and economic impact of those
23 processes, procedures, and methods.

24 (3) CONSULTATION.—For purposes of paragraph (1)(A)(xv), the Ad-
25 ministrator shall consult with the Secretary of the Interior as well as
26 with the Secretary of Transportation.

27 (g) ASSESSMENT OF RISKS TO ECOSYSTEMS.—The Administrator may
28 assess the risks to ecosystems from exposure to criteria air pollutants (as
29 identified by the Administrator in the Administrator's sole discretion).

30 (h) RACT/BACT/LAER CLEARINGHOUSE.—The Administrator shall
31 make information regarding emission control technology available to the
32 States and to the general public through a central database. Such informa-
33 tion shall include all control technology information received pursuant to
34 State plan provisions requiring permits for sources, including operating per-
35 mits for existing sources.

36 **§ 211109. National primary and secondary ambient air qual-**
37 **ity standards**

38 (a) PROMULGATION.—

39 (1) AIR POLLUTANTS FOR WHICH AIR QUALITY CRITERIA WERE IS-
40 SUED BEFORE DECEMBER 31, 1970.—The Administrator shall promul-
41 gate regulations prescribing a primary NAAQS and a secondary

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1 NAAQS for each air pollutant for which air quality criteria were issued
2 before December 31, 1970.

3 (2) AIR POLLUTANTS FOR WHICH AIR QUALITY CRITERIA ARE IS-
4 SUED AFTER DECEMBER 31, 1970.—

5 (A) PROPOSED STANDARDS.—With respect to any air pollutant
6 for which air quality criteria are issued after December 31, 1970,
7 the Administrator shall publish, simultaneously with the issuance
8 of such criteria and information, proposed primary and secondary
9 NAAQSeS for any such air pollutant.

10 (B) PROMULGATION.—After a reasonable time for interested
11 persons to submit written comments on the proposed standards
12 (but not later than 90 days after the initial publication of the pro-
13 posed standards), the Administrator shall by regulation promul-
14 gate the proposed primary and secondary NAAQSeS with such
15 modifications as the Administrator considers appropriate.

16 (b) PROTECTION OF PUBLIC HEALTH AND WELFARE.—

17 (1) PRIMARY NAAQSeS.—Primary NAAQSeS promulgated under sub-
18 section (a) shall be ambient air quality standards the attainment and
19 maintenance of which, in the judgment of the Administrator, based on
20 such criteria and allowing an adequate margin of safety, are requisite
21 to protect the public health. The primary NAAQSeS may be revised in
22 the same manner as promulgated.

23 (2) SECONDARY NAAQSeS.—Any secondary NAAQS promulgated
24 under subsection (a) shall specify a level of air quality the attainment
25 and maintenance of which, in the judgment of the Administrator, based
26 on such criteria, is requisite to protect the public welfare from any
27 known or anticipated adverse effects associated with the presence of an
28 air pollutant in the ambient air. The secondary NAAQSeS may be re-
29 vised in the same manner as promulgated.

30 (c) PRIMARY NAAQS FOR NITROGEN DIOXIDE.—The Administrator shall
31 promulgate a primary NAAQS for nitrogen dioxide concentrations over a
32 period of not more than 3 hours unless, based on the criteria issued under
33 section 211108(e) of this title, the Administrator finds that there is no sig-
34 nificant evidence that such a standard for such a period is requisite to pro-
35 tect public health.

36 (d) REVIEW OF CRITERIA AND STANDARDS.—

37 (1) IN GENERAL.—

38 (A) 5-YEAR INTERVALS.—At 5-year intervals, the Administrator
39 shall—

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1 (i) complete a thorough review of the criteria published
2 under section 211108 of this title and the NAAQSEs promul-
3 gated under this section; and

4 (ii) make such revisions in the criteria and standards and
5 promulgate such new standards as may be appropriate in ac-
6 cordance with section 211108 of this title and subsection (b).

7 (B) MORE FREQUENT INTERVALS.—The Administrator may re-
8 view and revise criteria or promulgate new standards more fre-
9 quently than required under this paragraph.

10 (2) SCIENTIFIC REVIEW COMMITTEE.—

11 (A) APPOINTMENT.—The Administrator shall appoint an inde-
12 pendent scientific review committee composed of 7 members, in-
13 cluding at least 1 member of the National Academy of Sciences,
14 1 physician, and 1 person representing State air pollution control
15 agencies.

16 (B) REVIEW.—At 5-year intervals, the scientific review commit-
17 tee shall—

18 (i) complete a review of the criteria published under section
19 211108 of this title and the primary and secondary NAAQSEs
20 promulgated under this section; and

21 (ii) recommend to the Administrator any new NAAQSEs
22 and revisions of existing criteria and standards as may be ap-
23 propriate under section 211108 of this title and subsection
24 (b).

25 (C) OTHER DUTIES.—The scientific review committee shall—

26 (i) advise the Administrator of areas in which additional
27 knowledge is required to appraise the adequacy and basis of
28 existing, new, or revised NAAQSEs;

29 (ii) describe the research efforts necessary to provide the
30 required information;

31 (iii) advise the Administrator on the relative contribution to
32 air pollution concentrations of natural activity and anthropo-
33 genic activity; and

34 (iv) advise the Administrator of any adverse public health,
35 welfare, social, economic, or energy effects that may result
36 from various strategies for attainment and maintenance of
37 NAAQSEs.

38 **§ 211110. State implementation plans**

39 (a) ADOPTION OF PLAN OR PLANS.—

40 (1) PRIMARY NAAQSES.—Each State shall, after reasonable notice
41 and public hearings, adopt and submit to the Administrator, within 3

1 years (or such shorter period as the Administrator may prescribe) after
2 the promulgation of a primary NAAQS (or any revision thereof) under
3 section 211109 of this title for any air pollutant, a plan that provides
4 for implementation, maintenance, and enforcement of the primary
5 standard in each air quality control region (or portion thereof) within
6 the State.

7 (2) SECONDARY NAAQSES.—

8 (A) IN GENERAL.—Each State shall, after reasonable notice and
9 public hearings, adopt and submit to the Administrator (either as
10 a part of a plan submitted under paragraph (1) or separately)
11 within 3 years (or such shorter period as the Administrator may
12 prescribe) after the promulgation of a secondary NAAQS (or revision
13 thereof), a plan that provides for implementation, maintenance,
14 and enforcement of the secondary standard in each air
15 quality control region (or portion thereof) within the State.

16 (B) PUBLIC HEARING.—Unless a separate public hearing is pro-
17 vided, each State shall consider its plan implementing a secondary
18 standard at the hearing required by paragraph (1).

19 (3) CONTENTS.—Each State implementation plan shall—

20 (A) include enforceable emission limitations and other control
21 measures, means, or techniques (including economic incentives
22 such as fees, marketable permits, and auctions of emissions
23 rights), and schedules and timetables for compliance, as may be
24 necessary or appropriate to meet the applicable requirements of
25 this division;

26 (B) provide for establishment and operation of appropriate de-
27 vices, methods, systems, and procedures necessary to—

28 (i) monitor, compile, and analyze data on ambient air qual-
29 ity; and

30 (ii) on request, make the data available to the Adminis-
31 trator;

32 (C) include a program to provide for—

33 (i) enforcement of the measures described in subparagraph
34 (A); and

35 (ii) regulation of the modification and construction of any
36 stationary source within the areas covered by the plan as nec-
37 essary to ensure that NAAQSEs are achieved, including a per-
38 mit program as required in chapters 213 and 215;

39 (D) contain adequate provisions—

1 (i) prohibiting, consistent with this subdivision, any source
2 or other type of emission activity within the State from emit-
3 ting any air pollutant in amounts that will—

4 (I) contribute significantly to nonattainment in, or
5 interfere with maintenance by, any other State with re-
6 spect to any such primary or secondary NAAQS; or

7 (II) interfere with measures required to be included in
8 the applicable implementation plan for any other State
9 under chapter 213 to prevent significant deterioration of
10 air quality or to protect visibility;

11 (ii) ensuring compliance with the applicable requirements
12 of sections 211115 and 211125 of this title;

13 (E) provide—

14 (i) necessary assurances that the State (or, except where
15 the Administrator considers inappropriate, the general pur-
16 pose local government or governments, or a regional agency
17 designated by the State or general purpose local governments
18 for the purpose)—

19 (I) will have adequate personnel, funding, and author-
20 ity under State (and, as appropriate, local) law to carry
21 out the implementation plan; and

22 (II) is not prohibited by any Federal or State law
23 from carrying out the implementation plan or portion
24 thereof;

25 (ii) requirements that the State comply with the require-
26 ments respecting State boards under section 211127 of this
27 title; and

28 (iii) necessary assurances that, where the State has relied
29 on a local or regional government, agency, or instrumentality
30 for the implementation of any plan provision, the State has
31 responsibility for ensuring adequate implementation of the
32 plan provision;

33 (F) require, as may be prescribed by the Administrator—

34 (i) the installation, maintenance, and replacement of equip-
35 ment, and the implementation of other necessary steps, by
36 owners or operators of stationary sources to monitor emis-
37 sions from stationary sources;

38 (ii) periodic reports on the nature and amounts of emis-
39 sions and emissions-related data from such sources; and

40 (iii) correlation of such reports by the State agency with
41 any emission limitations or standards established pursuant to

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1 this division, which reports shall be available at reasonable
2 times for public inspection;

3 (G) provide for authority comparable to that in section 203103
4 of this title and adequate contingency plans to implement that au-
5 thority;

6 (H) provide for revision of the plan—

7 (i) from time to time as may be necessary to take account
8 of revisions of the primary or secondary NAAQS or the avail-
9 ability of improved or more expeditious methods of attaining
10 the NAAQS; and

11 (ii) except as provided in paragraph (4)(B), whenever the
12 Administrator finds on the basis of information available to
13 the Administrator that the plan is substantially inadequate to
14 attain the NAAQS that it implements or to otherwise comply
15 with any additional requirements established under this divi-
16 sion;

17 (I) in the case of a plan or plan revision for an area designated
18 as a nonattainment area, meet the applicable requirements of
19 chapter 215;

20 (J) meet the applicable requirements of sections 211120 and
21 211126 of this title and chapter 213;

22 (K) provide for—

23 (i) the performance of such air quality modeling as the Ad-
24 ministrator may prescribe for the purpose of predicting the
25 effect on ambient air quality of any emissions of any air pol-
26 lutant for which the Administrator has established a NAAQS;
27 and

28 (ii) the submission, on request, of data related to such air
29 quality modeling to the Administrator;

30 (L) require the owner or operator of each major stationary
31 source to pay to the permitting authority, as a condition of any
32 permit required under this division, a fee under an approved fee
33 program under subdivision 6; and

34 (M) provide for consultation and participation by local political
35 subdivisions affected by the plan.

36 (4) PLAN REVISION.—

37 (A) REVIEW.—As soon as practicable, the Administrator shall,
38 consistent with the purposes of this division and the Energy Sup-
39 ply and Environmental Coordination Act of 1974 (15 U.S.C. 791
40 et seq.), review each State's applicable implementation plans and
41 report to the State on whether the plans can be revised in relation

1 to fuel burning stationary sources (or persons supplying fuel to
2 such sources) without interfering with the attainment and mainte-
3 nance of any NAAQS within the period permitted in this section.
4 If the Administrator determines that any such plan can be revised,
5 the Administrator shall notify the State that a plan revision may
6 be submitted by the State. Any plan revision that is submitted by
7 the State shall, after public notice and opportunity for public hear-
8 ing, be approved by the Administrator if the revision relates only
9 to fuel burning stationary sources (or persons supplying fuel to
10 such sources), and the plan as revised complies with paragraph
11 (3). The Administrator shall approve or disapprove any revision
12 not later than 3 months after its submission.

13 (B) LIMITATION.—Neither the State, in the case of a plan (or
14 portion thereof) approved under this subsection, nor the Adminis-
15 trator, in the case of a plan (or portion thereof) promulgated
16 under subsection (c), shall be required to revise an applicable im-
17 plementation plan because 1 or more suspensions under subsection
18 (d) or (e) or exemptions under section 211118 of this title have
19 been granted, if the plan would have met the requirements of this
20 section if no such suspension or exemption had been granted.

21 (5) INDIRECT SOURCE REVIEW PROGRAMS.—

22 (A) DEFINITIONS.—In this paragraph:

23 (i) INDIRECT SOURCE.—

24 (I) IN GENERAL.—The term “indirect source” means
25 a facility, building, structure, installation, real property,
26 road, or highway that attracts, or may attract, mobile
27 sources of pollution.

28 (II) INCLUSIONS.—The term “indirect source” in-
29 cludes a parking lot, parking garage, or other facility
30 subject to any measure for management of parking sup-
31 ply (within the meaning of subsection (c)(2)(A)(i)), in-
32 cluding regulation of existing off-street parking.

33 (III) EXCLUSIONS.—The term “indirect source” does
34 not include—

35 (aa) new or existing on-street parking; or

36 (bb) a direct emission source or facility at, within,
37 or associated with a source described in subclause
38 (I) or (II).

39 (ii) INDIRECT SOURCE REVIEW PROGRAM.—The term “indi-
40 rect source review program” means the facility-by-facility re-
41 view of indirect sources of air pollution, including such meas-

1 ures as are necessary to ensure, or assist in ensuring, that
2 a new or modified indirect source will not attract mobile
3 sources of air pollution, the emissions from which would cause
4 or contribute to air pollution concentrations—

5 (I) exceeding any primary NAAQS for a mobile
6 source-related air pollutant after the primary standard
7 attainment date; or

8 (II) preventing maintenance of any such standard
9 after that date.

10 (B) INCLUSION IN STATE IMPLEMENTATION PLAN.—

11 (i) IN GENERAL.—Any State may include in a State imple-
12 mentation plan, but the Administrator may not require as a
13 condition of approval of such a plan under this section, any
14 indirect source review program.

15 (ii) APPROVAL AND ENFORCEMENT BY THE ADMINIS-
16 TRATOR.—The Administrator may approve and enforce, as
17 part of an applicable implementation plan, an indirect source
18 review program that the State chooses to adopt and submit
19 as part of its plan.

20 (iii) REVISION.—Any State may revise an applicable imple-
21 mentation plan approved under this subsection to suspend or
22 revoke an indirect source review program included in the
23 plan, provided that the plan meets the requirements of this
24 section.

25 (C) PLANS PROMULGATED BY THE ADMINISTRATOR.—

26 (i) IN GENERAL.—Except as provided in clause (ii), no plan
27 promulgated by the Administrator shall include any indirect
28 source review program for any air quality control region, or
29 portion thereof.

30 (ii) FEDERALLY ASSISTED OR FEDERALLY OWNED OR OP-
31 ERATED SOURCES.—The Administrator may promulgate, im-
32 plement, and enforce regulations under subsection (c) respect-
33 ing indirect source review programs that apply only to feder-
34 ally assisted highways, airports, and other major federally as-
35 sisted indirect sources and federally owned or operated indi-
36 rect sources.

37 (b) EXTENSION OF PERIOD FOR SUBMISSION OF PLANS.—The Adminis-
38 trator may, wherever the Administrator determines it to be necessary, ex-
39 tend the period for submission of any plan or portion thereof that imple-
40 ments a secondary NAAQS for a period not to exceed 18 months after the
41 date otherwise required for submission of the plan.

1 (c) FEDERAL IMPLEMENTATION PLANS.—

2 (1) PROMULGATION.—The Administrator shall promulgate a Federal
3 implementation plan at any time within 2 years after the Adminis-
4 trator—

5 (A) finds that a State has failed to make a required submission
6 or finds that the plan or plan revision submitted by the State does
7 not satisfy the minimum criteria established under subsection
8 (i)(1)(A); or

9 (B) disapproves a State implementation plan submission in
10 whole or in part;

11 unless the State corrects the deficiency, and the Administrator ap-
12 proves the plan or plan revision, before the Administrator promulgates
13 the Federal implementation plan.

14 (2) PARKING SURCHARGE REGULATION.—

15 (A) DEFINITIONS.—In this paragraph:

16 (i) MANAGEMENT OF PARKING SUPPLY.—The term “man-
17 agement of parking supply” includes any requirement provid-
18 ing that any new facility containing a given number of park-
19 ing spaces shall receive a permit or other prior approval, issu-
20 ance of which is to be conditioned on air quality consider-
21 ations.

22 (ii) PARKING SURCHARGE REGULATION.—The term “park-
23 ing surcharge regulation” means a regulation imposing or re-
24 quiring the imposition of any tax, surcharge, fee, or other
25 charge on parking spaces, or any other area used for the tem-
26 porary storage of motor vehicles.

27 (iii) PREFERENTIAL BUS/CARPOOL LANE.—The term “pref-
28 erential bus/carpool lane” includes any requirement for the
29 setting aside of 1 or more lanes of a street or highway on a
30 permanent or temporary basis for the exclusive use of buses
31 or carpools, or both.

32 (B) NO REQUIREMENT BY THE ADMINISTRATOR.—

33 (i) FEDERAL IMPLEMENTATION PLAN.—No parking sur-
34 charge regulation may be required by the Administrator
35 under paragraph (1) as a part of an applicable implementa-
36 tion plan. All parking surcharge regulations previously re-
37 quired by the Administrator are void.

38 (ii) STATE IMPLEMENTATION PLAN.—The Administrator
39 may not condition approval of any implementation plan sub-
40 mitted by a State on the plan’s including a parking surcharge
41 regulation.

1 (iii) REQUIREMENT BY A STATE.—This subparagraph shall
2 not preclude the Administrator from approving a parking sur-
3 charge regulation if it is adopted and submitted by a State
4 as part of an applicable implementation plan.

5 (C) MANAGEMENT OF PARKING SUPPLY; PREFERENTIAL BUS/
6 CARPOOL LANES.—No standard, plan, or requirement, relating to
7 management of parking supply or preferential bus/carpool lanes
8 shall be promulgated after June 22, 1974, by the Administrator
9 pursuant to this section unless the promulgation has been sub-
10 jected to a public hearing held in the affected area for which rea-
11 sonable notice has been given in that area. If substantial changes
12 are made after public hearing, 1 or more additional hearings shall
13 be held in the area after such notice.

14 (3) DELEGATION OF AUTHORITY.—On application of the chief execu-
15 tive officer of any general purpose unit of local government, if the Ad-
16 ministrator determines that the unit has adequate authority under
17 State or local law, the Administrator may delegate to the unit the au-
18 thority to implement and enforce within the jurisdiction of the unit any
19 part of a plan promulgated under this subsection. Nothing in this para-
20 graph precludes the Administrator from implementing or enforcing any
21 applicable provision of a plan promulgated under this subsection.

22 (4) BRIDGE USE CHARGES.—

23 (A) ELIMINATION.—Any measure in an applicable implementa-
24 tion plan that requires a toll or other charge for the use of a
25 bridge located entirely within 1 city shall be eliminated from the
26 plan by the Administrator on application by the Governor of the
27 State, which application shall include a certification by the Gov-
28 ernor that the Governor will revise the plan in accordance with
29 subparagraph (B).

30 (B) PLAN REVISION.—In the case of any applicable implementa-
31 tion plan with respect to which a measure has been eliminated
32 under subparagraph (A)—

33 (i) the plan shall be revised to include comprehensive meas-
34 ures to—

35 (I) establish, expand, or improve public transportation
36 measures to meet basic transportation needs, as expedi-
37 tiously as is practicable; and

38 (II) implement transportation control measures nec-
39 essary to attain and maintain NAAQSes; and

40 (ii) the revised plan shall, for the purpose of implementing
41 those comprehensive public transportation measures, include

1 requirements to use (insofar as is necessary) Federal grants,
2 State or local funds, or any combination of such grants and
3 funds as may be consistent with the terms of the legislation
4 providing the grants and funds.

5 (C) EMISSION REDUCTIONS EQUIVALENT.—The measures under
6 subparagraph (B)(i) shall, as a substitute for the tolls or charges
7 eliminated under subparagraph (A), provide for emission reduc-
8 tions equivalent to the reductions that may reasonably be expected
9 to be achieved through the use of the tolls or charges eliminated.

10 (D) COORDINATION.—Any revision of an implementation plan
11 for purposes of meeting the requirements of subparagraphs (B)
12 and (C) shall be submitted in coordination with any plan revision
13 required under chapter 215.

14 (d) TEMPORARY EMERGENCY SUSPENSIONS ON DETERMINATION BY THE
15 PRESIDENT OF A NATIONAL OR REGIONAL ENERGY EMERGENCY.—

16 (1) DETERMINATION BY THE PRESIDENT.—On application by the
17 owner or operator of a fuel burning stationary source, and after notice
18 and opportunity for public hearing, the Governor of the State in which
19 the source is located may petition the President to determine that a
20 national or regional energy emergency exists of such severity that—

21 (A) a temporary suspension of any part of the applicable imple-
22 mentation plan or of any requirement under section 233110 of
23 this title may be necessary; and

24 (B) other means of responding to the energy emergency may be
25 inadequate.

26 (2) NONDELEGABILITY.—A determination under paragraph (1) shall
27 not be delegable by the President to any other person.

28 (3) TEMPORARY EMERGENCY SUSPENSIONS.—

29 (A) IN GENERAL.—If the President determines that a national
30 or regional energy emergency of the severity described in para-
31 graph (1) exists, a temporary emergency suspension of any part
32 of an applicable implementation plan or of any requirement under
33 section 233110 of this title adopted by the State may be issued
34 by the Governor of any State covered by the President's deter-
35 mination under the condition specified in subparagraph (B) and
36 may take effect immediately.

37 (B) CONDITION.—A temporary emergency suspension under
38 subparagraph (A) shall be issued to a source only if the Governor
39 of the State finds that—

1 (i) there exists in the vicinity of the source a temporary en-
2 ergy emergency involving high levels of unemployment or loss
3 of necessary energy supplies for residential dwellings; and

4 (ii) such unemployment or loss can be totally or partially
5 alleviated by the emergency suspension.

6 (C) LIMITATION.—Not more than 1 temporary emergency sus-
7 pension may be issued for any source on the basis of the same
8 set of circumstances or on the basis of the same emergency.

9 (D) EFFECTIVE PERIOD.—A temporary emergency suspension
10 shall remain in effect for a maximum of—

11 (i) 4 months; or

12 (ii) such lesser period as may be specified in a disapproval
13 order of the Administrator, if any.

14 (E) DISAPPROVAL BY THE ADMINISTRATOR.—The Adminis-
15 trator may disapprove a temporary emergency suspension if the
16 Administrator determines that it does not meet the requirements
17 of subparagraphs (B) and (C).

18 (4) APPLICABILITY.—This subsection shall not apply in the case of
19 a plan provision or requirement promulgated by the Administrator
20 under subsection (c), but in any such case the President may grant a
21 temporary emergency suspension for a 4-month period of any such pro-
22 vision or requirement if the President makes the determinations and
23 findings specified in paragraph (1) and subparagraphs (B) and (C) of
24 paragraph (3).

25 (e) TEMPORARY EMERGENCY SUSPENSIONS BY A GOVERNOR TO PRE-
26 VENT CLOSING OF A SOURCE.—

27 (1) IN GENERAL.—In the case of any State that has adopted and
28 submitted to the Administrator a proposed plan revision that—

29 (A) the State determines—

30 (i) meets the requirements of this section; and

31 (ii) is necessary—

32 (I) to prevent the closing for 1 year or more of any
33 source of air pollution; and

34 (II) to prevent substantial increases in unemployment
35 that would result from such a closing; and

36 (B) the Administrator has not approved or disapproved under
37 this section within 12 months of submission of the proposed plan
38 revision;

39 the Governor may issue a temporary emergency suspension of the part
40 of the applicable implementation plan for the State that is proposed to
41 be revised with respect to that source.

1 (2) DETERMINATION UNDER PARAGRAPH (1)(A)(ii).—A determination
2 under paragraph (1)(A)(ii) may not be made with respect to a source
3 that would close without regard to whether or not the proposed plan
4 revision is approved.

5 (3) EFFECTIVE PERIOD.—A temporary emergency suspension issued
6 by a Governor under this subsection shall remain in effect for a maxi-
7 mum of—

8 (A) 4 months; or

9 (B) such lesser period as may be specified in a disapproval
10 order of the Administrator.

11 (4) DISAPPROVAL BY THE ADMINISTRATOR.—The Administrator
12 may disapprove a temporary emergency suspension if the Administrator
13 determines that it does not meet the requirements of this subsection.

14 (f) COMPREHENSIVE DOCUMENTS SETTING FORTH REQUIREMENTS OF
15 APPLICABLE IMPLEMENTATION PLANS.—

16 (1) IN GENERAL.—Every 3 years, the Administrator shall assemble
17 and publish a comprehensive document for each State setting forth all
18 requirements of the applicable implementation plan for the State and
19 shall publish notice in the Federal Register of the availability of such
20 documents.

21 (2) REGULATIONS.—The Administrator may promulgate such regu-
22 lations as may be reasonably necessary to carry out this subsection.

23 (g) NO MODIFICATION OF IMPLEMENTATION PLAN REQUIREMENTS.—
24 Except for a suspension under subsection (d) or (e), an exemption under
25 section 211118 of this title, a plan promulgation under subsection (e), or
26 a plan revision under subsection (a)(4), no order, suspension, plan revision,
27 or other action modifying any requirement of an applicable implementation
28 plan may be taken with respect to any stationary source by a State or by
29 the Administrator.

30 (h) TECHNOLOGICAL SYSTEMS OF CONTINUOUS EMISSION REDUCTION
31 ON NEW OR MODIFIED STATIONARY SOURCES; COMPLIANCE WITH RE-
32 QUIREMENTS.—As a condition for issuance of any permit required under
33 this subdivision, the owner or operator of each new or modified stationary
34 source that is required to obtain such a permit shall show to the satisfaction
35 of the permitting authority that—

36 (1) the technological system of continuous emission reduction that is
37 to be used at the source will enable the source to comply with the
38 standards of performance that are to apply to the source; and

39 (2) the construction or modification and operation of the source will
40 be in compliance with all other requirements of this division.

41 (i) EPA ACTION ON PLAN SUBMISSIONS.—

1 (1) COMPLETENESS OF PLAN SUBMISSIONS.—

2 (A) COMPLETENESS CRITERIA.—The Administrator shall promulgate minimum criteria that any plan submission shall meet before the Administrator is required to act on the submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with this division.

8 (B) COMPLETENESS FINDING.—Within 60 days after the Administrator's receipt of a plan or plan revision, but not later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date that is 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A) shall on that date be deemed by operation of law to meet the minimum criteria.

19 (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).

24 (2) DEADLINE FOR ACTION.—Within 12 months after a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months after submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

32 (3) FULL AND PARTIAL APPROVAL AND DISAPPROVAL.—In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve the submittal as a whole if it meets all of the applicable requirements of this division. If a portion of the plan revision meets all the applicable requirements of this division, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this division until the Administrator approves the entire plan revision as complying with the applicable requirements of this division.

1 (4) **CONDITIONAL APPROVAL.**—The Administrator may approve a
2 plan revision based on a commitment of the State to adopt specific en-
3 forceable measures by a date certain, but not later than 1 year after
4 the date of approval of the plan revision. Any such conditional approval
5 shall be treated as a disapproval if the State fails to comply with the
6 commitment.

7 (5) **CALLS FOR PLAN REVISIONS.**—

8 (A) **IN GENERAL.**—Whenever the Administrator finds that the
9 applicable implementation plan for any area is substantially inad-
10 equate to attain or maintain the relevant NAAQS, to mitigate ade-
11 quately the interstate pollutant transport described in section
12 215108 of this title or section 215205 of this title, or to otherwise
13 comply with any requirement of this division, the Administrator
14 shall require the State to revise the plan as necessary to correct
15 such inadequacies.

16 (B) **NOTICE; DEADLINES.**—The Administrator—

17 (i) shall notify the State of the inadequacies; and

18 (ii) may establish reasonable deadlines (not to exceed 18
19 months after the date of the notice) for the submission of the
20 plan revisions.

21 (C) **PUBLIC AVAILABILITY.**—The findings under subparagraph
22 (A) and notice under subparagraph (B) shall be public.

23 (D) **EFFECT OF FINDING.**—Any finding under this paragraph
24 shall, to the extent that the Administrator considers appropriate,
25 subject the State to the requirements of this division to which the
26 State was subject when it developed and submitted the plan for
27 which the finding was made, except that the Administrator may
28 adjust any dates applicable under those requirements as appro-
29 priate (except that the Administrator may not adjust any attain-
30 ment date prescribed under chapter 215 unless that date has
31 elapsed).

32 (6) **CORRECTIONS.**—Whenever the Administrator determines that
33 the Administrator's action approving, disapproving, or promulgating
34 any plan or plan revision (or part thereof), area designation, redesigna-
35 tion, classification, or reclassification was in error, the Administrator
36 may in the same manner as the approval, disapproval, or promulgation
37 revise the action as appropriate without requiring any further submis-
38 sion from the State. Such a determination and the basis thereof shall
39 be provided to the State and public.

40 (j) **PLAN REVISIONS.**—Each revision to an implementation plan submit-
41 ted by a State under this division shall be adopted by the State after rea-

1 sonable notice and public hearing. The Administrator shall not approve a
2 revision of a plan if the revision would interfere with any applicable require-
3 ment concerning attainment and reasonable further progress (as defined in
4 section 215101 of this title) or any other applicable requirement of this divi-
5 sion.

6 (k) SANCTIONS.—

7 (1) IN GENERAL.—The Administrator may apply any of the sanc-
8 tions listed in section 215111(b) of this title at any time (or at any
9 time after) the Administrator makes a finding, disapproval, or deter-
10 mination under subparagraphs (A) through (D), respectively, of section
11 215111(a)(1) of this title in relation to any plan or plan item (as that
12 term is defined by the Administrator) required under this division, with
13 respect to any portion of the State that the Administrator determines
14 to be reasonable and appropriate, for the purpose of ensuring that the
15 requirements of this division relating to the plan or plan item are met.

16 (2) CRITERIA.—The Administrator shall, by regulation, establish cri-
17 teria for exercising the Administrator's authority under paragraph (1)
18 with respect to any deficiency described in section 215111(a)(1) of this
19 title to ensure that, during the 24-month period following the finding,
20 disapproval, or determination described in section 215111(a)(1) of this
21 title, the sanctions are not applied on a statewide basis where 1 or
22 more political subdivisions covered by the applicable implementation
23 plan are principally responsible for the deficiency.

24 (l) SAVINGS PROVISIONS.—

25 (1) EXISTING PLAN PROVISIONS.—Any provision of any applicable
26 implementation plan that was approved or promulgated by the Admin-
27 istrator pursuant to section 110 of the Clean Air Act (42 U.S.C. 7410)
28 (as in effect before November 15, 1990) shall remain in effect as part
29 of the applicable implementation plan, except to the extent that a revi-
30 sion to the provision is approved or promulgated by the Administrator
31 pursuant to this division.

32 (2) ATTAINMENT DATES.—For any area not designated nonattain-
33 ment, any plan or plan revision submitted or required to be submitted
34 by a State—

35 (A) in response to the promulgation or revision of a primary
36 NAAQS in effect on November 15, 1990; or

37 (B) in response to a finding of substantial inadequacy under
38 section 110(a)(2) of the Clean Air Act (42 U.S.C. 7410(a)(2)) (as
39 in effect before November 15, 1990);

40 shall provide for attainment of the primary NAAQSeS within 5 years
41 after issuance of the finding of substantial inadequacy.

1 (3) RETENTION OF CONSTRUCTION MORATORIUM IN CERTAIN
2 AREAS.—In the case of an area to which, as of November 14, 1990,
3 the prohibition on construction or modification of major stationary
4 sources prescribed in section 110(a)(2)(I) of the Clean Air Act (42
5 U.S.C. 7410(a)(2)(I)) (as in effect before November 15, 1990) applied
6 by virtue of a finding of the Administrator that the State containing
7 that area had not submitted an implementation plan meeting the re-
8 quirements of section 172(b)(6) of the Clean Air Act (42 U.S.C.
9 7502(b)(6)) (as in effect before November 15, 1990) or section
10 172(a)(1) of the Clean Air Act (42 U.S.C. 7502(a)(1)) (to the extent
11 that those requirements relate to provision for attainment of the pri-
12 mary NAAQS for sulfur oxides by December 31, 1982) (as in effect
13 before November 15, 1990), no major stationary source of the relevant
14 air pollutant or pollutants shall be constructed or modified in the area
15 until the Administrator finds that the plan for the area meets the ap-
16 plicable requirements of section 215102(c)(5) of this title or subchapter
17 V of chapter 215, respectively.

18 (m) INDIAN TRIBES.—

19 (1) REVIEW OF IMPLEMENTATION PLAN.—If an Indian tribe submits
20 an implementation plan to the Administrator pursuant to section
21 203101(d) of this title, the plan shall be reviewed in accordance with
22 the provisions for review set forth in this section for State plans, except
23 as otherwise provided by regulation promulgated pursuant to section
24 203101(d)(2) of this title.

25 (2) APPLICABILITY OF IMPLEMENTATION PLAN.—When an imple-
26 mentation plan described in paragraph (1) becomes effective in accord-
27 ance with the regulations promulgated under section 203101(d) of this
28 title, the plan shall become applicable to all areas (except as expressly
29 provided otherwise in the plan) located within the exterior boundaries
30 of the reservation, notwithstanding the issuance of any patent and in-
31 cluding rights-of-way running through the reservation.

32 (n) REPORTS.—Any State shall submit, according to such schedule as the
33 Administrator may prescribe, such reports as the Administrator may require
34 relating to—

35 (1) emission reductions;

36 (2) vehicle miles traveled;

37 (3) congestion levels; and

38 (4) any other information that the Administrator considers necessary
39 to assess the development, effectiveness, need for revision, or implemen-
40 tation of any plan or plan revision required under this division.

1 **§211111. Standards of performance for new stationary**
2 **sources**

3 (a) DEFINITIONS.—In this section:

4 (1) EXISTING SOURCE.—The term “existing source” means any sta-
5 tionary source other than a new source.

6 (2) MODIFY.—

7 (A) IN GENERAL.—The term “modify”, with respect to a sta-
8 tionary source, means to make or undergo any physical change in,
9 or change in the method of operation of, the stationary source
10 that—

11 (i) increases the amount of any air pollutant emitted by the
12 stationary source; or

13 (ii) results in the emission of any air pollutant not pre-
14 viously emitted.

15 (B) EXCLUSION.—The term “modify” does not include convert-
16 ing to coal by reason of an order under section 2(a) of the Energy
17 Supply and Environmental Coordination Act of 1974 (15 U.S.C.
18 792(a)) or any enactment that supersedes that Act.

19 (3) NEW SOURCE.—The term “new source” means any stationary
20 source, the construction or modification of which is commenced after
21 the publication of regulations (or, if earlier, proposed regulations) pre-
22 scribing a standard of performance under this section that will be ap-
23 plicable to the source.

24 (4) OWNER OR OPERATOR.—The term “owner or operator” means
25 any person that owns, leases, operates, controls, or supervises a sta-
26 tionary source.

27 (5) STANDARD OF PERFORMANCE.—The term “standard of perform-
28 ance” means a standard for emissions of air pollutants that reflects the
29 degree of emission limitation achievable through the application of the
30 best system of emission reduction that (taking into account the cost of
31 achieving the reduction and any non-air-quality health and environ-
32 mental impact and energy requirements) the Administrator determines
33 has been adequately demonstrated.

34 (6) STATIONARY SOURCE.—The term “stationary source” means any
35 building, structure, facility, or installation that emits or may emit any
36 air pollutant.

37 (7) TECHNOLOGICAL SYSTEM OF CONTINUOUS EMISSION REDUC-
38 TION.—The term “technological system of continuous emission reduc-
39 tion” means—

40 (A) a technological process for production or operation by any
41 source that is inherently low-polluting or nonpolluting; or

1 (B) a technological system for continuous reduction of the pollu-
2 tion generated by a source before the pollution is emitted into the
3 ambient air, including precombustion cleaning or treatment of
4 fuel.

5 (b) STANDARDS OF PERFORMANCE.—

6 (1) LIST OF CATEGORIES.—The Administrator shall publish (and
7 from time to time revise) a list of categories of stationary sources. The
8 Administrator shall include a category of sources in the list if in the
9 Administrator's judgment it causes, or contributes significantly to, air
10 pollution that may reasonably be anticipated to endanger public health
11 or welfare.

12 (2) REGULATIONS.—Within 1 year after the inclusion of a category
13 of stationary sources in a list under paragraph (1), the Administrator
14 shall publish proposed regulations establishing Federal standards of
15 performance for new sources within the category. The Administrator
16 shall afford interested persons an opportunity for written comment on
17 the proposed regulations. After considering the comments, the Adminis-
18 trator shall promulgate, within 1 year after publication of the proposed
19 regulations, the standard of performance with such modifications as the
20 Administrator considers appropriate.

21 (3) PERIODIC REVIEW.—

22 (A) IN GENERAL.—The Administrator shall, at least every 8
23 years, review and, if appropriate, revise the standard of perform-
24 ance following the procedure required by this subsection for pro-
25 mulgation of standards of performance.

26 (B) READILY AVAILABLE INFORMATION.—Notwithstanding sub-
27 paragraph (A), the Administrator need not review any standard of
28 performance if the Administrator determines that review is not ap-
29 propriate in light of readily available information on the efficacy
30 of the standard of performance.

31 (4) EFFECTIVE DATE.—A standard of performance or revision there-
32 of shall become effective on promulgation.

33 (5) CONSIDERATION OF EMISSION LIMITATIONS AND PERCENT RE-
34 DUCTIONS ACHIEVED IN PRACTICE.—When implementation and en-
35 forcement of any requirement of this division indicate that emission
36 limitations and percent reductions beyond those required by the stand-
37 ard of performance promulgated under this section are achieved in
38 practice, the Administrator shall, when revising the standard of per-
39 formance promulgated under this section, consider the emission limita-
40 tions and percent reductions achieved in practice.

1 (6) CLASSES, TYPES, AND SIZES.—The Administrator may distin-
2 guish among classes, types, and sizes within categories of new sources
3 for the purpose of establishing standards of performance.

4 (7) POLLUTION CONTROL TECHNIQUES.—The Administrator shall
5 from time to time issue information on pollution control techniques for
6 categories of new sources and air pollutants subject to this section.

7 (8) NEW SOURCES OWNED OR OPERATED BY THE UNITED STATES.—
8 This section shall apply to any new source owned or operated by the
9 United States.

10 (9) EFFECT OF SECTION.—Except as otherwise authorized under
11 subsection (f), nothing in this section shall be construed to require, or
12 to authorize the Administrator to require, any new or modified source
13 to install and operate any particular technological system of continuous
14 emission reduction to comply with any new source standard of perform-
15 ance.

16 (10) CERTAIN NEW OR MODIFIED FOSSIL FUEL-FIRED STATIONARY
17 SOURCES.—Any new or modified fossil fuel-fired stationary source that
18 commences construction prior to the date of publication of proposed re-
19 vised standards shall not be required to comply with those revised
20 standards.

21 (c) STATE IMPLEMENTATION AND ENFORCEMENT OF STANDARDS OF
22 PERFORMANCE.—

23 (1) DELEGATION OF AUTHORITY.—Each State may develop and sub-
24 mit to the Administrator a procedure for implementing and enforcing
25 standards of performance for new sources located in the State. If the
26 Administrator finds that the State procedure is adequate, the Adminis-
27 trator shall delegate to the State any authority that the Administrator
28 has under this division to implement and enforce the standards of per-
29 formance.

30 (2) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits
31 the Administrator from enforcing any applicable standard of perform-
32 ance under this section.

33 (d) STANDARDS OF PERFORMANCE ESTABLISHED BY STATES FOR EX-
34 ISTING SOURCES.—

35 (1) REGULATIONS.—

36 (A) IN GENERAL.—The Administrator shall prescribe regula-
37 tions that establish a procedure similar to that provided by section
38 211110 of this title under which each State shall submit to the
39 Administrator a plan that—

40 (i) establishes standards of performance for any existing
41 source for any air pollutant—

1 (I)(aa) for which air quality criteria have not been is-
2 sued; or

3 (bb) that is not included on a list published under sec-
4 tion 211108(a) of this title or emitted from a source cat-
5 egory that is regulated under section 211112 of this
6 title; but

7 (II) to which a standard of performance under this
8 section would apply if the existing source were a new
9 source; and

10 (ii) provides for the implementation and enforcement of the
11 standards of performance.

12 (B) CONSIDERATIONS.—The regulations under this paragraph
13 shall permit a State in applying a standard of performance to any
14 particular source under a plan submitted under this paragraph to
15 take into consideration, among other factors, the remaining useful
16 life of the existing source to which the standard of performance
17 applies.

18 (2) AUTHORITY OF THE ADMINISTRATOR.—

19 (A) IN GENERAL.—The Administrator shall have the authority
20 described in paragraph (1)—

21 (i) to prescribe a plan for a State in a case where the State
22 fails to submit a satisfactory plan as the Administrator would
23 have under section 211110(c) of this title in the case of fail-
24 ure to submit an implementation plan; and

25 (ii) to enforce the plan in a case where the State fails to
26 enforce the plan as the Administrator would have under sec-
27 tions 211113 and 211114 of this title with respect to an im-
28 plementation plan.

29 (B) CONSIDERATIONS.—In promulgating a standard of perform-
30 ance under a plan prescribed under this paragraph, the Adminis-
31 trator shall take into consideration, among other factors, the re-
32 maining useful lives of the sources in the category of sources to
33 which the standard applies.

34 (e) NEW SOURCE STANDARDS OF PERFORMANCE.—

35 (1) IN GENERAL.—For categories of major stationary sources that
36 the Administrator listed under section 111(b)(1)(A) of the Clean Air
37 Act (42 U.S.C. 7411(b)(1)(A)) before November 15, 1990, and for
38 which the Administrator had not proposed regulations by November 15,
39 1990, the Administrator shall promulgate regulations establishing
40 standards of performance.

1 (2) PRIORITIES.—In determining priorities for promulgating stand-
2 ards for categories of major stationary sources for the purpose of para-
3 graph (1), the Administrator shall consider—

4 (A) the quantity of air pollutant emissions that each category
5 will emit or be designed to emit;

6 (B) the extent to which each air pollutant may reasonably be
7 anticipated to endanger public health or welfare; and

8 (C) the mobility and competitive nature of each category of
9 sources and the consequent need for nationally applicable new
10 source standards of performance.

11 (3) CONSULTATION.—Before promulgating any regulations under
12 this subsection or listing any category of major stationary sources as
13 required under this subsection, the Administrator shall consult with ap-
14 propriate representatives of the Governors and of State air pollution
15 control agencies.

16 (4) REVISION OF REGULATIONS.—

17 (A) SPECIFICATION OF CATEGORY LISTED.—On application by
18 the Governor of a State showing that the Administrator has failed
19 to specify in regulations under paragraph (1) any category of
20 major stationary sources required to be specified under the regula-
21 tions, the Administrator shall revise the regulations to specify any
22 such category.

23 (B) SPECIFICATION OF CATEGORY NOT LISTED.—On application
24 of the Governor of a State showing that any category of stationary
25 sources not included in the list under section 111(b)(1)(A) of the
26 Clean Air Act (42 U.S.C. 7411(b)(1)(A)) before November 15,
27 1990, contributes significantly to air pollution that may reasonably
28 be anticipated to endanger public health or welfare (notwithstand-
29 ing that that category is not a category of major stationary
30 sources), the Administrator shall revise the regulations to specify
31 that category of stationary sources.

32 (C) PROPER APPLICATION OF CRITERIA.—On application of the
33 Governor of a State showing that the Administrator has failed to
34 apply properly the criteria required to be considered under para-
35 graph (2), the Administrator shall revise the list under subsection
36 (b)(1) to apply properly the criteria.

37 (D) NEW, INNOVATIVE, OR IMPROVED TECHNOLOGY OR PROC-
38 ESS.—On application of the Governor of a State showing that—

39 (i) a new, innovative, or improved technology or process
40 that achieves greater continuous emission reduction has been

1 adequately demonstrated for any category of stationary
2 sources; and

3 (ii) as a result of that technology or process, the new
4 source standard of performance in effect under this section
5 for that category no longer reflects the greatest degree of
6 emission limitation achievable through application of the best
7 technological system of continuous emission reduction that
8 (taking into consideration the cost of achieving such an emis-
9 sion reduction, and any non-air-quality health and environ-
10 mental impact and energy requirements) has been adequately
11 demonstrated,

12 the Administrator shall revise the standard of performance for
13 that category accordingly.

14 (E) DEADLINE.—Unless later deadlines for action of the Ad-
15 ministrator are otherwise prescribed under this section, the Ad-
16 ministrator shall, not later than 3 months after the date of receipt
17 of any application by a Governor of a State—

18 (i) find that the application does not contain the requisite
19 showing and deny the application; or

20 (ii) grant the application and take the action required
21 under this subsection.

22 (5) NOTICE AND OPPORTUNITY FOR PUBLIC HEARING.—Before tak-
23 ing any action required by this subsection, the Administrator shall pro-
24 vide notice and opportunity for public hearing.

25 (f) DESIGN, EQUIPMENT, WORK PRACTICE, OR OPERATIONAL STANDARD
26 IF STANDARD OF PERFORMANCE IS NOT FEASIBLE.—

27 (1) IN GENERAL.—If, in the judgment of the Administrator, it is not
28 feasible to prescribe or enforce a standard of performance, the Admin-
29 istrator may instead promulgate a design, equipment, work practice, or
30 operational standard (or combination thereof) that reflects the best
31 technological system of continuous emission reduction that (taking into
32 consideration the cost of achieving the emission reduction, and any
33 non-air-quality health and environmental impact and energy require-
34 ments) the Administrator determines has been adequately dem-
35 onstrated.

36 (2) OPERATION AND MAINTENANCE.—The Administrator shall in-
37 clude as part of any design or equipment standard promulgated under
38 this subsection such requirements as will ensure the proper operation
39 and maintenance of any such element of design or equipment.

40 (3) STANDARD OF PERFORMANCE NOT FEASIBLE.—For the purpose
41 of this subsection, the Administrator may determine that it is not fea-

1 sible to prescribe or enforce a standard of performance in any situation
2 in which the Administrator determines that—

3 (A) a pollutant or pollutants cannot be emitted through a con-
4 veyance designed and constructed to emit or capture pollutant, or
5 any requirement for, or use of, such a conveyance would be incon-
6 sistent with Federal, State, or local law; or

7 (B) the application of measurement methodology to a particular
8 class of sources is not practicable due to technological or economic
9 limitations.

10 (4) ALTERNATIVE MEANS OF EMISSION LIMITATION.—If, after notice
11 and opportunity for public hearing, any person establishes to the satis-
12 faction of the Administrator that an alternative means of emission limi-
13 tation will achieve a reduction in emissions of any air pollutant at least
14 equivalent to the reduction in emissions of that air pollutant achieved
15 under a design, equipment, work practice, or operational standard pro-
16 mulgated under paragraph (1), the Administrator shall permit the use
17 of the alternative by the source for purposes of compliance with this
18 section with respect to that pollutant.

19 (5) PROMULGATION OF STANDARD OF PERFORMANCE WHEN FEA-
20 SIBLE.—Any design, equipment, work practice, or operational standard
21 promulgated under paragraph (1) shall be promulgated in terms of a
22 standard of performance whenever it becomes feasible to promulgate
23 and enforce the design, equipment, work practice, or operational stand-
24 ard in terms of a standard of performance.

25 (6) TREATMENT.—Any design, equipment, work practice, or oper-
26 ational standard, or any combination thereof, described in this sub-
27 section shall be treated as a standard of performance for purposes of
28 this division (except subsection (a) and this subsection).

29 (g) COUNTRY ELEVATORS.—Any regulations promulgated by the Admin-
30 istrator under this section applicable to grain elevators shall not apply to
31 country elevators (as defined by the Administrator) that have a storage ca-
32 pacity of less than 2,500,000 bushels.

33 (h) WAIVERS TO ENCOURAGE THE USE OF INNOVATIVE TECHNOLOGICAL
34 SYSTEMS OF CONTINUOUS EMISSION REDUCTION.—

35 (1) REQUEST FOR WAIVER.—Any person proposing to own or oper-
36 ate a new source may request the Administrator for 1 or more waivers
37 from the requirements of this section for the source or any portion
38 thereof with respect to any air pollutant to encourage the use of 1 or
39 more innovative technological systems of continuous emission reduction.

40 (2) GRANT OF WAIVER.—The Administrator may, with the consent
41 of the Governor of the State in which the source is to be located, grant

1 a waiver under paragraph (1) if the Administrator determines, after
2 notice and opportunity for public hearing, that—

3 (A) the proposed system or systems have not been adequately
4 demonstrated;

5 (B)(i) the proposed system or systems will operate effectively;
6 and

7 (ii) there is a substantial likelihood that the system or systems
8 will achieve—

9 (I) greater continuous emission reduction than that re-
10 quired to be achieved under the standards of performance
11 that would otherwise apply; or

12 (II) at least an equivalent reduction at lower cost in terms
13 of energy, economic, or non-air-quality environmental impact;

14 (C) the owner or operator of the proposed source has dem-
15 onstrated to the satisfaction of the Administrator that the pro-
16 posed system will not cause or contribute to an unreasonable risk
17 to public health, welfare, or safety in its operation, function, or
18 malfunction; and

19 (D) the granting of the waiver is consistent with paragraph (6).

20 (3) LIKELIHOOD OF GREATER CONTINUOUS EMISSION REDUCTION.—
21 In making any determination under paragraph (2)(B), the Adminis-
22 trator shall take into account any previous failure of the system or sys-
23 tems to operate effectively or to meet any requirement of the new
24 source performance standards.

25 (4) RISK TO PUBLIC HEALTH, WELFARE, OR SAFETY.—

26 (A) CONSIDERATIONS.—In determining whether an unreason-
27 able risk exists under paragraph (2)(C), the Administrator shall
28 consider, among other factors—

29 (i) whether and to what extent the use of the proposed
30 technological system will cause, increase, reduce, or eliminate
31 emissions of any unregulated pollutants;

32 (ii) available methods for reducing or eliminating any risk
33 to public health, welfare, or safety that may be associated
34 with the use of the system; and

35 (iii) the availability of other technological systems that may
36 be used to conform to standards under this section without
37 causing or contributing to an unreasonable risk.

38 (B) TESTS; INFORMATION.—The Administrator may conduct
39 such tests and require the owner or operator of the proposed
40 source to conduct such tests and provide such information as is
41 necessary to carry out paragraph (2)(C). Such requirements shall

1 include a requirement for prompt reporting of the emission of any
2 unregulated pollutant from a system if the pollutant was not emit-
3 ted, or was emitted in significantly lesser amounts, without use of
4 the system.

5 (5) TERMS AND CONDITIONS.—

6 (A) IN GENERAL.—A waiver under paragraph (5) shall be
7 granted on such terms and conditions as the Administrator deter-
8 mines to be necessary to—

9 (i) ensure that emissions from the source will not prevent
10 attainment and maintenance of any NAAQSEs; and

11 (ii) ensure the proper functioning of the technological sys-
12 tem or systems authorized.

13 (B) TREATMENT AS STANDARD OF PERFORMANCE.—Any such
14 term or condition shall be treated as a standard of performance
15 for the purposes of subsection (j) and section 211113 of this title.

16 (6) NUMBER OF WAIVERS.—The number of waivers granted under
17 this subsection with respect to a proposed technological system of con-
18 tinuous emission reduction shall not exceed such number as the Admin-
19 istrator finds necessary to ascertain whether or not the system will
20 achieve the conditions specified in subparagraphs (B) and (C) of para-
21 graph (2).

22 (7) EFFECTIVE PERIOD.—

23 (A) IN GENERAL.—A waiver under paragraph (1) shall extend
24 to the earlier of—

25 (i) a date determined by the Administrator, after consulta-
26 tion with the owner or operator of the source, taking into
27 consideration the design, installation, and capital cost of the
28 technological system or systems being used; or

29 (ii) the date on which the Administrator determines that—

30 (I) the system has failed to—

31 (aa) achieve at least an equivalent continuous
32 emission reduction to that required to be achieved
33 under the standards of performance that would
34 otherwise apply; or

35 (bb) comply with the condition specified in para-
36 graph (2)(C); and

37 (II) the failure cannot be corrected.

38 (B) DATE DETERMINED BY THE ADMINISTRATOR.—In carrying
39 out subparagraph (A)(i), the Administrator shall not permit any
40 waiver for a source or portion thereof to extend beyond the earlier
41 of—

1 (i) years after the date on which any waiver is granted to
2 the source or portion thereof; or

3 (ii) the date that is 4 years after the date on which the
4 source or portion thereof commences operation.

5 (8) PORTION OF SOURCE TO WHICH WAIVER APPLIES.—No waiver
6 under paragraph (1) shall apply to any portion of a source other than
7 the portion on which the innovative technological system or systems of
8 continuous emission reduction are used.

9 (9) EXTENSION.—

10 (A) IN GENERAL.—If a waiver for a source is terminated under
11 paragraph (7)(A)(ii), the Administrator shall grant an extension
12 of the requirements of this section for the source for such mini-
13 mum period as may be necessary to comply with the applicable
14 standard of performance under this section. That period shall not
15 extend beyond the date that is 3 years after the date on which
16 the waiver is terminated.

17 (B) EMISSION LIMITS AND COMPLIANCE SCHEDULE.—

18 (i) IN GENERAL.—An extension granted under this para-
19 graph shall—

20 (I) set forth emission limits and a compliance schedule
21 containing increments of progress that require compli-
22 ance with the applicable standards of performance as ex-
23 peditiously as practicable; and

24 (II) include such measures as are necessary and prac-
25 ticable in the interim to minimize emissions.

26 (ii) TREATMENT.—A schedule under clause (i)(I) shall be
27 treated as a standard of performance for purposes of sub-
28 section (j) and section 211113 of this title.

29 (i) INCINERATION UNITS.—An incineration unit shall not be considered
30 to be combusting municipal waste for purposes of this section if the inciner-
31 ation unit combusts a fuel feed stream 30 percent or less of the weight of
32 which is comprised, in aggregate, of municipal waste.

33 (j) PROHIBITION.—It shall be unlawful for any owner or operator of any
34 new source to operate the source in violation of any standard of perform-
35 ance applicable to the source.

36 **§211112. Hazardous air pollutants**

37 (a) DEFINITIONS.—In this section:

38 (1) ADVERSE ENVIRONMENTAL EFFECT.—

39 (A) IN GENERAL.—The term “adverse environmental effect”
40 means any significant and widespread adverse effect that may rea-

1 sonably be anticipated, to wildlife, aquatic life, or other natural re-
2 sources.

3 (B) INCLUSIONS.—The term “adverse environmental effect” in-
4 cludes adverse impacts on—

5 (i) populations of endangered or threatened species; or

6 (ii) significant degradation of environmental quality over
7 broad areas.

8 (2) AREA SOURCE.—

9 (A) IN GENERAL.—The term “area source” means any station-
10 ary source of hazardous air pollutants that is not a major source.

11 (B) EXCLUSIONS.—The term “area source” does not include
12 motor vehicles or nonroad vehicles subject to regulation under sub-
13 division 3.

14 (3) CARCINOGENIC.—

15 (A) IN GENERAL.—Unless revised, the term “carcinogenic” has
16 the meaning provided by the Administrator for purposes of the
17 term “carcinogenic effect” under the Guidelines for Carcinogenic
18 Risk Assessment as of November 15, 1990.

19 (B) REVISION.—Any revision in the Guidelines for Carcinogenic
20 Risk Assessment shall be subject to notice and opportunity for
21 comment.

22 (4) ELECTRIC UTILITY STEAM GENERATING UNIT.—

23 (A) IN GENERAL.—The term “electric utility steam generating
24 unit” means any fossil fuel-fired combustion unit of more than 25
25 megawatts that serves a generator that produces electricity for
26 sale.

27 (B) COGENERATION UNITS.—A unit that cogenerates steam and
28 electricity and supplies more than $\frac{1}{3}$ of its potential electric out-
29 put capacity and more than 25 megawatts electrical output to any
30 utility power distribution system for sale shall be considered to be
31 an electric utility steam generating unit.

32 (5) EXISTING SOURCE.—The term “existing source” means any sta-
33 tionary source other than a new source.

34 (6) HAZARDOUS AIR POLLUTANT.—The term “hazardous air pollut-
35 ant” means any air pollutant listed pursuant to subsection (b).

36 (7) MAJOR SOURCE.—

37 (A) IN GENERAL.—The term “major source” means any sta-
38 tionary source or group of stationary sources located within a con-
39 tiguous area and under common control that emits or has the po-
40 tential to emit, considering controls, in the aggregate—

1 (i) 10 tons per year or more of any hazardous air pollutant;
2 ant; or

3 (ii) 25 tons per year or more of any combination of hazardous
4 air pollutants.

5 (B) LESSER QUANTITY; DIFFERENT CRITERIA.—The Administrator
6 may establish a lesser quantity, or in the case of radio-
7 nuclides different criteria, for a major source than that specified
8 in subparagraph (A), on the basis of—

9 (i) the potency of the air pollutant;

10 (ii) the persistence of the air pollutant;

11 (iii) the potential for bioaccumulation of the air pollutant;

12 (iv) other characteristics of the air pollutant; or

13 (v) other relevant factors.

14 (8) MODIFICATION.—The term “modification” means any physical
15 change in, or change in the method of operation of, a major source
16 that—

17 (A) increases the actual emissions of any hazardous air pollutant
18 emitted by the source by more than a de minimis amount; or

19 (B) results in the emission of any hazardous air pollutant not
20 previously emitted by more than a de minimis amount.

21 (9) NEW SOURCE.—The term “new source” means a stationary
22 source the construction or reconstruction of which is commenced after
23 the Administrator first proposes regulations under this section estab-
24 lishing an emission standard applicable to the source.

25 (10) OWNER OR OPERATOR.—Except in subsection (q), the term
26 “owner or operator” means any person that owns, leases, operates, con-
27 trols, or supervises a stationary source.

28 (11) STATIONARY SOURCE.—The term “stationary source” has the
29 meaning given the term in section 211111(a) of this title.

30 (b) LIST OF POLLUTANTS.—

31 (1) LIST.—Congress establishes for purposes of this section a list of
32 hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine

CAS number	Chemical name
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
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
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine

CAS number	Chemical name
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertiary butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perechloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds

CAS number	Chemical name
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds ¹
0	Glycol ethers ²
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers ³
0	Nickel Compounds
0	Polycyclic Organic Matter ⁴
0	Radionuclides (including radon) ⁵
0	Selenium Compounds

NOTE: For all listings above that contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

¹X’CN where X = H’ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂.

²Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH₂CH₂)_n-OR’ where

n = 1, 2, or 3

R = alkyl or aryl groups

R’ = R, H, or groups that, when removed, yield glycol ethers with the structure: R-(OCH₂CH)_n-OH. Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds that have more than 1 benzene ring and have a boiling point greater than or equal to 100 degrees C.

⁵A type of atom that spontaneously undergoes radioactive decay.

- 1 (2) REVISION OF LIST.—
- 2 (A) IN GENERAL.—The Administrator shall periodically review
- 3 the list established by paragraph (1) and publish the results of the
- 4 review and, where appropriate, revise the list by regulation, adding
- 5 pollutants that present, or may present, through inhalation or
- 6 other routes of exposure, a threat of—
- 7 (i) adverse human health effects, including substances
- 8 that—
- 9 (I) are known to be, or may reasonably be anticipated
- 10 to be, carcinogenic, mutagenic, teratogenic, neurotoxic;
- 11 (II) cause reproductive dysfunction; or
- 12 (III) are acutely or chronically toxic; or
- 13 (ii) adverse environmental effects, whether through—
- 14 (I) ambient concentrations;
- 15 (II) bioaccumulation;
- 16 (III) deposition; or
- 17 (IV) otherwise (not including releases subject to regu-
- 18 lation under subsection (q) as a result of emissions to
- 19 the air).
- 20 (B) POLLUTANTS LISTED UNDER SECTION 211108(a).—
- 21 (i) IN GENERAL.—No air pollutant that is listed under sec-
- 22 tion 211108(a) of this title may be added to the list under
- 23 this section.
- 24 (ii) APPLICABILITY.—This subparagraph does not apply to
- 25 any pollutant that—

1 (I) independently meets the listing criteria of subpara-
2 graph (A) and is a precursor to a pollutant that is listed
3 under section 211108(a) of this title; or

4 (II) is in a class of pollutants listed under that sec-
5 tion.

6 (C) SUBSTANCES, PRACTICES, PROCESSES, AND ACTIVITIES
7 REGULATED UNDER SUBDIVISION 7.—No substance, practice,
8 process, or activity regulated under subdivision 7 shall be subject
9 to regulation under this section solely due to its adverse effects on
10 the environment.

11 (3) PETITIONS TO MODIFY THE LIST.—

12 (A) PETITION.—Any person may petition the Administrator to
13 modify the list of hazardous air pollutants under this subsection
14 by adding or deleting a substance or, in case of listed pollutants
15 without CAS numbers (other than coke oven emissions, mineral fi-
16 bers, or polycyclic organic matter), removing certain unique sub-
17 stances. Any such petition shall include a showing by the peti-
18 tioner that there are adequate data on the health or environmental
19 effects of the pollutant or other evidence adequate to support the
20 petition.

21 (B) ACTION BY THE ADMINISTRATOR.—Within 18 months after
22 receipt of a petition, the Administrator shall grant or deny the pe-
23 tition by publishing a written explanation of the reasons for the
24 Administrator's decision. The Administrator may not deny a peti-
25 tion solely on the basis of inadequate resources or time for review.

26 (C) ADDITION OF SUBSTANCE.—The Administrator shall add a
27 substance to the list on a showing by the petitioner or on the Ad-
28 ministrator's own determination that—

29 (i) the substance is an air pollutant; and
30 (ii) emissions, ambient concentrations, bioaccumulation, or
31 deposition of the substance are known to cause or may reason-
32 ably be anticipated to cause adverse effects on human
33 health or adverse environmental effects.

34 (D) DELETION FROM LIST.—

35 (i) IN GENERAL.—The Administrator shall delete a sub-
36 stance from the list on a showing by the petitioner or on the
37 Administrator's own determination that there are adequate
38 data on the health and environmental effects of the substance
39 to determine that emissions, ambient concentrations, bio-
40 accumulation, or deposition of the substance may not reason-

1 ably be anticipated to cause any adverse effects on human
2 health or adverse environmental effects.

3 (ii) CERTAIN UNIQUE CHEMICAL SUBSTANCES THAT CON-
4 TAIN A LISTED HAZARDOUS AIR POLLUTANT NOT HAVING A
5 CAS NUMBER.—The Administrator shall delete from the list
6 1 or more unique chemical substances that contain a listed
7 hazardous air pollutant not having a CAS number (other
8 than coke oven emissions, mineral fibers, or polycyclic organic
9 matter) on a showing by the petitioner or on the Administra-
10 tor's own determination that the unique chemical substances
11 that contain the named chemical of the listed hazardous air
12 pollutant meet the deletion requirements of clause (i).

13 (4) FURTHER INFORMATION.—If the Administrator determines that
14 information on the health or environmental effects of a substance is not
15 sufficient to make a determination required by this subsection, the Ad-
16 ministrator may use any authority available to the Administrator to ac-
17 quire such information.

18 (5) TEST METHODS.—The Administrator may establish, by regula-
19 tion, test measures and other analytic procedures for monitoring and
20 measuring emissions, ambient concentrations, deposition, and bio-
21 accumulation of hazardous air pollutants.

22 (6) PREVENTION OF SIGNIFICANT DETERIORATION.—Chapter 213
23 shall not apply to a pollutant listed under this section.

24 (7) LEAD.—The Administrator may not list elemental lead as a haz-
25 ardous air pollutant under this subsection.

26 (c) LIST OF SOURCE CATEGORIES.—

27 (1) PUBLICATION AND REVISION.—

28 (A) IN GENERAL.—The Administrator shall publish, and shall
29 from time to time, but not less often than every 8 years, revise,
30 if appropriate, in response to public comment or new information,
31 a list of all categories and subcategories of major sources and area
32 sources (listed under paragraph (3)) of the air pollutants listed
33 pursuant to subsection (b).

34 (B) CONSISTENCY.—

35 (i) IN GENERAL.—To the extent practicable, the categories
36 and subcategories listed under this subsection shall be con-
37 sistent with the list of source categories established pursuant
38 to section 211111 of this title and chapter 213.

39 (ii) EFFECT.—Nothing in clause (i) limits the Administra-
40 tor's authority to establish subcategories under this section,
41 as appropriate.

1 (2) REQUIREMENT FOR EMISSION STANDARDS.—For the categories
2 and subcategories that the Administrator lists, the Administrator shall
3 establish emission standards under subsection (d), according to the
4 schedule in this subsection and subsection (e).

5 (3) AREA SOURCES.—The Administrator shall list under this sub-
6 section each category or subcategory of area sources that the Adminis-
7 trator finds presents a threat of adverse effects on human health or
8 the environment (by such sources individually or in the aggregate) war-
9 ranting regulation under this section. The Administrator shall, pursu-
10 ant to subsection (j)(3)(B), list, based on actual or estimated aggregate
11 emissions of a listed pollutant or pollutants, sufficient categories or
12 subcategories of area sources to ensure that area sources representing
13 90 percent of the area source emissions of the 30 hazardous air pollut-
14 ants that present the greatest threat to public health in the largest
15 number of urban areas are subject to regulation under this section.

16 (4) PREVIOUSLY REGULATED SOURCES.—The Administrator may list
17 any category or subcategory of sources regulated under section 112 of
18 the Clean Air Act (42 U.S.C. 7412) (as in effect before November 15,
19 1990).

20 (5) ADDITIONAL CATEGORIES.—In addition to the categories and
21 subcategories of sources listed for regulation pursuant to paragraphs
22 (1) and (3), the Administrator may at any time list additional cat-
23 egories and subcategories of sources of hazardous air pollutants accord-
24 ing to the criteria for listing applicable under those paragraphs. In the
25 case of source categories and subcategories listed after publication of
26 the initial list required under paragraph (1) or (3), emission standards
27 under subsection (d) for the category or subcategory shall be promul-
28 gated within 2 years after the date on which the category or sub-
29 category is listed.

30 (6) SPECIFIC POLLUTANTS.—

31 (A) IN GENERAL.—With respect to alkylated lead compounds,
32 polycyclic organic matter, hexachlorobenzene, mercury, polychlori-
33 nated biphenyls, 2,3,7,8-tetrachlorodibenzofurans, and 2,3,7,8-
34 tetrachlorodibenzo-p-dioxin, the Administrator shall list categories
35 and subcategories of sources ensuring that sources accounting for
36 not less than 90 percent of the aggregate emissions of each such
37 pollutant are subject to standards under paragraph (2) or (4) of
38 subsection (d).

39 (B) EFFECT OF PARAGRAPH.—This paragraph shall not be con-
40 strued to require the Administrator to promulgate standards for

1 pollutants described in subparagraph (A) emitted by electric utility
2 steam generating units.

3 (7) RESEARCH OR LABORATORY FACILITIES.—

4 (A) DEFINITION OF RESEARCH OR LABORATORY FACILITY.—In
5 this paragraph, the term “research or laboratory facility” means
6 a stationary source the primary purpose of which is to conduct re-
7 search and development into a new process or products, where if
8 the source—

9 (i) is operated under the close supervision of technically
10 trained personnel; and

11 (ii) is not engaged in the manufacture of a product for
12 commercial sale in commerce, except in a de minimis manner.

13 (B) SEPARATE CATEGORY.—The Administrator shall establish a
14 separate category covering research or laboratory facilities as nec-
15 essary to ensure the equitable treatment of such facilities.

16 (8) BOAT MANUFACTURING.—When establishing emission standards
17 for styrene, the Administrator shall list boat manufacturing as a sepa-
18 rate subcategory unless the Administrator finds that such a listing
19 would be inconsistent with the goals and requirements of this division.

20 (9) DELETION FROM LIST.—

21 (A) UNIQUE CHEMICAL SUBSTANCES.—Where the sole reason
22 for the inclusion of a source category on the list required under
23 this subsection is the emission of a unique chemical substance, the
24 Administrator shall delete the source category from the list if it
25 is appropriate because of action taken under subsection (b)(3)(D).

26 (B) ANY SOURCE CATEGORY.—

27 (i) IN GENERAL.—The Administrator may delete any
28 source category from the list under this subsection, on peti-
29 tion of any person or on the Administrator’s own motion,
30 whenever the Administrator makes the following determina-
31 tion or determinations, as applicable:

32 (I) In the case of hazardous air pollutants emitted by
33 sources in the category that may result in cancer in hu-
34 mans, a determination that no source in the category (or
35 group of sources in the case of area sources) emits such
36 hazardous air pollutants in quantities that may cause a
37 lifetime risk of cancer greater than 1 in 1,000,000 to the
38 individual in the population who is most exposed to emis-
39 sions of the pollutants from the source (or group of
40 sources in the case of an area source).

1 (II) In the case of hazardous air pollutants that may
2 result in adverse health effects in humans (other than
3 cancer) or adverse environmental effects, a determination
4 that emissions from no source in the category or sub-
5 category (or group of sources in the case of area sources)
6 exceed a level that is adequate to protect public health
7 with an ample margin of safety, and no adverse environ-
8 mental effect will result from emissions from any source
9 (or from a group of sources in the case of an area
10 source).

11 (ii) GRANT OR DENIAL.—The Administrator shall grant or
12 deny a petition under this subparagraph within 1 year after
13 the petition is filed.

14 (d) EMISSION STANDARDS.—

15 (1) REGULATIONS.—

16 (A) IN GENERAL.—The Administrator shall promulgate regula-
17 tions establishing emission standards for each category or sub-
18 category of major sources and area sources of hazardous air pol-
19 lutants listed for regulation pursuant to subsection (c).

20 (B) CLASSES, TYPES, AND SIZES.—The Administrator may dis-
21 tinguish among classes, types, and sizes of sources within a cat-
22 egory or subcategory in establishing the emission standards, ex-
23 cept that there shall be no delay in the compliance date for any
24 standard applicable to any source under subsection (i) as the re-
25 sult of the authority provided by this subparagraph.

26 (2) STANDARDS AND METHODS.—

27 (A) IN GENERAL.—Emission standards promulgated under this
28 subsection and applicable to new sources or existing sources of
29 hazardous air pollutants shall require the maximum degree of re-
30 duction in emissions of hazardous air pollutants subject to this
31 section (including a prohibition on such emissions, where achiev-
32 able) that the Administrator, taking into consideration the cost of
33 achieving such emission reduction, and any non-air-quality health
34 and environmental impacts and energy requirements, determines is
35 achievable for new sources or existing sources in the category or
36 subcategory to which the emission standard applies, through appli-
37 cation of measures, processes, methods, systems or techniques, in-
38 cluding measures that—

39 (i) reduce the volume of, or eliminate emissions of, such
40 pollutants through process changes, substitution of materials,
41 or other modifications;

- 1 (ii) enclose systems or processes to eliminate emissions;
2 (iii) collect, capture, or treat such pollutants when released
3 from a process, stack, storage, or fugitive emissions point;
4 (iv) are design, equipment, work practice, or operational
5 standards (including requirements for operator training or
6 certification) as provided in subsection (h); or
7 (v) are a combination of the measures described in clauses
8 (i) through (iv).

9 (B) NO COMPROMISE OF INTELLECTUAL PROPERTY RIGHTS.—
10 None of the measures described in clauses (i) through (iv) of sub-
11 paragraph (A) shall, consistent with section 211114(e) of this
12 title, in any way compromise any United States patent or United
13 States trademark right, or confidential business information, trade
14 secret, or other intellectual property right.

15 (3) NEW SOURCES AND EXISTING SOURCES.—

16 (A) NEW SOURCES.—The maximum degree of reduction in
17 emissions that is considered achievable for new sources in a cat-
18 egory or subcategory shall not be less stringent than the emission
19 control that is achieved in practice by the best controlled similar
20 source, as determined by the Administrator.

21 (B) EXISTING SOURCES.—An emission standard promulgated
22 under this subsection for existing sources in a category or sub-
23 category—

- 24 (i) may be less stringent than standards for new sources
25 in the same category or subcategory; but
26 (ii) shall not be less stringent, and may be more stringent,
27 than—

28 (I) the average emission limitation achieved by the
29 best performing 12 percent of the existing sources (for
30 which the Administrator has emissions information), ex-
31 cluding sources that have, within 18 months before the
32 emission standard is proposed or within 30 months be-
33 fore the emission standard is promulgated, whichever is
34 later, first achieved a level of emission rate or emission
35 reduction that complies, or would comply if the source is
36 not subject to the standard, with the lowest achievable
37 emission rate (as defined in section 215101 of this title)
38 applicable to the source category and prevailing at the
39 time, in the category or subcategory for categories and
40 subcategories with 30 or more sources; or

1 (II) the average emission limitation achieved by the
2 best performing 5 sources (for which the Administrator
3 has or could reasonably obtain emissions information) in
4 the category or subcategory for categories or sub-
5 categories with fewer than 30 sources.

6 (4) HEALTH THRESHOLD.—With respect to pollutants for which a
7 health threshold has been established, the Administrator may consider
8 that threshold level, with an ample margin of safety, when establishing
9 emission standards under this subsection.

10 (5) ALTERNATIVE STANDARD FOR AREA SOURCES.—With respect
11 only to categories and subcategories of area sources listed pursuant to
12 subsection (c), the Administrator may, in lieu of the authorities pro-
13 vided in paragraph (2) and subsection (f), elect to promulgate stand-
14 ards or requirements applicable to sources in categories or sub-
15 categories that provide for the use of generally available control tech-
16 nologies or management practices by those sources to reduce emissions
17 of hazardous air pollutants.

18 (6) REVIEW AND REVISION.—The Administrator shall review, and re-
19 vise as necessary (taking into account developments in practices, proe-
20 cesses, and control technologies), emission standards promulgated under
21 this section not less often than every 8 years.

22 (7) OTHER REQUIREMENTS.—No emission standard or other require-
23 ment promulgated under this section shall be interpreted, construed, or
24 applied to diminish or replace the requirements of—

25 (A) a more stringent emission limitation or other applicable re-
26 quirement established pursuant to section 211111 of this title,
27 chapter 213 or 215, or other authority of this division; or

28 (B) a standard issued under State authority.

29 (8) COKE OVENS.—

30 (A) REGULATIONS ESTABLISHING EMISSION STANDARDS.—

31 (i) IN GENERAL.—The Administrator shall promulgate reg-
32 ulations establishing emission standards under paragraphs
33 (2) and (3) for coke oven batteries.

34 (ii) EVALUATIONS.—In establishing such standards, the
35 Administrator shall evaluate—

36 (I) the use of sodium silicate (or equivalent) luting
37 compounds to prevent door leaks, and other operating
38 practices and technologies for their effectiveness in re-
39 ducing coke oven emissions, and their suitability for use
40 on new and existing coke oven batteries, taking into ac-

1 count costs and reasonable commercial door warranties;
2 and

3 (II) as a basis for emission standards under this sub-
4 section for new coke oven batteries that begin construc-
5 tion after the date of proposal of the standards, the
6 Jewell design Thompson non-recovery coke oven batteries
7 and other non-recovery coke oven technologies, and other
8 appropriate emission control and coke production tech-
9 nologies, as to their effectiveness in reducing coke oven
10 emissions and their capability for production of steel
11 quality coke.

12 (iii) MINIMUM REQUIREMENTS.—The regulations shall re-
13 quire at a minimum that coke oven batteries will not exceed
14 8 percent leaking doors, 1 percent leaking lids, 5 percent
15 leaking offtakes, and 16 seconds visible emissions per charge,
16 with no exclusion for emissions during the period after the
17 closing of self-sealing oven doors.

18 (B) WORK PRACTICE REGULATIONS.—The Administrator shall
19 promulgate work practice regulations under this subsection for
20 coke oven batteries requiring, as appropriate—

21 (i) the use of sodium silicate (or equivalent) luting com-
22 pounds, if the Administrator determines that use of sodium
23 silicate is an effective means of emission control and is
24 achievable, taking into account costs and reasonable commer-
25 cial warranties for doors and related equipment; and

26 (ii) door and jam cleaning practices.

27 (C) COKE OVEN BATTERIES ELECTING TO QUALIFY FOR COM-
28 PLIANCE DATE EXTENSION.—For coke oven batteries electing to
29 qualify for an extension of the compliance date for standards pro-
30 mulgated under subsection (f) in accordance with subsection
31 (i)(8), the emission standards under this subsection for coke oven
32 batteries shall require that coke oven batteries not exceed—

33 (i) 8 percent leaking doors;

34 (ii) 1 percent leaking lids;

35 (iii) 5 percent leaking offtakes; and

36 (iv) 16 seconds visible emissions per charge;

37 with no exclusion for emissions during the period after the closing
38 of self-sealing doors.

39 (9) SOURCES LICENSED BY THE NUCLEAR REGULATORY COMMIS-
40 SION.—No standard for radionuclide emissions from any category or
41 subcategory of facilities licensed by the Nuclear Regulatory Commission

1 (or an Agreement State) is required to be promulgated under this sec-
2 tion if the Administrator determines, by regulation, and after consulta-
3 tion with the Nuclear Regulatory Commission, that the regulatory pro-
4 gram established by the Nuclear Regulatory Commission pursuant to
5 the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for the cat-
6 egorY or subcategory provides an ample margin of safety to protect the
7 public health. Nothing in this subsection precludes or denies the right
8 of any State or political subdivision thereof to adopt or enforce any
9 standard or limitation respecting emissions of radionuclides that is
10 more stringent than the standard or limitation in effect under section
11 211111 of this title or this section.

12 (10) EFFECTIVE DATE.—Emission standards or other regulations
13 promulgated under this subsection shall be effective on promulgation.

14 (e) PRIORITIES; JUDICIAL REVIEW.—

15 (1) PRIORITIES.—In determining priorities for promulgating stand-
16 ards under subsection (d), the Administrator shall consider—

17 (A) the known or anticipated adverse effects of pollutants on
18 public health and the environment;

19 (B) the quantity and location of emissions or reasonably antici-
20 pated emissions of hazardous air pollutants that each category or
21 subcategory will emit; and

22 (C) the efficiency of grouping categories or subcategories ac-
23 cording to the pollutants emitted, or the processes or technologies
24 used.

25 (2) JUDICIAL REVIEW.—Notwithstanding section 203102 of this
26 title, no action of the Administrator adding a pollutant to the list under
27 subsection (b) or listing a source category or subcategory under sub-
28 section (c) shall be a final agency action subject to judicial review, ex-
29 cept that any such action may be reviewed under section 211113 of
30 this title when the Administrator issues emission standards for such a
31 pollutant or category.

32 (f) EMISSION STANDARDS TO PROTECT HEALTH AND ENVIRONMENT.—

33 (1) REPORT.—The Administrator shall investigate and report, after
34 consultation with the Surgeon General and after opportunity for public
35 comment, to Congress on—

36 (A) methods of calculating the risk to public health remaining,
37 or likely to remain, from sources subject to regulation under this
38 section after the application of standards under subsection (d);

39 (B) the public health significance of such estimated remaining
40 risk and the technologically and commercially available methods
41 and costs of reducing such risks;

1 (C) the actual health effects with respect to persons living in the
2 vicinity of sources, any available epidemiological or other health
3 studies, risks presented by background concentrations of hazard-
4 ous air pollutants, any uncertainties in risk assessment methodol-
5 ogy or other health assessment technique, and any negative health
6 or environmental consequences to the community of efforts to re-
7 duce such risks; and

8 (D) recommendations as to legislation regarding the remaining
9 risk.

10 (2) EMISSION STANDARDS.—

11 (A) IN GENERAL.—If Congress does not act on any recom-
12 mendation submitted under paragraph (1), the Administrator
13 shall, within 8 years after promulgation of emission standards for
14 each category or subcategory of sources pursuant to subsection
15 (d), promulgate emission standards for the category or sub-
16 category if promulgation of emission standards is required to pro-
17 vide an ample margin of safety to protect public health in accord-
18 ance with section 112 of the Clean Air Act (42 U.S.C. 7412) (as
19 in effect before November 15, 1990) or to prevent, taking into
20 consideration costs, energy, safety, and other relevant factors, an
21 adverse environmental effect. Emission standards promulgated
22 under this subsection shall provide an ample margin of safety to
23 protect public health in accordance with section 112 of the Clean
24 Air Act (42 U.S.C. 7412) (as in effect before November 15,
25 1990), unless the Administrator determines that a more stringent
26 emission standard is necessary to prevent, taking into consider-
27 ation costs, energy, safety, and other relevant factors, an adverse
28 environmental effect. If emission standards promulgated pursuant
29 to subsection (d) and applicable to a category or subcategory of
30 sources emitting a pollutant (or pollutants) classified as a known,
31 probable, or possible human carcinogen do not reduce lifetime ex-
32 cess cancer risks to the individual most exposed to emissions from
33 a source in the category or subcategory to less than 1 in
34 1,000,000, the Administrator shall promulgate emission standards
35 under this subsection for that source category.

36 (B) EFFECT OF SECTION.—Nothing in subparagraph (A) or in
37 any other provision of this section shall be construed as affecting,
38 or applying to the Administrator's interpretation of section 112 of
39 the Clean Air Act (42 U.S.C. 7412) (as in effect before November
40 15, 1990), and set forth in the Federal Register of September 14,
41 1989 (54 Fed. Reg. 38044).

1 (C) DEADLINES.—

2 (i) IN GENERAL.—The Administrator shall determine
3 whether or not to promulgate emission standards under sub-
4 paragraph (A) and, if the Administrator decides to promul-
5 gate emission standards, shall promulgate the emission stand-
6 ards 8 years after promulgation of the emission standards
7 under subsection (d) for each source category or subcategory
8 concerned.

9 (ii) CATEGORIES OR SUBCATEGORIES FOR WHICH STAND-
10 ARDS UNDER SUBSECTION (d) WERE REQUIRED TO BE PRO-
11 MULGATED WITHIN 2 YEARS AFTER NOVEMBER 15, 1990.—In
12 the case of categories or subcategories for which standards
13 under subsection (d) were required to be promulgated within
14 2 years after November 15, 1990, the Administrator shall
15 have 9 years after promulgation of the emission standards
16 under subsection (d) to make the determination under clause
17 (i) and, if required, to promulgate the emission standards
18 under this paragraph.

19 (3) EFFECTIVE DATE.—Any emission standard established pursuant
20 to this subsection shall become effective on promulgation.

21 (4) PROHIBITION.—

22 (A) IN GENERAL.—Except as provided in subparagraph (B), no
23 air pollutant to which an emission standard under this subsection
24 applies may be emitted from any stationary source in violation of
25 the emission standard.

26 (B) EXISTING SOURCES.—In the case of an existing source—

27 (i) the emission standard shall not apply until 90 days
28 after its effective date; and

29 (ii) the Administrator may grant a waiver permitting an
30 existing source a period of up to 2 years after the effective
31 date of an emission standard to comply with the emission
32 standard if the Administrator finds that such a period is nec-
33 essary for the installation of controls and that steps will be
34 taken during the period of the waiver to ensure that the
35 health of persons will be protected from imminent endanger-
36 ment.

37 (5) AREA SOURCES.—The Administrator is not required to conduct
38 any review under this subsection or promulgate emission limitations
39 under this subsection for any category or subcategory of area sources
40 that is listed pursuant to subsection (e)(3) and for which an emission
41 standard is promulgated pursuant to subsection (d)(5).

1 (6) UNIQUE CHEMICAL SUBSTANCES.—In establishing emission
2 standards for the control of unique chemical substances of listed pollut-
3 ants without CAS numbers under this subsection, the Administrator
4 shall establish the emission standards with respect to the health and
5 environmental effects of the substances actually emitted by sources and
6 direct transformation byproducts of such emissions in the categories
7 and subcategories.

8 (g) MODIFICATIONS.—

9 (1) OFFSETS.—

10 (A) CHANGE NOT A MODIFICATION.—

11 (i) IN GENERAL.—A physical change in, or change in the
12 method of operation of, a major source that results in a
13 greater than de minimis increase in actual emissions of a haz-
14 ardous air pollutant shall not be considered a modification, if
15 the increase in the quantity of actual emissions of any haz-
16 ardous air pollutant from the source will be offset by an equal
17 or greater decrease in the quantity of emissions of another
18 hazardous air pollutant (or pollutants) from the source that
19 is considered more hazardous, pursuant to guidance issued by
20 the Administrator under subparagraph (B).

21 (ii) SHOWING.—The owner or operator of the source shall
22 submit a showing to the Administrator (or the State) that an
23 increase described in clause (i) has been offset as described
24 in that clause.

25 (B) GUIDANCE.—The Administrator shall, after notice and op-
26 portunity for comment, publish guidance with respect to imple-
27 mentation of this subsection. The guidance shall include an identi-
28 fication, to the extent practicable, of the relative hazard to human
29 health resulting from emissions to the ambient air of each of the
30 pollutants listed under subsection (b) sufficient to facilitate the
31 offset showing authorized by subparagraph (A). The guidance
32 shall not authorize offsets between pollutants where the increased
33 pollutant (or more than 1 pollutant in a stream of pollutants)
34 causes adverse effects on human health for which no safety thresh-
35 old for exposure can be determined unless there are corresponding
36 decreases in those types of pollutants.

37 (2) MODIFICATION; CONSTRUCTION OR RECONSTRUCTION.—

38 (A) MODIFICATION.—No person may modify a major source of
39 hazardous air pollutants in a State unless the Administrator or
40 the State determines that the maximum achievable control tech-
41 nology emission limitation under this section for existing sources

1 will be met. Such a determination shall be made on a case-by-case
2 basis where no applicable emission limitations have been estab-
3 lished by the Administrator.

4 (B) CONSTRUCTION OR RECONSTRUCTION.—No person may
5 construct or reconstruct any major source of hazardous air pollut-
6 ants in a State unless the Administrator or the State determines
7 that the maximum achievable control technology emission limita-
8 tion under this section for new sources will be met. Such a deter-
9 mination shall be made on a case-by-case basis where no applica-
10 ble emission limitations have been established by the Adminis-
11 trator.

12 (3) PROCEDURES FOR MODIFICATION.—The Administrator (or the
13 State) shall establish reasonable procedures for ensuring that the re-
14 quirements applying to modifications under this section are reflected in
15 the permit.

16 (h) WORK PRACTICE STANDARDS AND OTHER REQUIREMENTS.—

17 (1) IN GENERAL.—For purposes of this section, if it is not feasible
18 in the judgment of the Administrator to prescribe or enforce an emis-
19 sion standard for control of a hazardous air pollutant or pollutants, the
20 Administrator may, in lieu of prescribing or enforcing an emission
21 standard, promulgate a design, equipment, work practice, or oper-
22 ational standard, or combination thereof, that in the Administrator's
23 judgment is consistent with subsection (d) or (f). If the Administrator
24 promulgates a design or equipment standard under this subsection, the
25 Administrator shall include as part of the design or equipment stand-
26 ard such requirements as will ensure the proper operation and mainte-
27 nance of any such element of design or equipment.

28 (2) EMISSION STANDARD NOT FEASIBLE.—For the purpose of this
29 subsection, the Administrator may determine that it is not feasible to
30 prescribe or enforce an emission standard in any situation in which the
31 Administrator determines that—

32 (A)(i) a hazardous air pollutant or pollutants cannot be emitted
33 through a conveyance designed and constructed to emit or capture
34 the pollutant; or

35 (ii) any requirement for, or use of, such a conveyance would be
36 inconsistent with any Federal, State, or local law; or

37 (B) the application of measurement methodology to a particular
38 class of sources is not practicable due to technological and eco-
39 nomic limitations.

40 (3) ALTERNATIVE STANDARD.—If after notice and opportunity for
41 comment, the owner or operator of any source establishes to the satis-

1 faction of the Administrator that an alternative means of emission limi-
2 tation will achieve a reduction in emissions of any air pollutant at least
3 equivalent to the reduction in emissions of the pollutant achieved under
4 the requirements of paragraph (1), the Administrator shall permit the
5 use of the alternative by the source for purposes of compliance with
6 this section with respect to that pollutant.

7 (4) NUMERICAL STANDARD.—Any standard promulgated under para-
8 graph (1) shall be promulgated in terms of an emission standard when-
9 ever it is feasible to promulgate and enforce a standard in such terms.

10 (i) SCHEDULE FOR COMPLIANCE.—

11 (1) PRECONSTRUCTION AND OPERATING REQUIREMENTS.—After the
12 effective date of any emission standard, limitation, or regulation under
13 subsection (d), (f), or (h), no person may construct any new major
14 source or reconstruct any existing major source subject to the emission
15 standard, regulation, or limitation unless the Administrator (or a State
16 with a permit program approved under subdivision 6) determines that
17 the source, if properly constructed, reconstructed, and operated, will
18 comply with the standard, regulation, or limitation.

19 (2) SPECIAL RULE.—Notwithstanding paragraph (1), a new source
20 that commences construction or reconstruction after a standard, limita-
21 tion, or regulation applicable to the source is proposed and before the
22 standard, limitation, or regulation is promulgated shall not be required
23 to comply with the promulgated standard until the date that is 3 years
24 after the date of promulgation if—

25 (A) the promulgated standard, limitation, or regulation is more
26 stringent than the standard, limitation, or regulation proposed;
27 and

28 (B) the source complies with the standard, limitation, or regula-
29 tion as proposed during the 3-year period immediately after pro-
30 mulgation.

31 (3) COMPLIANCE SCHEDULE FOR EXISTING SOURCES.—

32 (A) PROHIBITION.—After the effective date of any emission
33 standard, limitation, or regulation promulgated under this section
34 and applicable to a source, no person may operate the source in
35 violation of the standard, limitation, or regulation except that, in
36 the case of an existing source, the Administrator shall establish a
37 compliance date or dates for each category or subcategory of exist-
38 ing sources, which shall provide for compliance as expeditiously as
39 practicable, but in no event later than 3 years after the effective
40 date of the standard, limitation, or regulation, except as provided
41 in subparagraph (B) and paragraphs (4) through (8).

1 (B) EXTENSION PERMIT.—The Administrator (or a State with
2 a program approved under subdivision 6) may issue a permit that
3 grants an extension permitting an existing source up to 1 addi-
4 tional year to comply with standards under subsection (d) if such
5 an additional period is necessary for the installation of controls.
6 An additional extension of up to 3 years may be added for mining
7 waste operations, if the 4-year compliance time is insufficient to
8 dry and cover mining waste in order to reduce emissions of any
9 pollutant listed under subsection (b).

10 (4) PRESIDENTIAL EXEMPTION.—The President may exempt any
11 stationary source from compliance with any standard or limitation
12 under this section for a period of not more than 2 years if the Presi-
13 dent determines that the technology to implement the standard is not
14 available and that it is in the national security interests of the United
15 States to do so. An exemption under this paragraph may be extended
16 for 1 or more additional periods, each period not to exceed 2 years.
17 The President shall report to Congress with respect to each exemption
18 (or extension thereof) made under this paragraph.

19 (5) EARLY REDUCTION.—

20 (A) IN GENERAL.—

21 (i) PERMIT.—The Administrator (or a State acting pursu-
22 ant to a permit program approved under subdivision 6) shall
23 issue a permit allowing an existing source, for which the
24 owner or operator demonstrates that the source has achieved
25 a reduction of 90 percent or more in emissions of hazardous
26 air pollutants (95 percent in the case of hazardous air pollut-
27 ants that are particulates) from the source, to meet an alter-
28 native emission limitation reflecting the reduction in lieu of
29 an emission limitation promulgated under subsection (d) for
30 a period of 6 years after the compliance date for the other-
31 wise applicable standard, if reduction is achieved before the
32 otherwise applicable standard under subsection (d) is first
33 proposed.

34 (ii) EFFECT OF PARAGRAPH.—Nothing in this paragraph
35 precludes a State from requiring reductions in excess of those
36 specified in this subparagraph as a condition of granting the
37 extension authorized by clause (i).

38 (B) REDUCTION DETERMINATION.—The reduction shall be de-
39 termined with respect to verifiable and actual emissions in a base
40 year not earlier than calendar year 1987, so long as there is no
41 evidence that emissions in the base year are artificially or substan-

1 tially greater than emissions in other years prior to implementa-
2 tion of emissions reduction measures. The Administrator may
3 allow a source to use a baseline year of 1985 or 1986 if the source
4 can demonstrate to the satisfaction of the Administrator that
5 emissions data for the source reflect verifiable data based on infor-
6 mation for the source, received by the Administrator prior to No-
7 vember 15, 1990, pursuant to an information request issued under
8 section 211114 of this title.

9 (C) ENFORCEABLE EMISSION LIMITATION.—For each source
10 granted an alternative emission limitation under this paragraph
11 there shall be established by a permit issued pursuant to subdivi-
12 sion 6 an enforceable emission limitation for hazardous air pollut-
13 ants reflecting the reduction that qualifies the source for an alter-
14 native emission limitation under this paragraph. An alternative
15 emission limitation under this paragraph shall not be available
16 with respect to standards or requirements promulgated pursuant
17 to subsection (f), and the Administrator shall, for the purpose of
18 determining whether a standard under subsection (f) is necessary,
19 review emissions from sources granted an alternative emission lim-
20 itation under this paragraph at the same time that other sources
21 in the category or subcategory are reviewed.

22 (D) LIMITATION.—With respect to pollutants for which high
23 risks of adverse public health effects may be associated with expo-
24 sure to small quantities, including chlorinated dioxins and furans,
25 the Administrator shall by regulation limit the use of offsetting re-
26 ductions in emissions of other hazardous air pollutants from the
27 source as counting toward the 90 percent reduction in such high-
28 risk pollutants qualifying for an alternative emission limitation
29 under this paragraph.

30 (6) OTHER REDUCTIONS.—Notwithstanding the requirements of this
31 section, no existing source that has installed—

32 (A) best available control technology (as defined in section
33 213102 of this title); or

34 (B) technology required to meet a lowest achievable emission
35 rate (as defined in section 215101 of this title);

36 prior to the promulgation of a standard under this section applicable
37 to the source and the same pollutant (or stream of pollutants) con-
38 trolled pursuant to an action described in subparagraph (A) or (B)
39 shall be required to comply with the standard under this section until
40 the date that is 5 years after the date on which the installation or re-
41 duction has been achieved, as determined by the Administrator. The

1 Administrator may issue such regulations and guidance as are nec-
2 essary to implement this paragraph.

3 (7) EXTENSION FOR NEW SOURCES.—A source for which construc-
4 tion or reconstruction is commenced after the date an emission stand-
5 ard applicable to the source is proposed pursuant to subsection (d) but
6 before the date on which an emission standard applicable to the source
7 is proposed pursuant to subsection (f) shall not be required to comply
8 with the emission standard under subsection (f) until the date that is
9 10 years after the date on which construction or reconstruction is com-
10 menced.

11 (8) COKE OVENS.—

12 (A) DATE FOR ACHIEVEMENT OF EMISSION LIMITATIONS.—Any
13 coke oven battery that complies with the emission limitations es-
14 tablished under subsection (d)(8)(C) and subparagraph (B) shall
15 not be required to achieve emission limitations promulgated under
16 subsection (f) until January 1, 2020.

17 (B) INTERIM EMISSION LIMITATIONS.—

18 (i) IN GENERAL.—The Administrator shall promulgate
19 emission limitations for coke oven emissions from coke oven
20 batteries. The emission limitations shall reflect the lowest
21 achievable emission rate (as defined in section 215101 of this
22 title) for a coke oven battery that is rebuilt or a replacement
23 at a coke oven plant for an existing battery.

24 (ii) STRINGENCY.—The emission limitations under clause
25 (i) shall be no less stringent than—

26 (I) 3 percent leaking doors (5 percent leaking doors
27 for 6-meter batteries);

28 (II) 1 percent leaking lids;

29 (III) 4 percent leaking offtakes; and

30 (IV) 16 seconds visible emissions per charge;

31 with an exclusion for emissions during the period after the
32 closing of self-sealing oven doors (or the total mass emissions
33 equivalent).

34 (iii) MEASUREMENT METHODOLOGY; TERMS.—The rule-
35 making in which the emission limitations are promulgated
36 shall establish an appropriate measurement methodology for
37 determining compliance with the emission limitations, and
38 shall establish such emission limitations in terms of an equiv-
39 alent level of mass emissions reduction from a coke oven bat-
40 tery, unless the Administrator finds that such a mass emis-
41 sion standard would not be practicable or enforceable. The

1 measurement methodology, to the extent it measures leaking
2 doors, shall take into consideration alternative test methods
3 that reflect the best technology and practices actually applied
4 in the affected industries, and shall ensure that the final test
5 methods are consistent with the performance of such best
6 technology and practices.

7 (iv) REVIEW AND REVISION.—The Administrator shall re-
8 view the emission limitations promulgated under clause (i)
9 and revise, as necessary, the emission limitations to reflect
10 the lowest achievable emission rate (as defined in section
11 215101 of this title) at the time for a coke oven battery that
12 is rebuilt or a replacement at a coke oven plant for an exist-
13 ing battery. Such emission limitations shall be no less strin-
14 gent than the emission limitation promulgated under clause
15 (i). Notwithstanding paragraph (2), the compliance date for
16 such emission limitations for existing coke oven batteries shall
17 be January 1, 2010.

18 (C) ELECTION TO COMPLY.—Prior to January 1, 1998, the
19 owner or operator of any coke oven battery may elect to comply
20 with emission limitations promulgated under subsection (f) by the
21 date on which those emission limitations would otherwise apply to
22 the coke oven battery, in lieu of the emission limitations and the
23 compliance dates provided under subparagraph (B). Any such
24 owner or operator shall be legally bound to comply with the emis-
25 sion limitations promulgated under subsection (f) with respect to
26 that coke oven battery. If no such emission limitations have been
27 promulgated for the coke oven battery, the Administrator shall
28 promulgate such emission limitations in accordance with sub-
29 section (f) for that coke oven battery.

30 (D) EFFECT OF RECONSTRUCTION.—

31 (i) DEFINITION OF RECONSTRUCTION.—In this subpara-
32 graph, the term “reconstruction” includes the replacement of
33 existing coke oven battery capacity with new coke oven bat-
34 teries of comparable or lower capacity and lower potential
35 emissions.

36 (ii) EFFECT.—Notwithstanding this section, reconstruction
37 of any source of coke oven emissions qualifying for an exten-
38 sion under this paragraph shall not subject the source to
39 emission limitations under subsection (f) that are more strin-
40 gent than those established under subparagraph (B) until
41 January 1, 2020.

1 (j) AREA SOURCE PROGRAM.—

2 (1) FINDINGS AND PURPOSE.—Congress finds that emissions of haz-
3 arduous air pollutants from area sources may individually, or in the ag-
4 gregate, present significant risks to public health in urban areas. Con-
5 sidering the large number of persons exposed and the risks of carcino-
6 genic and other adverse health effects from hazardous air pollutants,
7 ambient concentrations characteristic of large urban areas should be
8 reduced to levels substantially below those currently experienced. It is
9 the purpose of this subsection to achieve a substantial reduction in
10 emissions of hazardous air pollutants from area sources and an equiva-
11 lent reduction in the public health risks associated with area sources,
12 including a reduction of not less than 75 percent in the incidence of
13 cancer attributable to emissions from area sources.

14 (2) RESEARCH PROGRAM.—

15 (A) IN GENERAL.—The Administrator shall, after consultation
16 with State and local air pollution control officials, conduct a pro-
17 gram of research with respect to sources of hazardous air pollut-
18 ants in urban areas that includes within the program—

19 (i) ambient monitoring for a broad range of hazardous air
20 pollutants (including volatile organic compounds, metals, pes-
21 ticides, and products of incomplete combustion) in a rep-
22 resentative number of urban locations;

23 (ii) analysis to characterize the sources of such pollution
24 with a focus on area sources and the contribution that area
25 sources make to public health risks from hazardous air pollut-
26 ants; and

27 (iii) consideration of atmospheric transformation and other
28 factors that can elevate public health risks from such pollut-
29 ants.

30 (B) HEALTH EFFECTS TO BE CONSIDERED.—The health effects
31 considered under the program include carcinogenicity, mutagenic-
32 ity, teratogenicity, neurotoxicity, reproductive dysfunction, and
33 other acute and chronic effects, including the role of such pollut-
34 ants as precursors of ozone or acid aerosol formation.

35 (3) NATIONAL STRATEGY.—

36 (A) IN GENERAL.—Considering information collected pursuant
37 to the monitoring program authorized by paragraph (2), the Ad-
38 ministrator shall, after notice and opportunity for public comment,
39 submit to Congress a comprehensive strategy to control emissions
40 of hazardous air pollutants from area sources in urban areas.

41 (B) CONTENTS.—

1 (i) IN GENERAL.—The strategy shall—

2 (I) identify not less than 30 hazardous air pollutants
3 that, as the result of emissions from area sources,
4 present the greatest threat to public health in the largest
5 number of urban areas and that are or will be listed pur-
6 suant to subsection (b); and

7 (II) identify the source categories or subcategories
8 emitting such pollutants that are or will be listed pursu-
9 ant to subsection (c).

10 (ii) PERCENTAGE OF SOURCES SUBJECT TO STANDARDS.—
11 When identifying categories and subcategories of sources
12 under this subparagraph, the Administrator shall ensure that
13 sources accounting for 90 percent or more of the aggregate
14 emissions of each of the 30 identified hazardous air pollutants
15 are subject to standards pursuant to subsection (d).

16 (C) REQUIREMENTS.—The strategy shall—

17 (i) include a schedule of specific actions to substantially re-
18 duce the public health risks posed by the release of hazardous
19 air pollutants from area sources that will be implemented by
20 the Administrator under the authority of this division or
21 other laws (including the Toxic Substances Control Act (15
22 U.S.C. 2601 et seq.), the Federal Insecticide, Fungicide, and
23 Rodenticide Act (7 U.S.C. 136 et seq.), and the Solid Waste
24 Disposal Act (42 U.S.C. 6901 et seq.)) or by the States; and

25 (ii) achieve a reduction in the incidence of cancer attrib-
26 utable to exposure to hazardous air pollutants emitted by sta-
27 tionary sources of not less than 75 percent, considering con-
28 trol of emissions of hazardous air pollutants from all station-
29 ary sources and resulting from measures implemented by the
30 Administrator or by the States under this division or other
31 laws.

32 (D) RESEARCH NEEDS.—The strategy may identify research
33 needs in monitoring, analytical methodology, modeling, or pollution
34 control techniques and make recommendations for changes in law
35 that would further the goals and objectives of this subsection.

36 (E) EFFECT OF SUBSECTION.—Nothing in this subsection shall
37 be interpreted to preclude or delay implementation of actions with
38 respect to area sources of hazardous air pollutants under consider-
39 ation pursuant to this or any other law and that may be promul-
40 gated before the strategy is prepared.

1 (F) IMPLEMENTATION.—The Administrator shall implement the
2 strategy as expeditiously as practicable, ensuring that all sources
3 are in compliance with all requirements.

4 (G) AMBIENT MONITORING AND EMISSIONS MODELING.—As
5 part of the strategy, the Administrator shall provide for ambient
6 monitoring and emissions modeling in urban areas as appropriate
7 to demonstrate that the goals and objectives of the strategy are
8 being met.

9 (4) AREAWIDE ACTIVITIES.—The Administrator shall encourage and
10 support areawide strategies developed by State or local air pollution
11 control agencies that are intended to reduce risks from emissions by
12 area sources within a particular urban area. From the funds available
13 for grants under this section, the Administrator shall set aside not less
14 than 10 percent to support areawide strategies addressing hazardous
15 air pollutants emitted by area sources and shall award such funds on
16 a demonstration basis to States with innovative and effective strategies.
17 At the request of State or local air pollution control officials, the Ad-
18 ministrator shall prepare guidelines for control technologies or manage-
19 ment practices that may be applicable to various categories or sub-
20 categories of area sources.

21 (k) STATE PROGRAMS.—

22 (1) IN GENERAL.—Each State may develop and submit to the Ad-
23 ministrator for approval a program for the implementation and enforce-
24 ment (including a review of enforcement delegations previously grant-
25 ed) of emission standards and other requirements for air pollutants
26 subject to this section or requirements for the prevention and mitiga-
27 tion of accidental releases pursuant to subsection (q). A program sub-
28 mitted by a State under this subsection may provide for partial or com-
29 plete delegation of the Administrator's authorities and responsibilities
30 to implement and enforce emission standards and prevention require-
31 ments but shall not include authority to set standards less stringent
32 than those promulgated by the Administrator under this division.

33 (2) GUIDANCE.—The Administrator shall publish guidance that
34 would be useful to States in developing programs for submittal under
35 this subsection. The guidance shall provide for the registration of all
36 facilities producing, processing, handling, or storing any substance list-
37 ed pursuant to subsection (q) in amounts greater than the threshold
38 quantity. The Administrator shall include as an element in such guid-
39 ance an optional program begun in 1986 for the review of high-risk
40 point sources of air pollutants including hazardous air pollutants listed
41 pursuant to subsection (b).

1 (3) TECHNICAL ASSISTANCE.—The Administrator shall establish and
2 maintain an air toxics clearinghouse and center to provide technical in-
3 formation and assistance to State and local agencies and, on a cost re-
4 covery basis, to others on control technology, health and ecological risk
5 assessment, risk analysis, ambient monitoring and modeling, and emis-
6 sions measurement and monitoring. The Administrator shall use the
7 authority of section 211103 of this title to examine methods for pre-
8 venting, measuring, and controlling emissions and evaluating associated
9 health and ecological risks. Where appropriate, such activity shall be
10 conducted with not-for-profit organizations. The Administrator may
11 conduct research on methods for preventing, measuring, and controlling
12 emissions and evaluating associated health and environment risks. All
13 information collected under this paragraph shall be available to the
14 public.

15 (4) GRANTS.—On application of a State, the Administrator may
16 make grants, subject to such terms and conditions as the Adminis-
17 trator considers appropriate, to the State for the purpose of assisting
18 the State in developing and implementing a program for submittal and
19 approval under this subsection. Programs assisted under this para-
20 graph may include program elements addressing air pollutants or ex-
21 tremely hazardous substances other than those specifically subject to
22 this section. Grants under this paragraph may include support for
23 high-risk point source review as provided in paragraph (2) and support
24 for the development and implementation of areawide area source pro-
25 grams pursuant to subsection (j).

26 (5) APPROVAL OR DISAPPROVAL.—

27 (A) IN GENERAL.—Not later than 180 days after receiving a
28 program submitted by a State, and after notice and opportunity
29 for public comment, the Administrator shall approve or disapprove
30 the program.

31 (B) DISAPPROVAL.—The Administrator shall disapprove any
32 program submitted by a State, if the Administrator determines
33 that—

34 (i) the authorities contained in the program are not ade-
35 quate to ensure compliance by all sources within the State
36 with each applicable standard, regulation, or requirement es-
37 tablished by the Administrator under this section;

38 (ii) adequate authority does not exist, or adequate re-
39 sources are not available, to implement the program;

1 (iii) the schedule for implementing the program and ensur-
2 ing compliance by affected sources is not sufficiently expedi-
3 tious; or

4 (iv) the program is otherwise not in compliance with the
5 guidance issued by the Administrator under paragraph (2) or
6 is not likely to satisfy, in whole or in part, the objectives of
7 this division.

8 (C) NOTIFICATION OF DISAPPROVAL.—If the Administrator dis-
9 approves a State program, the Administrator shall notify the State
10 of any revisions or modifications necessary to obtain approval. The
11 State may revise and resubmit the proposed program for review
12 and approval pursuant to this subsection.

13 (6) WITHDRAWAL.—Whenever the Administrator determines, after
14 public hearing, that a State is not administering and enforcing a pro-
15 gram approved pursuant to this subsection in accordance with the guid-
16 ance published pursuant to paragraph (2) or the requirements of para-
17 graph (5), the Administrator shall so notify the State and, if action
18 that will ensure prompt compliance is not taken within 90 days, the
19 Administrator shall withdraw approval of the program. The Adminis-
20 trator shall not withdraw approval of any program unless, prior to
21 withdrawal, the State is notified and the reasons for withdrawal are
22 stated in writing and made public.

23 (7) AUTHORITY TO ENFORCE.—Nothing in this subsection precludes
24 the Administrator from enforcing any applicable emission standard or
25 requirement under this section.

26 (8) LOCAL PROGRAM.—The Administrator may, after notice and op-
27 portunity for public comment, approve a program developed and sub-
28 mitted by a local air pollution control agency (after consultation with
29 the State) pursuant to this subsection, and any such agency implement-
30 ing an approved program may take any action authorized to be taken
31 by a State under this section.

32 (9) PERMIT AUTHORITY.—Nothing in this subsection affects the au-
33 thorities and obligations of the Administrator or the State under sub-
34 division 6.

35 (I) ATMOSPHERIC DEPOSITION TO GREAT LAKES AND COASTAL
36 WATER.—

37 (1) DEFINITION OF COASTAL WATER.—In this subsection, the term
38 “coastal water” means—

39 (A) an estuary selected pursuant to subparagraph (A) or listed
40 pursuant to subparagraph (B) of section 320(a)(2) of the Federal
41 Water Pollution Control Act (33 U.S.C. 1330(a)(2)); or

1 (B) an estuarine research reserve designated pursuant to section
2 315 of the Coastal Zone Management Act of 1972 (16 U.S.C.
3 1461).

4 (2) DEPOSITION ASSESSMENT.—The Administrator, in cooperation
5 with the Under Secretary of Commerce for Oceans and Atmosphere,
6 shall conduct a program to identify and assess the extent of atmos-
7 pheric deposition of hazardous air pollutants (and in the discretion of
8 the Administrator, other air pollutants) to the Great Lakes, the Ches-
9 apeake Bay, Lake Champlain, and coastal water. As part of the pro-
10 gram, the Administrator shall—

11 (A) monitor the Great Lakes, the Chesapeake Bay, Lake Cham-
12 plain, and coastal water, including monitoring of the Great Lakes
13 through the monitoring network established pursuant to para-
14 graph (3) and designing and deploying an atmospheric monitoring
15 network for coastal waters pursuant to paragraph (5);

16 (B) investigate the sources and deposition rates of atmospheric
17 deposition of air pollutants (and their atmospheric transformation
18 precursors);

19 (C) conduct research to develop and improve monitoring meth-
20 ods and to determine the relative contribution of atmospheric pol-
21 lutants to total pollution loadings to the Great Lakes, the Ches-
22 apeake Bay, Lake Champlain, and coastal water;

23 (D) evaluate any adverse effects on public health or the environ-
24 ment caused by such deposition (including effects resulting from
25 indirect exposure pathways) and assess the contribution of the
26 deposition to violations of water quality standards established pur-
27 suant to the Federal Water Pollution Control Act (33 U.S.C. 1251
28 et seq.) and drinking water standards established pursuant to the
29 Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

30 (E) sample for such pollutants in biota of the Great Lakes, the
31 Chesapeake Bay, Lake Champlain, and coastal water and charac-
32 terize the sources of the pollutants.

33 (3) GREAT LAKES MONITORING NETWORK.—

34 (A) IN GENERAL.—The Administrator shall oversee, in accord-
35 ance with annex 15 of the Great Lakes Water Quality Agreement
36 of 1978 (T.I.A.S. 11551; KAV 255), the establishment and oper-
37 ation of a Great Lakes atmospheric deposition network to monitor
38 atmospheric deposition of hazardous air pollutants (and in the Ad-
39 ministrator's discretion, other air pollutants) to the Great Lakes.

40 (B) MONITORING FACILITIES.—As part of the network provided
41 for in this paragraph, the Administrator shall establish in each of

1 the 5 Great Lakes at least 1 facility capable of monitoring the at-
2 mospheric deposition of hazardous air pollutants in both dry and
3 wet conditions.

4 (C) USE OF DATA.—The Administrator shall use the data pro-
5 vided by the network to—

6 (i) identify and track the movement of hazardous air pol-
7 lutants through the Great Lakes;

8 (ii) determine the portion of water pollution loadings attrib-
9 utable to atmospheric deposition of such pollutants; and

10 (iii) support development of remedial action plans and
11 other management plans as required by the Great Lakes
12 Water Quality Agreement of 1978 (T.I.A.S. 11551; KAV
13 255).

14 (D) FORMAT.—The Administrator shall ensure that the data
15 collected by the Great Lakes atmospheric deposition monitoring
16 network are in a format compatible with databases sponsored by
17 the International Joint Commission, Canada, and the States of the
18 Great Lakes region.

19 (4) MONITORING FOR THE CHESAPEAKE BAY AND LAKE CHAM-
20 PLAIN.—

21 (A) ATMOSPHERIC DEPOSITION STATIONS.—The Administrator
22 shall establish at the Chesapeake Bay and Lake Champlain atmo-
23 spheric deposition stations to monitor deposition of hazardous air
24 pollutants (and in the Administrator's discretion, other air pollut-
25 ants) within the Chesapeake Bay and Lake Champlain watersheds.

26 (B) ACTIVITIES.—The Administrator shall—

27 (i) determine the role of air deposition in the pollutant
28 loadings of the Chesapeake Bay and Lake Champlain;

29 (ii) investigate the sources of air pollutants deposited in the
30 watersheds;

31 (iii) evaluate the health and environmental effects of such
32 pollutant loadings; and

33 (iv) sample such pollutants in biota within the watersheds,
34 as necessary to characterize such effects.

35 (5) MONITORING FOR COASTAL WATER.—The Administrator shall
36 design and deploy atmospheric deposition monitoring networks for
37 coastal water and watersheds of coastal water and shall make any in-
38 formation collected through such networks available to the public. As
39 part of that effort, the Administrator shall conduct research to develop
40 and improve deposition monitoring methods, and to determine the re-
41 lative contribution of atmospheric pollutants to pollutant loadings.

1 (m) MISCELLANEOUS PROVISIONS.—

2 (1) ELECTRIC UTILITY STEAM GENERATING UNITS.—The Adminis-
3 trator shall perform a study of the hazards to public health reasonably
4 anticipated to occur as a result of emissions by electric utility steam
5 generating units of pollutants listed under subsection (b) after imposi-
6 tion of the requirements of this division. The Administrator shall report
7 the results of the study to Congress. The Administrator shall develop
8 and describe in the report alternative control strategies for emissions
9 that may warrant regulation under this section. The Administrator
10 shall regulate electric utility steam generating units under this section
11 if the Administrator finds that regulation is appropriate and necessary
12 after considering the results of the study.

13 (2) PUBLICLY OWNED TREATMENT WORKS.—The Administrator may
14 conduct, in cooperation with the owners and operators of publicly
15 owned treatment works, studies to characterize emissions of hazardous
16 air pollutants emitted by such facilities, to identify industrial, commer-
17 cial, and residential discharges that contribute to such emissions, and
18 to demonstrate control measures for such emissions. When promulgat-
19 ing any standard under this section applicable to publicly owned treat-
20 ment works, the Administrator may provide for control measures that
21 include pretreatment of discharges causing emissions of hazardous air
22 pollutants and process or product substitutions or limitations that may
23 be effective in reducing such emissions. The Administrator may pre-
24 scribe uniform sampling, modeling, and risk assessment methods for
25 use in implementing this subsection.

26 (3) OIL AND GAS WELLS; PIPELINE FACILITIES.—

27 (A) NO AGGREGATION OF UNITS.—Notwithstanding subsection

28 (a)—

29 (i) emissions from any oil or gas exploration or production
30 well (with its associated equipment) and emissions from any
31 pipeline compressor or pump station shall not be aggregated
32 with emissions from other similar units, whether or not the
33 units are in a contiguous area or under common control, to
34 determine whether the units or stations are major sources;
35 and

36 (ii) in the case of any oil or gas exploration or production
37 well (with its associated equipment), the emissions from those
38 units shall not be aggregated for any purpose under this sec-
39 tion.

40 (B) NO LISTING AS AREA SOURCE CATEGORY.—

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1 (i) IN GENERAL.—Except as provided in clause (ii), the Ad-
2 ministrador shall not list oil and gas production wells (with
3 their associated equipment) as an area source category under
4 subsection (c).

5 (ii) EXCEPTION.—The Administrator may establish an area
6 source category for oil and gas production wells located in
7 any metropolitan statistical area or consolidated metropolitan
8 statistical area with a population in excess of 1,000,000 if the
9 Administrator determines that emissions of hazardous air pol-
10 lutants from the wells present more than a negligible risk of
11 adverse effects on public health.

12 (4) RCRA FACILITIES.—In the case of any category or subcategory
13 of sources the air emissions of which are regulated under subtitle C
14 of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), the Adminis-
15 trador shall—

16 (A) take into account any regulations of such emissions that are
17 promulgated under that subtitle; and

18 (B) to the maximum extent practicable and consistent with this
19 section, ensure that the requirements of that subtitle and this sec-
20 tion are consistent.

21 (n) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—

22 (1) REQUEST OF THE ACADEMY.—The Administrator shall enter into
23 appropriate arrangements with the National Academy of Sciences (re-
24 ferred to in this subsection as the “Academy”) to conduct a review
25 of—

26 (A) risk assessment methodology used by EPA to determine the
27 carcinogenic risk associated with exposure to hazardous air pollut-
28 ants from source categories and subcategories subject to the re-
29 quirements of this section; and

30 (B) improvements in the methodology.

31 (2) ELEMENTS TO BE STUDIED.—In conducting the review, the
32 Academy should consider—

33 (A) the techniques used for estimating and describing the car-
34 cinogenic potency to humans of hazardous air pollutants; and

35 (B) the techniques used for estimating exposure to hazardous
36 air pollutants (for hypothetical and actual maximally exposed indi-
37 viduals and other exposed individuals).

38 (3) OTHER HEALTH EFFECTS OF CONCERN.—To the extent prac-
39 ticable, the Academy shall evaluate and report on the methodology for
40 assessing the risk of adverse human health effects other than cancer

1 for which safe thresholds of exposure may not exist, including inherit-
2 able genetic mutations, birth defects, and reproductive dysfunctions.

3 (4) REPORT.—A report on the results of the review shall be submit-
4 ted to the Committee on Environment and Public Works of the Senate,
5 the Committee on Energy and Commerce of the House of Representa-
6 tives, and the Administrator.

7 (5) ASSISTANCE.—The Administrator shall assist the Academy in
8 gathering any information that the Academy considers necessary to
9 carry out this subsection. The Administrator may use any authority
10 under this division to obtain information from any person, and to re-
11 quire any person to conduct tests, keep and produce records, and make
12 reports respecting research or other activities conducted by the person
13 as necessary to carry out this subsection.

14 (6) AUTHORIZATION.—Of the funds authorized to be appropriated to
15 the Administrator by this division, such amounts as are required shall
16 be available to carry out this subsection.

17 (7) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—The Ad-
18 ministrator shall consider, but need not adopt, the recommendations
19 contained in the report of the Academy and the views of the Science
20 Advisory Board, with respect to the report. Prior to the promulgation
21 of any standard under subsection (f), and after notice and opportunity
22 for comment, the Administrator shall publish revised Guidelines for
23 Carcinogenic Risk Assessment or a detailed explanation of the reasons
24 that any recommendations contained in the report of the Academy will
25 not be implemented. The publication of the revised Guidelines shall be
26 a final agency action for purposes of section 211113 of this title.

27 (o) MICKEY LELAND NATIONAL URBAN AIR TOXICS RESEARCH CEN-
28 TER.—

29 (1) ESTABLISHMENT.—The Administrator shall oversee the estab-
30 lishment of a national urban air toxics research center to be known as
31 the Mickey Leland National Urban Air Toxics Research Center (re-
32 ferred to in this subsection as the “Center”) and to be located at a
33 university, hospital, or other facility capable of undertaking and main-
34 taining similar research capabilities in the areas of epidemiology, oncol-
35 ogy, toxicology, pulmonary medicine, pathology, and biostatistics. The
36 geographic site of the Center should be directed to Harris County,
37 Texas, to take full advantage of the well-developed scientific community
38 presence onsite at the Texas Medical Center and the extensive data
39 compiled for the comprehensive monitoring system.

40 (2) BOARD OF DIRECTORS.—The Center shall be governed by a
41 Board of Directors (referred to in this subsection as the “Board”) to

1 be comprised of 9 members, the appointment of whom shall be allo-
2 cated pro rata among the Speaker of the House, the Majority Leader
3 of the Senate, and the President. The members of the Board shall be
4 selected based on their respective academic and professional back-
5 grounds and expertise in matters relating to public health, environ-
6 mental pollution, and industrial hygiene. The duties of the Board shall
7 be to determine policy and research guidelines, submit views from Cen-
8 ter sponsors and the public, and issue periodic reports of findings and
9 activities of the Center.

10 (3) SCIENTIFIC ADVISORY PANEL.—The Board shall be advised by
11 a Scientific Advisory Panel (referred to in this subsection as the
12 “Panel”), the 13 members of which shall be appointed by the Board
13 and include eminent members of the scientific and medical commu-
14 nities. The Panel membership may include scientists with relevant ex-
15 perience from the National Institute of Environmental Health Sciences,
16 the Centers for Disease Control, EPA, the National Cancer Institute,
17 and others. The Panel shall conduct peer review and evaluate research
18 results. The Panel shall assist the Board in developing the research
19 agenda and reviewing proposals and applications, and shall advise on
20 the awarding of research grants.

21 (4) FUNDING.—The Center shall be established and funded with
22 Federal funds and private funds.

23 (p) SAVINGS PROVISIONS.—

24 (1) STANDARDS PREVIOUSLY PROMULGATED.—Any standard under
25 section 112 of the Clean Air Act (42 U.S.C. 7412) in effect before No-
26 vember 15, 1990, shall remain in effect after that date unless modified
27 as provided in that section before that date or under Public Law 101–
28 549 (104 Stat. 2399) (commonly known as the Clean Air Act Amend-
29 ments of 1990). Except as provided in paragraph (3), any standard
30 under that section that had been promulgated, but had not taken ef-
31 fect, before November 15, 1990, shall not be affected by Public Law
32 101–549 unless modified as provided in that section before November
33 15, 1990, or under Public Law 101–549. If a timely petition for review
34 of any such standard under section 307 of the Clean Air Act (42
35 U.S.C. 7607) was pending on November 15, 1990, the standard shall
36 be upheld if it complies with section 112 of the Clean Air Act (42
37 U.S.C. 7412) as in effect before that date. If any such standard is re-
38 manded to the Administrator, the Administrator may apply the require-
39 ments of this section or the requirements of section 112 of the Clean
40 Air Act (42 U.S.C. 7412) as in effect before November 15, 1990.

41 (2) SPECIAL RULES FOR RADIONUCLIDE EMISSIONS.—

- 1 (A) NO STANDARD FOR CERTAIN CATEGORIES.—
- 2 (i) IN GENERAL.—Notwithstanding paragraph (1), no
- 3 standard shall be established under this section for radio-
- 4 nuclide emissions from—
- 5 (I) elemental phosphorous plants;
- 6 (II) grate calcination elemental phosphorous plants;
- 7 (III) phosphogypsum stacks; or
- 8 (IV) any subcategory of the foregoing.
- 9 (ii) CONTINUED EFFECTIVENESS OF PRIOR LAW.—Section
- 10 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect prior
- 11 to November 15, 1990) shall remain in effect for radionuclide
- 12 emissions from plants and stacks described in clause (i).
- 13 (B) OTHER CATEGORIES.—Notwithstanding paragraph (1), sec-
- 14 tion 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect prior
- 15 to November 15, 1990) shall remain in effect for radionuclide
- 16 emissions from—
- 17 (i) non-Department of Energy Federal facilities that are
- 18 not licensed by the Nuclear Regulatory Commission;
- 19 (ii) coal-fired utility and industrial boilers;
- 20 (iii) underground uranium mines;
- 21 (iv) surface uranium mines; and
- 22 (v) disposal of uranium mill tailings piles;
- 23 unless the Administrator, in the Administrator’s discretion, applies
- 24 the requirements of this section to the sources of radionuclides de-
- 25 scribed in any of clauses (i) through (v).
- 26 (3) MEDICAL RESEARCH OR TREATMENT FACILITIES.—If the Admin-
- 27 istrator determines that the regulatory program established by the Nu-
- 28 clear Regulatory Commission for medical research or treatment facili-
- 29 ties does not provide an ample margin of safety to protect public
- 30 health, the requirements of this section shall fully apply to medical re-
- 31 search or treatment facilities. If the Administrator determines that the
- 32 regulatory program does provide an ample margin of safety to protect
- 33 the public health, the Administrator is not required to promulgate a
- 34 standard under this section for medical research or treatment facilities,
- 35 as provided in subsection (d)(9).
- 36 (q) PREVENTION OF ACCIDENTAL RELEASES.—
- 37 (1) DEFINITIONS.—In this subsection:
- 38 (A) ACCIDENTAL RELEASE.—The term “accidental release”
- 39 means an unanticipated emission of a regulated substance or other
- 40 extremely hazardous substance into the ambient air from a sta-
- 41 tionary source.

1 (B) REGULATED SUBSTANCE.—The term “regulated substance”
2 means a substance listed under paragraph (3).

3 (C) RETAIL FACILITY.—The term “retail facility” means a sta-
4 tionary source at which more than ½ of the income is obtained
5 from direct sales to end users or at which more than ½ of the
6 fuel sold, by volume, is sold through a cylinder exchange program.

7 (D) STATIONARY SOURCE.—The term “stationary source”
8 means 1 or more buildings, structures, pieces of equipment, instal-
9 lations, or substance-emitting stationary activities—

10 (i) that belong to the same industrial group;

11 (ii) that are located on a property or 2 or more contiguous
12 properties;

13 (iii) that are under the control of the same person (or per-
14 sons under common control); and

15 (iv) from which an accidental release may occur.

16 (2) PURPOSE AND GENERAL DUTY.—

17 (A) OBJECTIVE.—It shall be the objective of the regulations and
18 programs authorized under this subsection to prevent, and mini-
19 mize the consequences of, accidental releases.

20 (B) GENERAL DUTY.—The owners and operators of stationary
21 sources producing, processing, handling, or storing regulated sub-
22 stances have a general duty in the same manner and to the same
23 extent as under section 5 of the Occupational Safety and Health
24 Act of 1970 (29 U.S.C. 654) to—

25 (i) identify hazards that may result from accidental re-
26 leases using appropriate hazard assessment techniques;

27 (ii) design and maintain a safe facility taking such steps
28 as are necessary to prevent accidental releases; and

29 (iii) minimize the consequences of accidental releases that
30 do occur.

31 (C) NO CITIZEN SUITS.—For purposes of this paragraph, sec-
32 tion 203104 of this title shall not be available to any person or
33 otherwise be construed to be applicable to this paragraph.

34 (D) EFFECT OF PARAGRAPH.—Nothing in this section shall be
35 interpreted, construed, or applied to create, or held to imply the
36 creation of, any liability or basis for suit for compensation for bod-
37 ily injury or any other injury or property damages to any person
38 that may result from an accidental release.

39 (3) LIST OF SUBSTANCES.—

40 (A) IN GENERAL.—The Administrator shall promulgate an ini-
41 tial list of 100 substances that, in the case of an accidental re-

1 lease, are known to cause or may reasonably be anticipated to
2 cause death or injury to humans or serious adverse effects on
3 human health or the environment.

4 (B) USE OF LIST UNDER THE EMERGENCY PLANNING AND COM-
5 MUNITY RIGHT-TO-KNOW ACT OF 1986.—For purposes of promul-
6 gating the list under subparagraph (A), the Administrator shall
7 use, but is not limited to, the list of extremely hazardous sub-
8 stances published under the Emergency Planning and Community
9 Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), with such
10 modifications as the Administrator considers appropriate.

11 (C) SUBSTANCES TO BE INCLUDED.—The initial list shall in-
12 clude ammonia, anhydrous ammonia, anhydrous hydrogen chlo-
13 ride, anhydrous sulfur dioxide, bromine, chlorine, ethylene oxide,
14 hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, methyl
15 chloride, methyl isocyanate, phosgene, sulfur trioxide, toluene
16 diisocyanate, and vinyl chloride.

17 (D) NUMBER OF SUBSTANCES.—The initial list shall include at
18 least 100 substances that pose the greatest risk of causing death
19 or injury to humans or serious adverse effects on human health
20 or the environment from accidental releases.

21 (E) EXPLANATION.—Regulations establishing the list shall in-
22 clude an explanation of the basis for establishing the list.

23 (F) REVISION; REVIEW.—The list—

24 (i) may be revised from time to time by the Administrator
25 on the Administrator's own motion or by petition; and

26 (ii) shall be reviewed at least every 5 years.

27 (G) LIMITATIONS.—No air pollutant for which a primary
28 NAAQS has been established shall be included on the list. No sub-
29 stance, practice, process, or activity regulated under subdivision 7
30 shall be subject to regulations under this subsection.

31 (H) ADDITION AND DELETION.—The Administrator shall estab-
32 lish procedures for the addition and deletion of substances from
33 the list established under this paragraph consistent with those ap-
34 plicable to the list under subsection (b).

35 (4) FACTORS TO BE CONSIDERED.—In listing substances under
36 paragraph (3), the Administrator—

37 (A) shall consider—

38 (i) the severity of any acute adverse health effects associ-
39 ated with accidental releases of the substance;

40 (ii) the likelihood of accidental releases of the substance;
41 and

1 (iii) the potential magnitude of human exposure to acciden-
2 tal releases of the substance; and

3 (B) shall not list a flammable substance when used as a fuel
4 or held for sale as a fuel at a retail facility under this subsection
5 solely because of the explosive or flammable properties of the sub-
6 stance, unless a fire or explosion caused by the substance will re-
7 sult in acute adverse health effects from human exposure to the
8 substance, including the unburned fuel or its combustion byprod-
9 ucts, other than those caused by the heat of the fire or impact of
10 the explosion.

11 (5) THRESHOLD QUANTITY.—At the time at which any substance is
12 listed pursuant to paragraph (3), the Administrator shall establish by
13 regulation a threshold quantity for the substance, taking into account
14 the toxicity, reactivity, volatility, dispersibility, combustibility, or flam-
15 mability of the substance and the amount of the substance that, as a
16 result of an accidental release, is known to cause or may reasonably
17 be anticipated to cause death or injury to humans or serious adverse
18 effects on human health for which the substance was listed. The Ad-
19 ministrator may establish a greater threshold quantity for, or to ex-
20 empt entirely, any substance that is a nutrient used in agriculture
21 when held by a farmer.

22 (6) CHEMICAL SAFETY BOARD.—

23 (A) ESTABLISHMENT.—There is established an independent
24 safety board to be known as the Chemical Safety and Hazard In-
25 vestigation Board (referred to in this paragraph as the “Board”).

26 (B) MEMBERSHIP.—The Board shall consist of 5 members, in-
27 cluding a Chairperson, who shall be appointed by the President,
28 by and with the advice and consent of the Senate. Members of the
29 Board shall be appointed on the basis of technical qualification,
30 professional standing, and demonstrated knowledge in the fields of
31 accident reconstruction, safety engineering, human factors, toxi-
32 cology, or air pollution regulation. The terms of office of members
33 of the Board shall be 5 years. Any member of the Board, including
34 the Chairperson, may be removed for inefficiency, neglect of duty,
35 or malfeasance in office. The Chairperson shall be the Chief Exec-
36 utive Officer of the Board and shall exercise the executive and ad-
37 ministrative functions of the Board.

38 (C) DUTIES.—

39 (i) IN GENERAL.—The Board shall—

40 (I) investigate (or cause to be investigated), determine,
41 and report to the public in writing the facts, conditions,

1 circumstances and cause or probable cause of any acci-
2 dental release resulting in a fatality, serious injury, or
3 substantial property damages;

4 (II) issue periodic reports to Federal, State, and local
5 agencies concerned with the safety of chemical produc-
6 tion, processing, handling, and storage, and other inter-
7 ested persons (including EPA and the Occupational
8 Safety and Health Administration) that—

9 (aa) recommend measures to reduce the likelihood
10 or the consequences of accidental releases and pro-
11 pose corrective steps to make chemical production,
12 processing, handling, and storage as safe and free
13 from risk of injury as is possible; and

14 (bb) may include proposed regulations or orders
15 that should be issued by the Administrator under
16 this section or by the Secretary of Labor under the
17 Occupational Safety and Health Act of 1970 (29
18 U.S.C. 651 et seq.) to prevent or minimize the con-
19 sequences of any release of substances that may
20 cause death or injury to humans or other serious
21 adverse effects on human health or substantial
22 property damage as the result of an accidental re-
23 lease; and

24 (III) establish by regulation requirements binding on
25 persons for reporting accidental releases into the ambient
26 air subject to the Board's investigatory jurisdiction.

27 (ii) REPORTING.—Reporting releases to the National Re-
28 sponse Center, in lieu of the Board directly, shall satisfy the
29 regulations under clause (i)(III). The National Response Cen-
30 ter shall promptly notify the Board of any releases that are
31 within the Board's jurisdiction.

32 (D) EXPERTISE AND EXPERIENCE OF OTHER AGENCIES.—The
33 Board may utilize the expertise and experience of other agencies.

34 (E) COORDINATION WITH OTHER AGENCIES.—The Board shall
35 coordinate its activities with investigations and studies conducted
36 by other agencies of the United States having a responsibility to
37 protect public health and safety. The Board shall enter into a
38 memorandum of understanding with the National Transportation
39 Safety Board to ensure coordination of functions and to limit du-
40 plication of activities, which shall designate the National Trans-
41 portation Safety Board as the lead agency for the investigation of

1 releases that are transportation-related. The Board shall not be
2 authorized to investigate marine oil spills, which the National
3 Transportation Safety Board is authorized to investigate. The
4 Board shall enter into a memorandum of understanding with the
5 Occupational Safety and Health Administration to limit duplica-
6 tion of activities. In no event shall the Board forgo an investiga-
7 tion where an accidental release causes a fatality or serious injury
8 among the general public, or had the potential to cause substantial
9 property damage or a number of deaths or injuries among the
10 general public.

11 (F) RESEARCH; STUDIES.—The Board may conduct research
12 and studies with respect to the potential for accidental releases,
13 whether or not an accidental release has occurred, where there is
14 evidence that indicates the presence of a potential hazard or haz-
15 ards. To the extent practicable, the Board shall conduct such stud-
16 ies in cooperation with other Federal agencies having emergency
17 response authorities, State and local governmental agencies, and
18 associations and organizations from the industrial, commercial,
19 and nonprofit sectors.

20 (G) NO ADMISSION INTO EVIDENCE.—No part of the conclu-
21 sions, findings, or recommendations of the Board relating to any
22 accidental release or the investigation thereof shall be admitted as
23 evidence or used in any action or suit for damages arising out of
24 any matter mentioned in the report.

25 (H) RECOMMENDATIONS TO THE ADMINISTRATOR ON THE USE
26 OF HAZARD ASSESSMENTS.—

27 (i) RECOMMENDATIONS.—The Board shall publish a report
28 accompanied by recommendations to the Administrator on the
29 use of hazard assessments in preventing the occurrence and
30 minimizing the consequences of accidental releases of ex-
31 tremely hazardous substances. The recommendations shall in-
32 clude a list of extremely hazardous substances that are not
33 regulated substances (including threshold quantities for such
34 substances) and categories of stationary sources for which
35 hazard assessments would be an appropriate measure to aid
36 in the prevention of accidental releases and to minimize the
37 consequences of releases that do occur and a description of
38 the information and analysis that would be appropriate to in-
39 clude in any hazard assessment. The Board shall make rec-
40 ommendations with respect to the role of risk management
41 plans as required by paragraph (7)(B)(ii) in preventing acci-

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dental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

(ii) RESPONSE BY THE ADMINISTRATOR.—

(I) IN GENERAL.—Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to the recommendation formally and in writing not later than 180 days after receipt of the recommendation. The response to the Board’s recommendation by the Administrator shall indicate whether the Administrator will—

(aa) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; or

(bb) decline to initiate a rulemaking or issue orders as recommended.

(II) REASONS.—Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for the determination.

(I) RECOMMENDATIONS TO THE SECRETARY OF LABOR WITH RESPECT TO ACCIDENTAL RELEASES.—

(i) RECOMMENDATIONS.—The Board may make recommendations with respect to accidental releases to the Secretary of Labor.

(ii) RESPONSE BY THE SECRETARY OF LABOR.—

(I) IN GENERAL.—Whenever the Board submits a recommendation with respect to accidental releases to the Secretary of Labor, the Secretary shall respond to the recommendation formally and in writing not later than 180 days after receipt of the recommendation. The response to the Board’s recommendation by the Secretary shall indicate whether the Secretary will—

(aa) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation; or

1 (bb) decline to initiate a rulemaking or issue or-
2 ders as recommended.

3 (II) REASONS.—Any determination by the Secretary
4 not to implement a recommendation or to implement a
5 recommendation only in part, including any variation
6 from the schedule contained in the recommendation,
7 shall be accompanied by a statement from the Secretary
8 setting forth the reasons for the determination.

9 (J) RECOMMENDATIONS TO THE ADMINISTRATOR AND THE AD-
10 MINISTRATOR OF THE OCCUPATIONAL SAFETY AND HEALTH AD-
11 MINISTRATION RELATING TO RISK MANAGEMENT PLANS, GENERAL
12 REQUIREMENTS FOR THE PREVENTION OF ACCIDENTAL RE-
13 LEASES, AND MITIGATION OF POTENTIAL ADVERSE EFFECTS.—
14 The Board shall issue a report to the Administrator and to the
15 Administrator of the Occupational Safety and Health Administra-
16 tion recommending the adoption of regulations for the preparation
17 of risk management plans and general requirements for the pre-
18 vention of accidental releases of regulated substances into the am-
19 bient air (including recommendations for listing substances under
20 paragraph (3)) and for the mitigation of the potential adverse ef-
21 fect on human health or the environment as a result of accidental
22 releases that should be applicable to any stationary source han-
23 dling any regulated substance in more than threshold amounts.
24 The Board may include proposed regulations or orders that should
25 be issued by the Administrator under this subsection or by the
26 Secretary of Labor under the Occupational Safety and Health Act
27 of 1970 (29 U.S.C. 651 et seq.). Any such recommendations shall
28 be specific and shall identify the regulated substance or class of
29 regulated substances (or other substances) to which the recom-
30 mendations apply. The Administrator shall consider the recom-
31 mendations before promulgating regulations required by paragraph
32 (7)(B).

33 (K) POWERS.—

34 (i) IN GENERAL.—The Board, or on authority of the
35 Board, any member thereof, any administrative law judge em-
36 ployed by or assigned to the Board, or any officer or em-
37 ployee duly designated by the Board, may for the purpose of
38 carrying out duties authorized by subparagraph (C)—

39 (I) hold such hearings, sit and act at such times and
40 places, administer such oaths, and require by subpoena

1 or otherwise attendance and testimony of such witnesses
2 and the production of evidence;

3 (II) require by order that any person engaged in the
4 production, processing, handling, or storage of extremely
5 hazardous substances submit written reports and re-
6 sponses to requests and questions within such time and
7 in such form as the Board may require;

8 (III) on presenting appropriate credentials and a writ-
9 ten notice of inspection authority—

10 (aa) enter any property where an accidental re-
11 lease causing a fatality, serious injury, or substan-
12 tial property damage has occurred and do all things
13 therein necessary for a proper investigation pursu-
14 ant to subparagraph (C); and

15 (bb) inspect at reasonable times records, proc-
16 esses, controls, and facilities and take such samples
17 as are relevant to the investigation; and

18 (IV) use any information-gathering authority of the
19 Administrator under this division, including the sub-
20 poena power provided in section 203102(a)(1) of this
21 title.

22 (ii) RIGHTS TO PARTICIPATE.—Whenever the Adminis-
23 trator or the Board conducts an inspection of a facility pursu-
24 ant to this subsection, employees and their representatives
25 shall have the same rights to participate in the inspection as
26 are provided under the Occupational Safety and Health Act
27 of 1970 (29 U.S.C. 651 et seq.).

28 (L) RULES; TRANSACTIONS.—The Board may establish such
29 procedural and administrative rules as are necessary to the exer-
30 cise of its functions and duties. The Board may, without regard
31 to section 6101 of title 5, enter into contracts, leases, cooperative
32 agreements, or other transactions as may be necessary in the con-
33 duct of the duties and functions of the Board with any other agen-
34 cy, institution, or person.

35 (M) ENFORCEMENT.—After the effective date of any reporting
36 requirement promulgated pursuant to subparagraph (C)(i)(III) it
37 shall be unlawful for any person to fail to report any release of
38 any extremely hazardous substance as required by that subpara-
39 graph. The Administrator may enforce any regulation or require-
40 ments established by the Board pursuant to subparagraph
41 (C)(i)(III) using the authorities of sections 211113 and 211114 of

1 this title. Any request for information from the owner or operator
2 of a stationary source made by the Board or by the Administrator
3 under this section shall be treated, for purposes of sections
4 203102, 203103, 203104, 211113, 211114, 211116, and 211119
5 of this title and any other enforcement provision of this division,
6 as a request made by the Administrator under section 211114 of
7 this title and may be enforced by the Chairperson of the Board
8 or by the Administrator as provided in that section.

9 (N) SUPPORT AND FACILITIES.—The Administrator shall pro-
10 vide to the Board such support and facilities as may be necessary
11 for operation of the Board.

12 (O) AVAILABILITY OF RECORDS, REPORTS, AND INFORMA-
13 TION.—

14 (i) IN GENERAL.—Consistent with subparagraph (G) and
15 section 211114(c) of this title and except as provided in
16 clause (ii), any records, reports, or information obtained by
17 the Board shall be available to the Administrator, the Sec-
18 retary of Labor, Congress, and the public.

19 (ii) SUBSTANTIAL HARM TO COMPETITIVE POSITION.—On a
20 showing satisfactory to the Board by any person that records,
21 reports, or information or any particular part thereof (other
22 than release data or emission data) to which the Board has
23 access, if made public, is likely to cause substantial harm to
24 the person's competitive position, the Board shall consider the
25 record, report, or information or particular portion thereof
26 confidential in accordance with section 1905 of title 18, ex-
27 cept that such a record, report, or information may be dis-
28 closed to other officers, employees, and authorized representa-
29 tives of the United States concerned with carrying out this
30 division or when relevant under any proceeding under this di-
31 vision. This subparagraph does not constitute authority to
32 withhold records, reports, or information from Congress.

33 (P) SUBMISSIONS AND TRANSMITTALS BY THE BOARD; RE-
34 PORTS; PERFORMANCE OF FUNCTIONS.—

35 (i) COPY TO CONGRESS.—Whenever the Board submits or
36 transmits any budget estimate, budget request, supplemental
37 budget request, or other budget information, legislative rec-
38 ommendation, prepared testimony for congressional hearings,
39 recommendation, or study to the President, the Secretary of
40 Labor, the Administrator, or the Director of the Office of

1 Management and Budget, the Board shall concurrently trans-
2 mit a copy thereof to Congress.

3 (ii) REPORTS NOT SUBJECT TO REVIEW.—No report of the
4 Board shall be subject to review by the Administrator or any
5 Federal agency or to judicial review in any court.

6 (iii) NO AUTHORITY TO REQUIRE PRIOR APPROVAL OR RE-
7 VIEW OF SUBMISSIONS.—No officer or agency of the United
8 States shall have authority to require the Board to submit its
9 budget requests or estimates, legislative recommendations,
10 prepared testimony, comments, recommendations, or reports
11 to any officer or agency of the United States for approval or
12 review prior to the submission of the recommendations, testi-
13 mony, comments, or reports to Congress.

14 (iv) PERFORMANCE OF FUNCTIONS.—In the performance of
15 their functions established by this division, in carrying out
16 any duties under this subsection, the members, officers, and
17 employees of the Board shall not be responsible to or subject
18 to supervision or direction of any officer or employee or agent
19 of EPA, the Department of Labor, or any other agency of the
20 United States, except that the President may remove any
21 member, officer, or employee of the Board for inefficiency, ne-
22 glect of duty, or malfeasance in office.

23 (v) TITLE 5.—Nothing in this section shall affect the appli-
24 cation of title 5 to officers or employees of the Board.

25 (Q) ANNUAL REPORT.—The Board shall annually submit to the
26 President and Congress a report that includes—

27 (i) information on accidental releases that have been inves-
28 tigated by or reported to the Board during the previous year;

29 (ii) recommendations for legislative or administrative action
30 that the Board has made;

31 (iii) the actions that have been taken by the Administrator
32 or the Secretary of Labor or the heads of other agencies to
33 implement those recommendations;

34 (iv) an identification of priorities for study and investiga-
35 tion in the succeeding year;

36 (v) a description of progress in the development of risk-re-
37 duction technologies; and

38 (vi) a description of the response to and implementation of
39 significant research findings on chemical safety in the public
40 and private sector.

1 (7) PREVENTION OF ACCIDENTAL RELEASES OF REGULATED SUB-
2 STANCES.—

3 (A) REQUIREMENTS TO PREVENT ACCIDENTAL RELEASES.—To
4 prevent accidental releases of regulated substances, the Adminis-
5 trator may promulgate release prevention, detection, and correc-
6 tion requirements that may include monitoring, recordkeeping, re-
7 porting, training, vapor recovery, secondary containment, and
8 other design, equipment, work practice, and operational require-
9 ments. Regulations promulgated under this subparagraph shall
10 have an effective date, as determined by the Administrator, ensur-
11 ing compliance as expeditiously as practicable.

12 (B) REASONABLE REGULATIONS AND APPROPRIATE GUIDANCE
13 FOR THE PREVENTION AND DETECTION OF ACCIDENTAL RE-
14 LEASES OF REGULATED SUBSTANCES.—

15 (i) IN GENERAL.—

16 (I) PROMULGATION.—The Administrator shall promul-
17 gate reasonable regulations and appropriate guidance to
18 provide, to the greatest extent practicable, for the pre-
19 vention and detection of accidental releases of regulated
20 substances and for response to such releases by the own-
21 ers or operators of the sources of such releases. The Ad-
22 ministrator shall utilize the expertise of the Secretary of
23 Transportation and Secretary of Labor in promulgating
24 the regulations.

25 (II) CONTENTS.—The regulations shall—

26 (aa) as appropriate, cover the use, operation, re-
27 pair, replacement, and maintenance of equipment to
28 monitor, detect, inspect, and control such accidental
29 releases, including training of persons in the use
30 and maintenance of such equipment and in the con-
31 duct of periodic inspections;

32 (bb) include procedures and measures for emer-
33 gency response after an accidental release of a regu-
34 lated substance to protect human health and the en-
35 vironment;

36 (cc) cover storage and operations;

37 (dd) as appropriate, recognize differences in size,
38 operations, processes, class, and categories of
39 sources and the voluntary actions of sources to pre-
40 vent such accidental releases and respond to such
41 accidental releases; and

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1 (ec) be applicable to a stationary source 3 years
2 after the date of promulgation, or 3 years after the
3 date on which a regulated substance present at a
4 source in more than threshold amounts is first listed
5 under paragraph (3), whichever is later.

6 (ii) RISK MANAGEMENT PLANS.—

7 (I) IN GENERAL.—The regulations under this sub-
8 paragraph shall require the owner or operator of a sta-
9 tionary source at which a regulated substance is present
10 in more than a threshold quantity to prepare and imple-
11 ment a risk management plan to detect and prevent or
12 minimize accidental releases of regulated substances
13 from the stationary source, and to provide a prompt
14 emergency response to any such releases in order to pro-
15 tect human health and the environment.

16 (II) CONTENTS.—A risk management plan shall pro-
17 vide for compliance with the requirements of this sub-
18 section and include—

19 (aa) a hazard assessment to assess the potential
20 effects of an accidental release of any regulated sub-
21 stance;

22 (bb) a program for preventing accidental releases
23 of regulated substances, including safety pre-
24 cautions and maintenance, monitoring, and em-
25 ployee training measures to be used at the source;
26 and

27 (cc) a response program providing for specific ac-
28 tions to be taken in response to an accidental re-
29 lease of a regulated substance so as to protect
30 human health and the environment, including proce-
31 dures for informing the public and local agencies re-
32 sponsible for responding to accidental releases,
33 emergency health care, and employee training meas-
34 ures.

35 (III) HAZARD ASSESSMENTS.—A hazard assessment
36 under subclause (II)(aa) shall include an estimate of po-
37 tential release quantities, a determination of downwind
38 effects (including potential exposures to affected popu-
39 lations), a previous release history of the past 5 years
40 (including the size, concentration, and duration of re-

1 leases), and an evaluation of worst case accidental re-
2 leases.

3 (IV) GUIDELINES.—At the time at which regulations
4 are promulgated under this subparagraph, the Adminis-
5 trator shall promulgate guidelines to assist stationary
6 sources in the preparation of risk management plans.
7 The guidelines shall, to the extent practicable, include
8 model risk management plans.

9 (iii) AVAILABILITY OF RISK MANAGEMENT PLANS.—The
10 owner or operator of a stationary source covered by clause (ii)
11 shall—

12 (I) register a risk management plan prepared under
13 this subparagraph with the Administrator before the ef-
14 fective date of regulations under clause (i) in such form
15 and manner as the Administrator shall, by regulation,
16 require; and

17 (II) submit the risk management plan to—

18 (aa) the Chemical Safety and Hazard Investiga-
19 tion Board;

20 (bb) the State in which the stationary source is
21 located; and

22 (cc) any local agency or entity having responsibil-
23 ity for planning for or responding to accidental re-
24 leases that may occur at the source.

25 (iv) PUBLIC AVAILABILITY.—A risk management plan shall
26 be available to the public under section 211114(e) of this
27 title.

28 (v) AUDITING.—The Administrator shall establish, by regu-
29 lation, an auditing system to regularly review and, if nec-
30 essary, require revision in risk management plans to ensure
31 that the risk management plans comply with this subpara-
32 graph. Each risk management plan shall be updated periodi-
33 cally as required by the Administrator, by regulation.

34 (C) CONSULTATION; COORDINATION.—In carrying out this
35 paragraph, the Administrator shall—

36 (i) consult with the Secretary of Labor and the Secretary
37 of Transportation; and

38 (ii) coordinate any requirements under this paragraph with
39 any requirements established for comparable purposes by the
40 Occupational Safety and Health Administration or the De-
41 partment of Transportation.

1 (D) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS IN-
2 FORMATION.—

3 (i) DEFINITIONS.—In this subparagraph:

4 (I) COVERED PERSON.—The term “covered person”
5 means—

6 (aa) an officer or employee of the United States;

7 (bb) an officer or employee of an agent or con-
8 tractor of the Federal Government;

9 (cc) an officer or employee of a State or local gov-
10 ernment;

11 (dd) an officer or employee of an agent or con-
12 tractor of a State or local government;

13 (ee) an individual affiliated with an entity that
14 has been given, by a State or local government, re-
15 sponsibility for preventing, planning for, or respond-
16 ing to accidental releases;

17 (ff) an officer or employee or an agent or contrac-
18 tor of an entity described in item (ee); and

19 (gg) a qualified researcher under clause (vi).

20 (II) OFFICIAL USE.—The term “official use” means
21 an action of a Federal, State, or local government agency
22 or an entity described in subclause (I)(ee) intended to
23 carry out a function relevant to preventing, planning for,
24 or responding to accidental releases.

25 (III) OFF-SITE CONSEQUENCE ANALYSIS INFORMA-
26 TION.—The term “off-site consequence analysis informa-
27 tion” means the portions of a risk management plan, ex-
28 cluding the executive summary of the plan, consisting of
29 an evaluation of 1 or more worst-case release scenarios
30 or alternative release scenarios, and any electronic data-
31 base created by the Administrator from those portions.

32 (IV) RISK MANAGEMENT PLAN.—The term “risk man-
33 agement plan” means a risk management plan submitted
34 to the Administrator by an owner or operator of a sta-
35 tionary source under subparagraph (B)(iii).

36 (ii) REGULATIONS.—The President shall—

37 (I) assess—

38 (aa) the increased risk of terrorist and other
39 criminal activity associated with the posting of off-
40 site consequence analysis information on the Inter-
41 net; and

1 (bb) the incentives created by public disclosure of
2 off-site consequence analysis information for reduc-
3 tion in the risk of accidental releases; and

4 (II) based on the assessment under subclause (I), pro-
5 mulgate regulations governing the distribution of off-site
6 consequence analysis information in a manner that, in
7 the opinion of the President, minimizes the likelihood of
8 accidental releases and the risk described in subclause
9 (I)(aa) and the likelihood of harm to public health and
10 welfare, and—

11 (aa) allows access by any member of the public
12 to paper copies of off-site consequence analysis in-
13 formation for a limited number of stationary
14 sources located anywhere in the United States, with-
15 out any geographical restriction;

16 (bb) allows other public access to off-site con-
17 sequence analysis information as appropriate;

18 (cc) allows access for official use by a covered
19 person described in any of items (cc) through (ff)
20 of clause (i)(I) (referred to in this subclause as a
21 “State or local covered person”) to off-site con-
22 sequence analysis information relating to stationary
23 sources located in the person’s State;

24 (dd) allows a State or local covered person to pro-
25 vide, for official use, off-site consequence analysis
26 information relating to stationary sources located in
27 the person’s State to a State or local covered person
28 in a contiguous State; and

29 (ee) allows a State or local covered person to ob-
30 tain for official use, by request to the Adminis-
31 trator, off-site consequence analysis information
32 that is not available to the person under item (cc).

33 (iii) AVAILABILITY UNDER FREEDOM OF INFORMATION
34 ACT.—

35 (I) IN GENERAL.—Off-site consequence analysis infor-
36 mation covered by the regulations, and any ranking of
37 stationary sources derived from the information, shall
38 not be made available under section 552 of title 5.

39 (II) APPLICABILITY.—Subclause (I) applies to off-site
40 consequence analysis information submitted to the Ad-
41 ministrator at any time.

1 (iv) PROHIBITION OF UNAUTHORIZED DISCLOSURE OF IN-
2 FORMATION BY COVERED PERSON.—

3 (I) IN GENERAL.—A covered person shall not disclose
4 to the public off-site consequence analysis information in
5 any form, or any statewide or national ranking of identi-
6 fied stationary sources derived from such information,
7 except as authorized by this subparagraph (including the
8 regulations promulgated under clause (ii)).

9 (II) CRIMINAL PENALTIES.—Criminal penalties for a
10 violation of a restriction or prohibition established by
11 this subparagraph (including the regulations promul-
12 gated under clause (ii)) are provided under section 732
13 of title 18.

14 (III) APPLICABILITY.—If the owner or operator of a
15 stationary source makes off-site consequence analysis in-
16 formation relating to that stationary source available to
17 the public without restriction—

18 (aa) subclause (I) and section 732 of title 18
19 shall not apply with respect to the information; and

20 (bb) the owner or operator shall notify the Ad-
21 ministrator of the public availability of the informa-
22 tion.

23 (IV) LIST.—The Administrator shall maintain and
24 make publicly available a list of all stationary sources
25 that have provided notification under subclause (III)(bb).

26 (v) NOTICE.—The Administrator shall provide notice of the
27 definition of official use as provided in clause (i) and exam-
28 ples of actions that would and would not meet that definition,
29 and notice of the restrictions on further dissemination and
30 the penalties established by this division to each covered per-
31 son who receives off-site consequence analysis information for
32 an official use under the regulations promulgated under
33 clause (ii).

34 (vi) QUALIFIED RESEARCHERS.—

35 (I) IN GENERAL.—The Administrator, in consultation
36 with the Attorney General, shall develop and implement
37 a system for providing off-site consequence analysis in-
38 formation, including facility identification, to any quali-
39 fied researcher, including a qualified researcher from in-
40 dustry or any public interest group.

1 (II) LIMITATION ON DISSEMINATION.—The system
2 shall not allow a qualified researcher to disseminate, or
3 make available on the internet, the off-site consequence
4 analysis information, or any portion of the off-site con-
5 sequence analysis information, received under this clause.

6 (vii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In
7 consultation with the Attorney General and the heads of other
8 appropriate Federal agencies, the Administrator shall estab-
9 lish an information technology system that provides for the
10 availability to the public of off-site consequence analysis infor-
11 mation by means of a central database under the control of
12 the Federal Government that contains information that users
13 may read, but that provides no means by which an electronic
14 or mechanical copy of the information may be made.

15 (viii) VOLUNTARY INDUSTRY ACCIDENT PREVENTION
16 STANDARDS.—EPA, the Department of Justice, and other
17 appropriate agencies may provide technical assistance to own-
18 ers and operators of stationary sources and participate in the
19 development of voluntary industry standards that will help
20 achieve the objectives set forth in paragraph (2).

21 (ix) EFFECT ON STATE OR LOCAL LAW.—

22 (I) IN GENERAL.—Subject to subclause (II), this sub-
23 paragraph (including the regulations promulgated under
24 this subparagraph) shall supersede any provision of
25 State or local law that is inconsistent with this subpara-
26 graph (including the regulations).

27 (II) AVAILABILITY OF INFORMATION UNDER STATE
28 LAW.—Nothing in this subparagraph precludes a State
29 from making available data on the off-site consequences
30 of chemical releases collected in accordance with State
31 law.

32 (x) REPORT ON RESULT OF REGULATIONS.—

33 (I) IN GENERAL.—The Attorney General, in consulta-
34 tion with appropriate Federal, State, and local govern-
35 ment agencies, affected industry, and the public, shall
36 submit to Congress a report that describes the extent to
37 which regulations promulgated under this paragraph
38 have resulted in actions, including the design and main-
39 tenance of safe facilities, that are effective in detecting,
40 preventing, and minimizing the consequences of releases
41 of regulated substances that may be caused by criminal

1 activity. As part of the report, the Attorney General,
2 using available data to the extent possible, and a sam-
3 pling of covered stationary sources selected at the discre-
4 tion of the Attorney General, and in consultation with
5 appropriate Federal, State, and local government agen-
6 cies, affected industry, and the public, shall review the
7 vulnerability of covered stationary sources to criminal
8 and terrorist activity, current industry practices regard-
9 ing site security, and security of transportation of regu-
10 lated substances. The Attorney General shall submit the
11 report, containing the results of the review, together with
12 recommendations, if any, for reducing vulnerability of
13 covered stationary sources to criminal and terrorist activ-
14 ity, to the Committee on Energy and Commerce of the
15 House of Representatives and the Committee on Envi-
16 ronment and Public Works of the Senate and other rel-
17 evant committees of Congress.

18 (II) NONAVAILABILITY OF INFORMATION DEVELOPED
19 OR RECEIVED FOR REPORT.—Information developed by
20 the Attorney General or requested by the Attorney Gen-
21 eral and received from a covered stationary source for
22 the purpose of conducting the review under subclause (I)
23 shall be exempt from disclosure under section 552 of
24 title 5 if disclosure of the information would pose a
25 threat to national security.

26 (xi) SCOPE.—This subparagraph—

27 (I) applies only to covered persons; and

28 (II) does not restrict the dissemination of off-site con-
29 sequence analysis information by any covered person in
30 any manner or form except in the form of a risk man-
31 agement plan or an electronic data base created by the
32 Administrator from off-site consequence analysis infor-
33 mation.

34 (xii) AUTHORIZATION OF APPROPRIATIONS.—There are au-
35 thorized to be appropriated to the Administrator and the At-
36 torney General such sums as are necessary to carry out this
37 subparagraph (including the regulations promulgated under
38 clause (ii)), to remain available until expended.

39 (E) DISTINCTIONS.—Regulations promulgated under this para-
40 graph may make distinctions between various types, classes, and
41 kinds of facilities, devices, and systems, taking into consideration

1 factors that include the size, location, process, process controls,
2 quantity of substances handled, potency of substances, and re-
3 sponse capabilities present at any stationary source.

4 (8) RESEARCH ON HAZARD ASSESSMENTS.—The Administrator may
5 collect and publish information on accident scenarios and consequences
6 covering a range of possible events for substances listed under para-
7 graph (3). The Administrator shall establish a program of long-term
8 research to develop and disseminate information on methods and tech-
9 niques for hazard assessment that may be useful in improving and vali-
10 dating the procedures employed in the preparation of hazard assess-
11 ments under this subsection.

12 (9) ORDER AUTHORITY.—

13 (A) IN GENERAL.—In addition to any other action taken, when
14 the Administrator determines that there may be an imminent and
15 substantial endangerment to the human health or welfare or the
16 environment because of an actual or threatened accidental release
17 of a regulated substance, the Administrator may secure such relief
18 as may be necessary to abate the danger or threat, and the district
19 court of the United States for the district in which the threat oc-
20 curs shall have jurisdiction to grant such relief as the public inter-
21 est and the equities of the case may require. The Administrator
22 may also, after notice to the State in which the stationary source
23 is located, take other action under this paragraph including issu-
24 ing such orders as may be necessary to protect human health. The
25 Administrator shall take action under section 203103 of this title
26 rather than this paragraph whenever the authority of that section
27 is adequate to protect human health and the environment.

28 (B) ENFORCEMENT.—An order issued pursuant to this para-
29 graph may be enforced in an action brought in the appropriate
30 United States district court as if the order were issued under sec-
31 tion 203103 of this title.

32 (C) GUIDANCE.—The Administrator shall publish guidance for
33 using the order authorities established by this paragraph. The
34 guidance shall provide for the coordinated use of the authorities
35 of this paragraph with other emergency powers authorized by sec-
36 tion 106 of the Comprehensive Environmental Response, Com-
37 pensation, and Liability Act of 1980 (42 U.S.C. 9606), sections
38 308, 309, 311(c), and 504(a) of the Federal Water Pollution Con-
39 trol Act (33 U.S.C. 1318, 1319, 1321(c), 1364(a)), sections 3007,
40 3008, 3013, and 7003 of the Solid Waste Disposal Act (42 U.S.C.
41 6927, 6928, 6934, 6973), sections 1431 and 1445 of the Safe

1 Drinking Water Act (42 U.S.C. 300i, 300j-4), sections 5 and 7
2 of the Toxic Substances Control Act (15 U.S.C. 2604, 2606), and
3 sections 203103, 211113, and 211114 of this title.

4 (10) STATE AUTHORITY.—Nothing in this subsection shall preclude,
5 deny, or limit any right of a State or political subdivision thereof to
6 adopt or enforce any regulation, requirement, limitation, or standard
7 (including any procedural requirement) that is more stringent than a
8 regulation, requirement, limitation, or standard in effect under this
9 subsection or that applies to a substance not subject to this subsection.

10 (11) CONSISTENCY WITH ASME, ASNI, AND ASTM STANDARDS AND
11 RECOMMENDATIONS.—Any regulations promulgated pursuant to this
12 subsection shall, to the maximum extent practicable, consistent with
13 this subsection, be consistent with the recommendations and standards
14 established by the American Society of Mechanical Engineers, the
15 American National Standards Institute, or ASTM International.

16 (12) CONCERNS OF SMALL BUSINESS.—The Administrator shall take
17 into consideration the concerns of small business in promulgating regu-
18 lations under this subsection.

19 (13) RADIONUCLIDES.—Nothing in this subsection shall be inter-
20 preted, construed, or applied to impose requirements affecting, or to
21 grant the Administrator, the Chemical Safety and Hazard Investigation
22 Board, or any other agency any authority to regulate (including re-
23 quirements for hazard assessment), the accidental release of radio-
24 nuclides arising from the construction and operation of facilities li-
25 censed by the Nuclear Regulatory Commission.

26 (14) PROHIBITION.—It shall be unlawful for any person to operate
27 any stationary source subject to a regulation or requirement imposed
28 under this subsection in violation of the regulation or requirement.
29 Each regulation or requirement under this subsection shall, for pur-
30 poses of sections 203102, 203104, 211113, 211114, 211116, and
31 211119 of this title and other enforcement provisions of this division,
32 be treated as a standard in effect under subsection (d).

33 (15) PERMITS.—Notwithstanding subdivision 6 or this section, no
34 stationary source shall be required to apply for, or operate pursuant
35 to, a permit issued under that subdivision solely because the source is
36 subject to regulations or requirements under this subsection.

37 (16) OCCUPATIONAL SAFETY AND HEALTH.—In exercising any au-
38 thority under this subsection, the Administrator shall not, for purposes
39 of section 4(b)(1) of the Occupational Safety and Health Act of 1970
40 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory author-

1 ity to prescribe or enforce standards or regulations affecting occupa-
2 tional safety and health.

3 **§ 211113. Federal enforcement**

4 (a) DEFINITIONS.—In this section:

5 (1) OPERATOR.—

6 (A) IN GENERAL.—The term “operator” includes any person
7 who is a part of senior management personnel or is a corporate
8 officer.

9 (B) EXCLUSIONS.—Except in the case of a knowing and willful
10 violation, the term “operator” does not include any person who is
11 a stationary engineer or technician responsible for the operation,
12 maintenance, repair, or monitoring of equipment and facilities and
13 who often has supervisory and training duties but who is not a
14 part of senior management personnel and not a corporate officer.

15 (2) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—The term
16 “period of federally assumed enforcement” means a period described in
17 subsection (b)(2)(C).

18 (b) IN GENERAL.—

19 (1) ORDER TO COMPLY WITH SIP.—Whenever, on the basis of any
20 information available to the Administrator, the Administrator finds
21 that any person has violated or is in violation of any requirement or
22 prohibition of an applicable implementation plan or permit, the Admin-
23 istrator shall notify the person and the State in which the plan applies
24 of the finding. At any time after the expiration of 30 days following
25 the date on which the notice of violation is issued, the Administrator
26 may, without regard to the period of violation (subject to section 2462
27 of title 28)—

28 (A) issue an order requiring the person to comply with the re-
29 quirements or prohibitions of the plan or permit;

30 (B) issue an administrative penalty order in accordance with
31 subsection (e); or

32 (C) bring a civil action in accordance with subsection (e).

33 (2) STATE FAILURE TO ENFORCE SIP OR PERMIT PROGRAM.—

34 (A) NOTICE TO STATE.—Whenever, on the basis of information
35 available to the Administrator, the Administrator finds that viola-
36 tions of an applicable implementation plan or an approved permit
37 program under subdivision 6 are so widespread that the violations
38 appear to result from a failure of the State in which the plan or
39 permit program applies to enforce the plan or permit program ef-
40 fectively, the Administrator shall so notify the State. In the case

1 of a permit program, the notice shall be made in accordance with
2 subdivision 6.

3 (B) PUBLIC NOTICE.—If the Administrator finds that the fail-
4 ure extends beyond the 30th day after the notice (90 days in the
5 case of such a permit program), the Administrator shall give pub-
6 lic notice of that finding.

7 (C) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—During
8 the period beginning with the public notice under subparagraph
9 (B) and ending when the State satisfies the Administrator that
10 the State will enforce the plan or permit program, the Adminis-
11 trator may enforce any requirement or prohibition of the plan or
12 permit program with respect to any person by—

13 (i) issuing an order requiring the person to comply with the
14 requirement or prohibition;

15 (ii) issuing an administrative penalty order in accordance
16 with subsection (e); or

17 (iii) bringing a civil action in accordance with subsection
18 (c).

19 (3) EPA ENFORCEMENT OF OTHER REQUIREMENTS.—Except for a
20 requirement or prohibition enforceable under paragraph (1) or (2),
21 when, on the basis of any information available to the Administrator,
22 the Administrator finds that any person has violated, or is in violation
23 of, any other requirement or prohibition of this subdivision, section
24 203103 of this title, subdivision 5, 6, or 7 (including a requirement or
25 prohibition of any regulation, plan, order, waiver, or permit promul-
26 gated, issued, or approved under those provisions, or for the payment
27 of any fee owed to the United States under this division, other than
28 subdivision 3), the Administrator may—

29 (A) issue an administrative penalty order in accordance with
30 subsection (b);

31 (B) issue an order requiring the person to comply with the re-
32 quirement or prohibition;

33 (C) bring a civil action in accordance with subsection (c) or sec-
34 tion 203105 of this title; or

35 (D) request the Attorney General to commence a criminal action
36 in accordance with subsection (d).

37 (4) REQUIREMENTS FOR ORDERS.—

38 (A) OPPORTUNITY TO CONFER.—An order issued under this
39 subsection (other than an order relating to a violation of section
40 211112 of this title) shall not take effect until the person to which

1 it is issued has had an opportunity to confer with the Adminis-
2 trator concerning the alleged violation.

3 (B) COPY TO STATE AIR POLLUTION CONTROL AGENCY.—A
4 copy of any order issued under this subsection shall be sent to the
5 State air pollution control agency of any State in which the viola-
6 tion occurs.

7 (C) CORPORATIONS.—In any case in which an order under this
8 subsection (or notice to a violator under paragraph (1)) is issued
9 to a corporation, a copy of the order (or notice) shall be issued
10 to appropriate corporate officers.

11 (D) CONTENTS.—Any order issued under this subsection
12 shall—

13 (i) state with reasonable specificity the nature of the viola-
14 tion;

15 (ii) specify a time for compliance that the Administrator
16 determines is reasonable, taking into account the seriousness
17 of the violation and any good faith efforts to comply with ap-
18 plicable requirements; and

19 (iii) require the person to which it is issued to comply with
20 the requirement as expeditiously as practicable, but in no
21 event longer than 1 year after the date the order is issued.

22 (E) NONRENEWABILITY.—An order issued under this subsection
23 shall be nonrenewable.

24 (F) EFFECT.—No order issued under this subsection shall—

25 (i) preclude the State or the Administrator from assessing
26 any penalties or otherwise affect or limit the authority of the
27 State or the United States to enforce under other provisions
28 of this division; or

29 (ii) affect any person's obligations to comply with any sec-
30 tion of this division or with a term or condition of any permit
31 or applicable implementation plan promulgated or approved
32 under this division.

33 (5) FAILURE TO COMPLY WITH NEW SOURCE REQUIREMENTS.—

34 (A) IN GENERAL.—Whenever, on the basis of any available in-
35 formation, the Administrator finds that a State is not acting in
36 compliance with any requirement or prohibition of this division re-
37 lating to the construction of new sources or the modification of ex-
38 isting sources, the Administrator may—

39 (i) issue an order prohibiting the construction or modifica-
40 tion of any major stationary source in any area to which the
41 requirement or prohibition applies;

1 (ii) issue an administrative penalty order in accordance
2 with subsection (e); or

3 (iii) bring a civil action under subsection (e).

4 (B) CRIMINAL ACTION.—Nothing in this subsection shall pre-
5 clude the United States from commencing a criminal action under
6 subsection (d) at any time for any violation described in subpara-
7 graph (A).

8 (e) CIVIL JUDICIAL ENFORCEMENT.—

9 (1) IN GENERAL.—The Administrator shall, as appropriate, in the
10 case of any person that is the owner or operator of an affected source,
11 a major emitting facility, or a major stationary source, and may, in the
12 case of any other person, commence a civil action for a permanent or
13 temporary injunction, or to assess and recover a civil penalty of not
14 more than \$25,000 per day for each violation, or both—

15 (A) whenever the person has violated, or is in violation of, any
16 requirement or prohibition of an applicable implementation plan or
17 permit;

18 (B) whenever the person has violated, or is in violation of, any
19 other requirement or prohibition of this subdivision, section
20 203103 of this title, or subdivision 5, 6, or 7 (including a require-
21 ment or prohibition of any regulation, order, waiver or permit pro-
22 mulgated, issued, or approved under this division, or for the pay-
23 ment of any fee owed the United States under this division (other
24 than subdivision 3); or

25 (C) whenever the person attempts to construct or modify a
26 major stationary source in any area with respect to which a find-
27 ing under subsection (b)(5)(A) has been made.

28 (2) TIME FOR ACTION.—An action under paragraph (1)(A) shall be
29 commenced—

30 (A) during any period of federally assumed enforcement; or

31 (B) more than 30 days following the date of the Administrator's
32 notification under subsection (b)(1) that the person has violated,
33 or is in violation of, the requirement or prohibition.

34 (3) PLACE FOR ACTION.—Any action under this subsection may be
35 brought in the United States district court for the district in which the
36 violation is alleged to have occurred, or is occurring, or in which the
37 defendant resides, or where the defendant's principal place of business
38 is located, and the court shall have jurisdiction to restrain the violation,
39 to require compliance, to assess a civil penalty, to collect any fees owed
40 the United States under this division (other than subdivision 3) and

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1 any noncompliance assessment and nonpayment penalty owed under
2 section 211119 of this title, and to award any other appropriate relief.

3 (4) NOTICE TO STATE AIR POLLUTION CONTROL AGENCY.—Notice of
4 the commencement of an action under this subsection shall be given to
5 the appropriate State air pollution control agency.

6 (5) COSTS.—In the case of any action brought by the Administrator
7 under this subsection, the court may award costs of litigation (includ-
8 ing reasonable attorney's fees and expert witness's fees) to the party
9 or parties against which the action was brought if the court finds that
10 the action was unreasonable.

11 (d) CRIMINAL PENALTIES.—

12 (1) IN GENERAL.—Criminal penalties for a violation described in
13 paragraph (2) are provided under section 732 of title 18.

14 (2) VIOLATIONS.—The violations referred to in paragraph (1) are as
15 follows:

16 (A) A knowing violation by a person of—

17 (i) a requirement or prohibition of an applicable implemen-
18 tation plan—

19 (I) during any period of federally assumed enforce-
20 ment; or

21 (II) more than 30 days after having been notified by
22 the Administrator under subsection (b)(1) that the per-
23 son is violating the requirement or prohibition);

24 (ii)(I) subsection (b)(1);

25 (II) section 203103, 211111(j), 211112, 211113(b)(1),
26 211114, 211128, 213107(a), 213109, 235102(a), or
27 235103(c) of this title; or

28 (III) subdivision 5 or 7 of division A of subtitle II of title
29 55;

30 (iii) a requirement of a regulation, order, waiver, or permit
31 promulgated or approved under a section or subdivision speci-
32 fied in clause (ii); or

33 (iv) a requirement for the payment of a fee owed the
34 United States under this division (other than subdivision 3);

35 (B)(i) A knowing making of any false material statement, rep-
36 resentation, or certification in, or omission of material information
37 from, or knowing alteration, concealment, or failure to file or
38 maintain any notice, application, record, report, plan, or other doc-
39 ument required pursuant to this division to be filed or maintained
40 (whether with respect to the requirements imposed by the Admin-
41 istrator or with respect to the requirements imposed by a State).

1 (ii) A knowing failure to notify or report as required under this
2 division.

3 (iii) A knowing falsification, tampering with, rendering inac-
4 curate, or failure to install any monitoring device or method re-
5 quired to be maintained or followed under this division.

6 (C) A knowing failure to pay any fee owed the United States
7 under subdivision 1, 2, 5, 6, or 7.

8 (D) A negligent release by a person into the ambient air of any
9 hazardous air pollutant listed pursuant to section 211112 of this
10 title or of any extremely hazardous substance listed pursuant to
11 section 302(a)(2) of the Emergency Planning and Community
12 Right-To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not
13 listed in section 211112 of this title, if, at the time, the person
14 negligently places another person in imminent danger of death or
15 serious bodily injury.

16 (E) A knowing release by a person into the ambient air of any
17 hazardous air pollutant listed pursuant to section 211112 of this
18 title or any extremely hazardous substance listed pursuant to sec-
19 tion 302(a)(2) of the Emergency Planning and Community Right-
20 To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not listed
21 in section 211112 of this title, if, at the time, the person knows
22 that the person thereby places another person in imminent danger
23 of death or serious bodily injury.

24 (e) ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES.—

25 (1) IN GENERAL.—

26 (A) ISSUANCE OF ADMINISTRATIVE ORDER.—The Administrator
27 may issue an administrative order against any person assessing a
28 civil administrative penalty of up to \$25,000 per day of violation
29 whenever, on the basis of any available information, the Adminis-
30 trator finds that the person—

31 (i) has violated or is violating any requirement or prohibi-
32 tion of an applicable implementation plan; or

33 (ii) has violated or is violating any other requirement or
34 prohibition of this subdivision or subdivision 1, 5, 6, or 7, in-
35 cluding a requirement or prohibition of any regulation, order,
36 waiver, permit, or plan promulgated, issued, or approved
37 under this division;

38 (iii) has failed to pay any fee owed the United States under
39 this division (other than subdivision 3); or

1 (iv) attempts to construct or modify a major stationary
2 source in any area with respect to which a finding under sub-
3 section (b)(5) has been made.

4 (B) TIME FOR ISSUANCE.—An administrative order under sub-
5 paragraph (A)(i) shall be issued—

6 (i) during any period of federally assumed enforcement; or

7 (ii) more than 30 days following the date of the Adminis-
8 trator's notification under subsection (b)(1) of a finding that
9 the person has violated or is violating the requirement or pro-
10 hibition.

11 (C) LIMITATION.—The Administrator's authority under this
12 paragraph shall be limited to matters where the total penalty
13 sought does not exceed \$200,000 and the 1st alleged date of viola-
14 tion occurred not more than 12 months prior to the initiation of
15 the administrative action, except where the Administrator and the
16 Attorney General jointly determine that a matter involving a larg-
17 er penalty amount or longer period of violation is appropriate for
18 administrative penalty action. Any such determination by the Ad-
19 ministrator and the Attorney General shall not be subject to judi-
20 cial review.

21 (2) PROCEDURE.—

22 (A) OPPORTUNITY FOR A HEARING.—An administrative order
23 under paragraph (1) shall be issued after opportunity for a hear-
24 ing on the record in accordance with sections 554 and 556 of title
25 5. The Administrator shall issue reasonable rules for discovery and
26 other procedures for hearings under this paragraph. Before issu-
27 ing such an order, the Administrator shall give to the person to
28 be assessed an administrative penalty written notice of the Admin-
29 istrator's proposal to issue the order and provide the person an
30 opportunity to request a hearing on the order, within 30 days
31 after the date on which the notice is received by the person.

32 (B) COMPROMISE, MODIFICATION, OR REMISSION OF ADMINIS-
33 TRATIVE PENALTY.—The Administrator may compromise, modify,
34 or remit, with or without conditions, any administrative penalty
35 that may be imposed under this subsection.

36 (3) FIELD CITATION PROGRAM.—

37 (A) IN GENERAL.—The Administrator may implement, after
38 consultation with the Attorney General and the States, a field cita-
39 tion program through regulations establishing appropriate minor
40 violations for which field citations assessing civil penalties not to

1 exceed \$5,000 per day of violation may be issued by officers or
2 employees designated by the Administrator.

3 (B) ELECTION TO PAY OR REQUEST HEARING.—Any person to
4 whom a field citation is assessed may, within a reasonable time
5 as prescribed by the Administrator by regulation, elect to pay the
6 penalty assessment or to request a hearing on the field citation.
7 If a request for a hearing is not made within the time specified
8 in the regulation, the penalty assessment in the field citation shall
9 be final. Such a hearing shall not be subject to section 554 or 556
10 of title 5, but shall provide a reasonable opportunity to be heard
11 and to present evidence.

12 (C) NO DEFENSE TO FURTHER ENFORCEMENT.—Payment of a
13 civil penalty required by a field citation shall not be a defense to
14 further enforcement by the United States or a State to correct a
15 violation, or to assess the statutory maximum penalty pursuant to
16 other authorities in this division, if the violation continues.

17 (4) JUDICIAL REVIEW.—

18 (A) IN GENERAL.—Any person against which a civil penalty is
19 assessed under paragraph (3) or to which an administrative pen-
20 alty order is issued under paragraph (1) may seek review of the
21 assessment in the United States District Court for the District of
22 Columbia or for the district in which the violation is alleged to
23 have occurred, in which the person resides, or where the person's
24 principal place of business is located, by filing in the court within
25 30 days after the date on which the administrative penalty order
26 becomes final under paragraph (2), the assessment becomes final
27 under paragraph (3), or a final decision following a hearing under
28 paragraph (3) is rendered, and by simultaneously sending a copy
29 of the filing by certified mail to the Administrator and the Attor-
30 ney General.

31 (B) RECORD.—Within 30 days after the date of a filing under
32 subparagraph (A), the Administrator shall file in the court a cer-
33 tified copy, or certified index, as appropriate, of the record on
34 which the administrative penalty order or assessment was issued.

35 (C) SCOPE OF REVIEW.—The court shall not set aside or re-
36 mand the order or assessment unless there is not substantial evi-
37 dence in the record, taken as a whole, to support the finding of
38 a violation or unless the order or penalty assessment constitutes
39 an abuse of discretion.

1 (D) NO OTHER JUDICIAL REVIEW.—An order or penalty assess-
2 ment described in subparagraph (A) shall not be subject to review
3 by any court except as provided in this paragraph.

4 (E) RECOVERY OF CIVIL PENALTIES.—In any proceeding under
5 this paragraph, the United States may seek to recover civil pen-
6 alties ordered or assessed under this section.

7 (5) FAILURE TO PAY ASSESSMENT OR COMPLY WITH ADMINISTRA-
8 TIVE ORDER.—

9 (A) IN GENERAL.—If any person fails to pay an assessment of
10 a civil penalty or fails to comply with an administrative penalty
11 order—

12 (i) after the order or assessment has become final; or

13 (ii) after a court in an action brought under paragraph (4)

14 has entered a final judgment in favor of the Administrator;
15 the Administrator shall request the Attorney General to bring a
16 civil action in an appropriate United States district court to en-
17 force the order or to recover the amount ordered or assessed (plus
18 interest at rates established pursuant to section 6621(a)(2) of the
19 Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the
20 date of the final order or decision or the date of the final judg-
21 ment, as the case may be).

22 (B) VALIDITY, AMOUNT, AND APPROPRIATENESS NOT SUBJECT
23 TO REVIEW.—In a civil action under subparagraph (A), the valid-
24 ity, amount, and appropriateness of the order or assessment shall
25 not be subject to review.

26 (C) ENFORCEMENT EXPENSES.—Any person that fails to pay
27 on a timely basis a civil penalty ordered or assessed under this
28 section shall be required to pay, in addition to the civil penalty
29 and interest, the enforcement expenses of the United States, in-
30 cluding attorney's fees and costs incurred by the United States for
31 collection proceedings and a quarterly nonpayment penalty for
32 each quarter during which the failure to pay persists. The non-
33 payment penalty shall be 10 percent of the aggregate amount of
34 the person's outstanding penalties and nonpayment penalties ac-
35 crued as of the beginning of each such quarter.

36 (f) PENALTY ASSESSMENT CRITERIA.—

37 (1) FACTORS.—In determining the amount of any civil penalty to be
38 assessed under this section, the Administrator or the court, as appro-
39 priate, shall take into consideration (in addition to such other factors
40 as justice may require)—

41 (A) the size of the business;

- 1 (B) the economic impact of the civil penalty on the business;
2 (C) the violator's full compliance history and good faith efforts
3 to comply;
4 (D) the duration of the violation as established by any credible
5 evidence (including evidence other than the applicable test meth-
6 od);
7 (E) payment by the violator of penalties previously assessed for
8 the same violation;
9 (F) the economic benefit of noncompliance; and
10 (G) the seriousness of the violation.

11 (2) LIMITATION.—The court shall not assess a penalty for non-
12 compliance with an administrative subpoena under section 203102(a)
13 of this title, or an action under section 211114 of this title, where the
14 violator had sufficient cause to violate or fail or refuse to comply with
15 the subpoena or action.

16 (3) CIVIL PENALTY FOR EACH DAY OF VIOLATION.—A civil penalty
17 may be assessed for each day of violation. For purposes of determining
18 the number of days of violation for which a civil penalty may be as-
19 sessed under subsection (c) or (e)(1) or section 203104(b) of this title,
20 where the Administrator or an air pollution control agency has notified
21 the source of the violation, and the plaintiff makes a prima facie show-
22 ing that the conduct or events giving rise to the violation are likely to
23 have continued or recurred past the date of notice, the days of violation
24 shall be presumed to include the date of the notice and each day there-
25 after until the violator establishes that continuous compliance has been
26 achieved, except to the extent that the violator can prove by a prepon-
27 derance of the evidence that there were intervening days during which
28 no violation occurred or that the violation was not continuing in nature.

29 (g) AWARDS.—

30 (1) IN GENERAL.—The Administrator may pay an award, not to ex-
31 ceed \$10,000, to any person that furnishes information or services that
32 lead to a criminal conviction or a judicial or administrative civil penalty
33 for any violation of this subdivision or subdivision 1, 5, 6, or 7 enforced
34 under this section.

35 (2) AVAILABILITY OF APPROPRIATIONS.—A payment under para-
36 graph (1) is subject to available appropriations for such payments as
37 provided in annual appropriation Acts.

38 (3) INELIGIBILITY OF GOVERNMENT OFFICERS AND EMPLOYEES.—
39 Any officer or employee of the United States or any State or local gov-
40 ernment who furnishes information or renders service in the perform-
41 ance of an official duty is ineligible for payment under this subsection.

1 (4) ADDITIONAL CRITERIA.—The Administrator may, by regulation,
2 prescribe additional criteria for eligibility for an award under this sub-
3 section.

4 (h) SETTLEMENTS; PUBLIC PARTICIPATION.—

5 (1) OPPORTUNITY TO COMMENT.—At least 30 days before a consent
6 order or settlement agreement of any kind under this division to which
7 the United States is a party (other than an enforcement action under
8 this section, section 211119 of this title, or subdivision 3, whether or
9 not involving civil or criminal penalties, or judgments subject to De-
10 partment of Justice policy on public participation) is final or filed with
11 a court, the Administrator shall provide a reasonable opportunity by
12 notice in the Federal Register to persons that are not named as parties
13 or intervenors to the action or matter to comment in writing.

14 (2) CONSIDERATION OF COMMENTS; WITHHOLDING OR WITHDRAWAL
15 OF CONSENT.—The Administrator or the Attorney General, as appro-
16 priate—

17 (A) shall promptly consider any such written comments; and

18 (B) may withdraw or withhold consent to the proposed order or
19 agreement if the comments disclose facts or considerations that in-
20 dicate that consent is inappropriate, improper, inadequate, or in-
21 consistent with the requirements of this division.

22 (3) EFFECT OF SUBSECTION.—Nothing in this subsection shall apply
23 to civil or criminal penalties under this division.

24 **§ 211114. Recordkeeping, inspections, monitoring, and entry**

25 (a) AUTHORITY OF ADMINISTRATOR OR AUTHORIZED REPRESENTA-
26 TIVE.—

27 (1) PURPOSES.—The Administrator may take the actions described
28 in paragraph (2) for the purpose of—

29 (A) developing or assisting in the development of—

30 (i) any implementation plan under section 211110 or
31 211111(d) of this title;

32 (ii) any standard of performance under section 211111 of
33 this title;

34 (iii) any emission standard under section 211112 of this
35 title; or

36 (iv) any regulation of solid waste combustion under section
37 211128 of this title;

38 (B) determining whether any person is in violation of any such
39 standard or any requirement of such a plan; or

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1 (C) carrying out any provision of this division (except a provi-
2 sion of subdivision 3 with respect to a manufacturer of new motor
3 vehicles or new motor vehicle engines).

4 (2) ACTIONS.—For any of the purposes stated in paragraph (1)—

5 (A) the Administrator may require any person that owns or op-
6 erates any emission source, that manufactures emission control
7 equipment or process equipment, that the Administrator believes
8 may have information necessary for the purposes set forth in this
9 subsection, or that is subject to any requirement of this division
10 (other than a manufacturer subject to the provisions of section
11 221106(c) or 221108 of this title with respect to a provision of
12 subdivision 3) on a one-time, periodic, or continuous basis to—

13 (i) establish and maintain such records as the Adminis-
14 trator may reasonably require;

15 (ii) make such reports as the Administrator may reason-
16 ably require;

17 (iii) install, use, and maintain such monitoring equipment,
18 and use such audit procedures, or methods, as the Adminis-
19 trator may reasonably require;

20 (iv) sample such emissions (in accordance with such proce-
21 dures or methods, at such locations, at such intervals, during
22 such periods and in such manner as the Administrator shall
23 prescribe);

24 (v) keep records on control equipment parameters, produc-
25 tion variables or other indirect data when direct monitoring
26 of emissions is impractical;

27 (vi) submit compliance certifications in accordance with
28 paragraph (3); and

29 (vii) provide such other information as the Administrator
30 may reasonably require; and

31 (B) the Administrator or an authorized representative of the
32 Administrator, on presentation of his or her credentials—

33 (i) shall have a right of entry to, on, or through any prem-
34 ises of a person described in subparagraph (A) or in which
35 any records required to be maintained under subparagraph
36 (A) are located; and

37 (ii) may at reasonable times have access to and copy any
38 records, inspect any monitoring equipment or method re-
39 quired under subparagraph (A), and sample any emissions
40 that a person is required to sample under subparagraph (A).

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1 (3) ENHANCED MONITORING; SUBMISSION OF COMPLIANCE CERTIFI-
2 CATIONS.—

3 (A) IN GENERAL.—The Administrator shall, in the case of any
4 person that is the owner or operator of a major stationary source,
5 and may, in the case of any other person, require enhanced mon-
6 itoring and submission of compliance certifications.

7 (B) COMPLIANCE CERTIFICATIONS.—A compliance certification
8 shall include—

9 (i) identification of the applicable requirement that is the
10 basis of the certification;

11 (ii) the method used for determining the compliance status
12 of the source;

13 (iii) the compliance status;

14 (iv) whether compliance is continuous or intermittent; and

15 (v) such other facts as the Administrator may require.

16 (C) EFFECT OF SUBMISSION OF COMPLIANCE CERTIFICATE.—
17 Submission of a compliance certification shall in no way limit the
18 Administrator's authorities to investigate or otherwise implement
19 this division.

20 (D) REGULATIONS.—The Administrator shall promulgate regu-
21 lations to provide guidance and to implement this paragraph.

22 (b) STATE ENFORCEMENT.—

23 (1) IN GENERAL.—A State may develop and submit to the Adminis-
24 trator a procedure for carrying out this section in the State. If the Ad-
25 ministrator finds that the State procedure is adequate, the Adminis-
26 trator may delegate to the State any authority that the Administrator
27 has to carry out this section.

28 (2) EFFECT OF SUBSECTION.—Nothing in this subsection precludes
29 the Administrator from carrying out this section in a State.

30 (c) PUBLIC AVAILABILITY OF RECORDS, REPORTS, AND INFORMATION.—

31 (1) IN GENERAL.—Except as provided in paragraph (2), any records,
32 reports or information obtained under subsection (a) shall be available
33 to the public.

34 (2) TRADE SECRETS.—On a showing satisfactory to the Adminis-
35 trator by any person that records, reports, or information, or any par-
36 ticular part thereof (other than emission data), to which the Adminis-
37 trator has access under this section, if made public, would divulge
38 methods or processes entitled to protection as trade secrets of the per-
39 son, the Administrator shall consider the record, report, or information
40 or particular part thereof confidential in accordance with section 1905
41 of title 18, except that the record, report, or information may be dis-

1 closed to other officers, employees, or authorized representatives of the
2 United States concerned with carrying out this division or when rel-
3 evant in any proceeding under this division.

4 (d) NOTICE OF PROPOSED ENTRY, INSPECTION, OR MONITORING.—

5 (1) IN GENERAL.—In the case of any emission standard or limitation
6 or other requirement that is adopted by a State as part of an applica-
7 ble implementation plan, before carrying out an entry, inspection, or
8 monitoring under subsection (a)(2)(B) with respect to the emission
9 standard, limitation, or other requirement, the Administrator (or the
10 Administrator's representative) shall provide the State air pollution
11 control agency with reasonable prior notice of that action, indicating
12 the purpose of the action.

13 (2) PROHIBITION OF USE OF INFORMATION TO INFORM AFFECTED
14 PERSON.—No State air pollution control agency that receives notice
15 under paragraph (1) of an action proposed to be taken may use the
16 information contained in the notice to inform the person whose prop-
17 erty is proposed to be affected of the proposed action. If the Adminis-
18 trator has a reasonable basis for believing that a State air pollution
19 control agency is so using or will so use such information, notice to
20 the State air pollution control agency under paragraph (1) is not re-
21 quired until such time as the Administrator determines that the State
22 air pollution control agency will no longer so use information contained
23 in a notice under paragraph (1).

24 (3) EFFECT OF SECTION.—Nothing in this section shall be construed
25 to require notification to any State air pollution control agency of any
26 action taken by the Administrator with respect to any standard, limita-
27 tion, or other requirement that is not part of an applicable implementa-
28 tion plan or that was promulgated by the Administrator under section
29 211110(c) of this title.

30 (4) EFFECT OF SUBSECTION.—Nothing in this subsection shall be
31 construed to provide that any failure of the Administrator to comply
32 with the requirements of this subsection shall be a defense in any en-
33 forcement action brought by the Administrator or shall make inadmis-
34 sible as evidence in any such action any information or material ob-
35 tained notwithstanding the failure to comply with those requirements.

36 **§211115. International air pollution**

37 (a) ENDANGERMENT OF PUBLIC HEALTH OR WELFARE IN FOREIGN
38 COUNTRIES FROM POLLUTION EMITTED IN UNITED STATES.—Whenever
39 the Administrator, on receipt of reports, surveys, or studies from any duly
40 constituted international agency, has reason to believe that any air pollutant
41 or pollutants emitted in the United States cause or contribute to air pollu-

1 tion that may reasonably be anticipated to endanger public health or welfare
2 in a foreign country or whenever the Secretary of State requests the Admin-
3 istrator to do so with respect to such pollution that the Secretary of State
4 alleges is of such a nature, the Administrator shall give formal notification
5 thereof to the Governor of the State in which the emissions originate.

6 (b) PREVENTION OR ELIMINATION OF ENDANGERMENT.—The notice of
7 the Administrator shall be deemed to be a finding under section
8 211110(a)(3)(H)(ii) of this title that requires a plan revision with respect
9 to so much of the applicable implementation plan as is inadequate to pre-
10 vent or eliminate the endangerment described in subsection (a). Any foreign
11 country so affected by the emission of the pollutant or pollutants shall be
12 invited to appear at any public hearing associated with any revision of the
13 appropriate portion of the applicable implementation plan.

14 (c) RECIPROCITY.—This section shall apply only to a foreign country that
15 the Administrator determines has given the United States essentially the
16 same rights with respect to the prevention or control of air pollution occur-
17 ring in that country as is given that country by this section.

18 (d) RECOMMENDATIONS.—Recommendations issued following any abate-
19 ment conference conducted prior to August 7, 1977, shall remain in effect
20 with respect to any pollutant for which no NAAQS has been established
21 under section 211109 of this title unless the Administrator, after consulta-
22 tion with all agencies that were party to the conference, rescinds any such
23 recommendation on grounds of obsolescence.

24 **§ 211116. Retention of State authority**

25 (a) IN GENERAL.—Except as otherwise provided in subsections (c), (e),
26 and (f) of section 119 of the Clean Air Act (42 U.S.C. 1857e–10) (as in
27 effect before August 7, 1977) and in sections 221109, 221111(d)(4), and
28 223104 of this title, and subject to subsection (b), nothing in this division
29 shall preclude or deny the right of any State or political subdivision thereof
30 to adopt or enforce—

31 (1) any standard or limitation respecting emissions of air pollutants;

32 or

33 (2) any requirement respecting control or abatement of air pollution.

34 (b) STRINGENCY.—If an emission standard or limitation is in effect under
35 an applicable implementation plan or under section 211111 or 211112 of
36 this title, a State or political subdivision may not adopt or enforce any emis-
37 sion standard or limitation that is less stringent than the standard or limi-
38 tation under the plan or section.

39 **§ 211117. Advisory committees**

40 (a) ESTABLISHMENT.—The Administrator shall from time to time estab-
41 lish advisory committees—

1 (1) to obtain assistance in the development and implementation of
2 this division, including air quality criteria, recommended control tech-
3 niques, standards, research and development; and

4 (2) to encourage continued efforts on the part of industry to improve
5 air quality and to develop economically feasible methods for the control
6 and abatement of air pollution.

7 (b) MEMBERSHIP.—Committee members shall include persons who are
8 knowledgeable concerning air quality from the standpoint of health, welfare,
9 economics, or technology.

10 (c) COMPENSATION.—The members of any advisory committee appointed
11 pursuant to this division who are not officers or employees of the United
12 States while attending conferences or meetings or while otherwise serving
13 at the request of the Administrator shall be entitled to receive compensation
14 at a rate to be fixed by the Administrator, but not exceeding \$100 per diem,
15 including traveltime, and while away from their homes or regular places of
16 business they may be allowed travel expenses, including per diem in lieu of
17 subsistence, as authorized by section 5703 of title 5 for persons in the Gov-
18 ernment service employed intermittently.

19 (d) CONSULTATION.—The Administrator shall, to the maximum extent
20 practicable within the time provided, consult with appropriate advisory com-
21 mittees, independence experts, and Federal departments and agencies be-
22 fore—

23 (1) issuing criteria for an air pollutant under section 211108(a)(2)
24 of this title;

25 (2) publishing any list under section 211111(b)(1) or 211112(b)(1)
26 of this title;

27 (3) publishing any standard under section 211111 or 211112 of this
28 title; or

29 (4) publishing any regulation under section 221102(a) of this title.

30 **§ 211118. Control of pollution from Federal facilities**

31 (a) GENERAL COMPLIANCE.—

32 (1) IN GENERAL.—Each department, agency, and instrumentality of
33 the executive, legislative, and judicial branches of the Federal Govern-
34 ment—

35 (A) having jurisdiction over any property or facility; or

36 (B) engaged in any activity resulting, or which may result, in
37 the discharge of air pollutants;

38 and each officer, agent, or employee thereof, shall be subject to, and
39 comply with, all Federal, State, interstate, and local requirements, ad-
40 ministrative authority, and process and sanctions respecting the control

1 and abatement of air pollution in the same manner and to the same
2 extent as any nongovernmental entity.

3 (2) APPLICABILITY.—Paragraph (1) shall apply—

4 (A) to any requirement whether substantive or procedural (in-
5 cluding any recordkeeping or reporting requirement, any require-
6 ment respecting permits, and any other requirement);

7 (B) to any requirement to pay a fee or charge imposed by any
8 State or local agency to defray the costs of its air pollution regu-
9 latory program;

10 (C) to the exercise of any Federal, State, or local administrative
11 authority; and

12 (D) to any process and sanction, whether enforced in Federal,
13 State, or local courts or in any other manner.

14 (3) IMMUNITY.—This subsection shall apply notwithstanding any im-
15 munity of agencies, officers, agents, or employees described in para-
16 graph (1) under any law or rule of law.

17 (4) PERSONAL LIABILITY.—No officer, agent, or employee of the
18 United States shall be personally liable for any civil penalty for which
19 he or she is not otherwise liable.

20 (b) EXEMPTIONS.—

21 (1) EXEMPTION OF PARTICULAR EMISSION SOURCES.—

22 (A) IN GENERAL.—The President may exempt any emission
23 source of any department, agency, or instrumentality in the execu-
24 tive branch from compliance with a requirement described in sub-
25 section (a) if the President determines it to be in the paramount
26 interest of the United States to do so, except that—

27 (i) no exemption may be granted from section 211111 of
28 this title; and

29 (ii) an exemption from section 211112 of this title may be
30 granted only in accordance with subsection (i)(4) of that sec-
31 tion.

32 (B) LACK OF APPROPRIATION.—No exemption under subpara-
33 graph (A) shall be granted due to lack of appropriation unless the
34 President specifically requests such an appropriation as a part of
35 the budgetary process and Congress fails to make available the re-
36 quested appropriation.

37 (C) EXEMPTION PERIOD.—Any exemption under subparagraph
38 (A) shall be for a period of not more than 1 year, but additional
39 exemptions may be granted for periods of not more than 1 year
40 on the President's making a new determination.

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1 (2) EXEMPTION OF WEAPONRY, EQUIPMENT, AIRCRAFT, VEHICLES,
2 OR OTHER CLASSES OR CATEGORIES OF PROPERTY.—

3 (A) IN GENERAL.—The President may, if the President deter-
4 mines it to be in the paramount interest of the United States to
5 do so, issue regulations exempting from compliance with the re-
6 quirements of this section any weaponry, equipment, aircraft, vehi-
7 cles, or other classes or categories of property that are owned or
8 operated by the Armed Forces of the United States (including the
9 Coast Guard) or by the National Guard of any State and that are
10 uniquely military in nature.

11 (B) RECONSIDERATION.—The President shall reconsider the
12 need for such regulations at 3-year intervals.

13 (3) REPORTS.—The President shall report each January to Congress
14 all exemptions from the requirements of this section granted during the
15 preceding calendar year, together with the President's reason for grant-
16 ing each such exemption.

17 (e) GOVERNMENT VEHICLES.—Each department, agency, and instrumen-
18 tality of the executive, legislative, and judicial branches of the Federal Gov-
19 ernment shall comply with all applicable provisions of a valid inspection and
20 maintenance program established under subchapter II or III of chapter 215
21 except for such vehicles as are considered military tactical vehicles.

22 (d) VEHICLES OPERATED ON FEDERAL INSTALLATIONS.—

23 (1) IN GENERAL.—Each department, agency, and instrumentality of
24 the executive, legislative, and judicial branches of the Federal Govern-
25 ment having jurisdiction over any property or facility shall require all
26 employees that operate a motor vehicle on the property or facility to
27 furnish proof of compliance with the applicable requirements of any ve-
28 hicle inspection and maintenance program established under subchapter
29 II or III of chapter 215 for the State in which the property or facility
30 is located (without regard to whether the vehicle is registered in the
31 State).

32 (2) PROOF OF COMPLIANCE.—A department, agency, and instrumen-
33 tality shall use 1 of the following methods to establish proof of compli-
34 ance with paragraph (1):

35 (A) Presentation by the vehicle owner of a valid certificate of
36 compliance from the vehicle inspection and maintenance program.

37 (B) Presentation by the vehicle owner of proof of vehicle reg-
38 istration within the geographic area covered by the vehicle inspec-
39 tion and maintenance program (except for any program whose en-
40 forcement mechanism is not through the denial of vehicle registra-
41 tion).

1 (C) Another method approved by the vehicle inspection and
2 maintenance program administrator.

3 **§ 211119. Noncompliance penalty**

4 (a) DEFINITION OF OPERATOR.—In this section:

5 (1) IN GENERAL.—The term “operator” includes any person who is
6 a part of senior management personnel or is a corporate officer.

7 (2) EXCLUSIONS.—Except in the case of a knowing and willful viola-
8 tion, the term “operator” does not include any person who is a station-
9 ary engineer or technician responsible for the operation, maintenance,
10 repair, or monitoring of equipment and facilities and who often has su-
11 pervisory and training duties but who is not a part of senior manage-
12 ment personnel and not a corporate officer.

13 (b) ASSESSMENT AND COLLECTION.—

14 (1) IN GENERAL.—

15 (A) REGULATIONS.—After notice and opportunity for a public
16 hearing, the Administrator shall promulgate regulations requiring
17 the assessment and collection of a noncompliance penalty against
18 a person described in paragraph (2)(A).

19 (B) DELEGATION OF AUTHORITY TO A STATE.—

20 (i) IN GENERAL.—A State may develop and submit to the
21 Administrator a plan for carrying out this section in the
22 State. If the Administrator finds that the State plan meets
23 the requirements of this section, the Administrator may dele-
24 gate to the State any authority that the Administrator has
25 to carry out this section.

26 (ii) AUTHORITY OF THE ADMINISTRATOR.—Notwithstand-
27 ing a delegation to a State under clause (i), the Adminis-
28 trator may carry out this section in the State under the cir-
29 cumstances described in subsection (c)(2)(B).

30 (2) AUTHORITY.—

31 (A) ASSESSMENT AND COLLECTION.—

32 (i) IN GENERAL.—Except as provided in subparagraph (B)
33 or (C), a State to which authority has been delegated under
34 paragraph (1) or the Administrator shall assess and collect a
35 noncompliance penalty against every person that owns or op-
36 erates—

37 (I) a major stationary source (other than a primary
38 nonferrous smelter that received a primary nonferrous
39 smelter order under section 119 of the Clean Air Act (42
40 U.S.C. 7419) (as in effect before the repeal of that sec-
41 tion)) that is not in compliance with any emission limita-

1 tion, emission standard, or compliance schedule under
2 any applicable implementation plan (whether or not the
3 source is subject to a Federal or State consent decree);

4 (II) a stationary source that is not in compliance with
5 an emission limitation, emission standard, standard of
6 performance, or other requirement established under sec-
7 tion 203103, 211111, 211112, or 213109 of this title;

8 (III) a stationary source that is not in compliance with
9 any requirement of subdivision 5, 6, or 7; or

10 (IV) any source described in subclause (I), (II), or
11 (III) (for which an extension, order, or suspension de-
12 scribed in subparagraph (B) or a Federal or State con-
13 sent decree is in effect) or a primary nonferrous smelter
14 that received a primary nonferrous smelter order under
15 section 119 of the Clean Air Act (42 U.S.C. 7419) (as
16 in effect before the repeal of that section) that is not in
17 compliance with any interim emission control require-
18 ment or schedule of compliance under the extension,
19 order, suspension, or consent decree.

20 (ii) COSTS.—For purposes of subsection (g)(1), in the case
21 of a penalty assessed with respect to a source described in
22 clause (i)(III), the costs described in subsection (g)(1) shall
23 be the economic value of noncompliance with the interim
24 emission control requirement or the remaining steps in the
25 schedule of compliance described in clause (i)(III).

26 (B) EXEMPTIONS IF FAILURE TO COMPLY IS DUE TO CERTAIN
27 EXTENSIONS, ORDERS, OR SUSPENSIONS.—

28 (i) IN GENERAL.—Notwithstanding the requirements of
29 subclauses (I) and (II) of subparagraph (A)(i), the owner or
30 operator of any source shall be exempted from the duty to
31 pay a noncompliance penalty under those requirements with
32 respect to that source if, in accordance with the procedures
33 in subsection (c)(5), the owner or operator demonstrates that
34 the failure of the source to comply with any such requirement
35 is due solely to—

36 (I) a conversion by the source from the burning of pe-
37 troleum products or natural gas, or both, as the perma-
38 nent primary energy source to the burning of coal pursu-
39 ant to an order under section 113(d)(5) of the Clean Air
40 Act (42 U.S.C. 7413(d)(5)) (as in effect before Novem-

1 ber 15, 1990) or section 119 of the Clean Air Act (42
2 U.S.C. 7419) (as in effect before August 7, 1977);

3 (II) in the case of a coal-burning source granted an
4 extension under the 2d sentence of section 119(c)(1) of
5 the Clean Air Act (42 U.S.C. 1857c-10(c)(1)) (as in ef-
6 fect before August 7, 1977), a prohibition from using pe-
7 troleum products or natural gas or both, by reason of an
8 order under subsections (a) and (b) of section 2 of the
9 Energy Supply and Environmental Coordination Act of
10 1974 (15 U.S.C. 792) or under any legislation that su-
11 persedes those subsections;

12 (III) the use of innovative technology sanctioned by an
13 enforcement order under section 113(d)(4) of the Clean
14 Air Act (42 U.S.C. 7413(d)(4)) (as in effect before No-
15 vember 15, 1990);

16 (IV) an inability to comply with any such requirement,
17 for which inability the source received an order under
18 section 113(d) of the Clean Air Act (42 U.S.C. 7413(d))
19 (as in effect before November 15, 1990) or an order
20 under section 113 of the Clean Air Act (42 U.S.C. 7413)
21 (as in effect before August 7, 1977) that has the effect
22 of permitting a delay or violation of any requirement of
23 this division (including a requirement of an applicable
24 implementation plan), which inability results from rea-
25 sons entirely beyond the control of the owner or operator
26 of the source or of any entity controlling, controlled by,
27 or under common control with the owner or operator of
28 the source; or

29 (V) the conditions by reason of which a temporary
30 emergency suspension is authorized under subsection (d)
31 or (e) of section 211110 of this title.

32 (ii) CESSATION OF EFFECTIVENESS.—An exemption under
33 this subparagraph shall cease to be effective if the source fails
34 to comply with the interim emission control requirements or
35 schedules of compliance (including increments of progress)
36 under any such extension, order, or suspension.

37 (C) EXEMPTION IF FAILURE TO COMPLY IS DE MINIMIS IN NA-
38 TURE AND IN DURATION.—The Administrator may, after notice
39 and opportunity for public hearing, exempt any source from the
40 requirements of this section with respect to a particular instance

1 of noncompliance if the Administrator finds that the instance of
2 noncompliance is de minimis in nature and in duration.

3 (c) CONTENTS OF REGULATIONS.—Regulations under subsection (b)
4 shall—

5 (1) permit the assessment and collection of a penalty by a State if
6 the State has a delegation of authority in effect under subsection
7 (b)(1)(B)(i);

8 (2) provide for the assessment and collection of a penalty by the Ad-
9 ministrator, if—

10 (A) a State does not have a delegation of authority in effect
11 under subsection (b)(1)(B)(i); or

12 (B) a State has such a delegation in effect but fails with respect
13 to any particular person or source to assess or collect the penalty
14 in accordance with the requirements of this section;

15 (3) require a State, or if a State fails to do so, the Administrator,
16 to give a brief but reasonably specific notice of noncompliance under
17 this section to each person described in subsection (b)(2)(A)(i) with re-
18 spect to each source owned or operated by the person that is not in
19 compliance as provided in subsection (b) not later than 30 days after
20 the discovery of the noncompliance;

21 (4) require each person to which notice is given under paragraph (3)
22 to—

23 (A) calculate the amount of the penalty owed (determined in ac-
24 cordance with subsection (g)(1)) and the schedule of payments
25 (determined in accordance with subsection (g)(2)) for each such
26 source and, within 45 days after the issuance of the notice or after
27 the denial of a petition under subparagraph (B), to submit that
28 calculation and proposed schedule, together with the information
29 necessary for an independent verification of the calculation, to the
30 State and to the Administrator; or

31 (B) submit a petition, within 45 days after the issuance of the
32 notice, challenging the notice or alleging entitlement to an exemp-
33 tion under subsection (b)(2)(B) with respect to a particular
34 source;

35 (5) require the Administrator to provide a hearing on the record
36 (within the meaning of subchapter II of chapter 5 of title 5) and to
37 make a decision on the petition (including findings of fact and conclu-
38 sions of law) not later than 90 days after the receipt of any petition
39 under paragraph (4)(B), unless the State agrees to provide a hearing
40 that is substantially similar to such a hearing on the record and to

1 make a decision on the petition (including findings and conclusions)
2 within the 90-day period;

3 (6)(A) authorize the Administrator on the Administrator's initiative
4 to review the decision of the State under paragraph (5) and disapprove
5 the decision if it is not in accordance with the requirements of this sec-
6 tion; and

7 (B) on petition for such a review, require the Administrator to do
8 so not later than 60 days after receipt of the petition, notice, and pub-
9 lic hearing and a showing by the petitioner that the State decision
10 under paragraph (5) is not in accordance with the requirements of this
11 section;

12 (7) require payment, in accordance with subsections (f) and (g), of
13 the penalty by each person to which notice of noncompliance is given
14 under paragraph (3) with respect to each noncomplying source for
15 which the notice is given unless there has been a final determination
16 granting a petition under paragraph (4)(B) with respect to the source;

17 (8) authorize a State or the Administrator to adjust (and from time
18 to time to readjust) the amount of the penalty assessment calculated
19 or the payment schedule proposed by an owner or operator under para-
20 graph (4) if the Administrator finds, after notice and opportunity for
21 a hearing on the record, that the penalty or schedule does not meet
22 the requirements of this section; and

23 (9) require a final adjustment of the penalty within 180 days after
24 a source comes into compliance in accordance with subsection (g)(3).

25 (d) NONCOMPLIANCE PENALTY ESTABLISHED BY A STATE.—

26 (1) NOTICE.—In any case in which a State establishes a noncompli-
27 ance penalty under this section, the State shall provide notice of the
28 noncompliance penalty to the Administrator.

29 (2) APPLICABILITY.—A noncompliance penalty established by a
30 State under this section shall apply unless the Administrator, within
31 90 days after the date of receipt of notice of the State penalty assess-
32 ment under this section, objects in writing to the amount of the penalty
33 as less than would be required to comply with guidelines established
34 by the Administrator.

35 (3) OBJECTION.—If the Administrator objects, the Administrator
36 shall immediately establish a substitute noncompliance penalty applica-
37 ble to the source.

38 (e) CONTRACT TO ASSIST IN DETERMINING AMOUNT OF PENALTY AS-
39 SESSMENT OR PAYMENT SCHEDULE.—

40 (1) IN GENERAL.—If the owner or operator of any stationary source
41 to which a notice is issued under subsection (c)(3)—

1 (A)(i) does not submit a timely petition under subsection
2 (c)(4)(B); or

3 (ii) submits a petition under subsection (c)(4)(B) that is denied;
4 and

5 (B) fails to submit a calculation of the penalty assessment, a
6 schedule for payment, and the information necessary for independ-
7 ent verification of the calculation;

8 the State (or the Administrator, as the case may be) may enter into
9 a contract with any person that has no financial interest in the owner
10 or operator of the source (or in any person controlling, controlled by,
11 or under common control with the source) to assist in determining the
12 amount of the penalty assessment or payment schedule with respect to
13 the source.

14 (2) COST.—The cost of carrying out a contract under paragraph (1)
15 may be added to the penalty to be assessed against the owner or opera-
16 tor of the source.

17 (f) PAYMENT.—All penalties assessed by the Administrator under this
18 section shall be paid to the Treasury. All penalties assessed by a State
19 under this section shall be paid to the State.

20 (g) AMOUNT OF PENALTY.—

21 (1) AMOUNT.—

22 (A) IN GENERAL.—The amount of the penalty that shall be as-
23 sessed and collected with respect to any source under this section
24 shall be equal to—

25 (i) the amount determined in accordance with regulations
26 promulgated by the Administrator under subsection (b),
27 which is not less than the economic value that a delay in com-
28 pliance may have for the owner of the source, including—

29 (I) the quarterly equivalent of the capital costs of com-
30 pliance and debt service over a normal amortization pe-
31 riod, not to exceed 10 years;

32 (II) operation and maintenance costs forgone as a re-
33 sult of noncompliance; and

34 (III) any additional economic value that such a delay
35 may have for the owner or operator of the source; minus

36 (ii) the amount of any expenditure made by the owner or
37 operator of the source during any such quarter for the pur-
38 pose of bringing the source into, and maintaining compliance
39 with, the requirement, to the extent that the expenditure is
40 not taken into account in the calculation of the penalty under
41 clause (i).

1 (B) SUBTRACTION OF EXPENDITURE.—To the extent that any
2 expenditure under subparagraph (A)(ii) made during any quarter
3 is not subtracted for that quarter from the costs under subpara-
4 graph (A)(i), the expenditure may be subtracted for any subse-
5 quent quarter from those costs.

6 (C) MINIMUM AMOUNT.—In no event shall the amount paid be
7 less than the quarterly payment minus the amount attributed to
8 actual cost of construction.

9 (2) PAYMENT IN INSTALLMENTS.—

10 (A) DEFINITION OF PERIOD OF COVERED NONCOMPLIANCE.—
11 In this paragraph, the term “period of covered noncompliance”
12 means the period that begins on the date of issuance of a notice
13 of noncompliance under subsection (c)(3) and ending on the date
14 on which the source comes into (or for the purpose of establishing
15 the schedule of payments, is estimated to come into) compliance
16 with the requirement.

17 (B) IN GENERAL.—The assessed penalty required under this
18 section shall be paid in quarterly installments for the period of
19 covered noncompliance. All quarterly payments (determined with-
20 out regard to any adjustment or any subtraction under paragraph
21 (1)(A)(ii)) after the 1st payment shall be equal.

22 (C) 1ST PAYMENT.—The 1st payment shall be due on the date
23 that is 6 months after the date of issuance of the notice of non-
24 compliance under subsection (b)(3) with respect to any source.
25 The 1st payment shall be in the amount of the quarterly install-
26 ment for the upcoming quarter, plus the amount owed for any pre-
27 ceding period within the period of covered noncompliance for the
28 source.

29 (3) REVIEW OF ACTUAL EXPENDITURES.—On making a determina-
30 tion that a source with respect to which a penalty has been paid under
31 this section is in compliance and is maintaining compliance with the
32 applicable requirement, a State (or the Administrator as the case may
33 be) shall—

34 (A) review the actual expenditures made by the owner or opera-
35 tor of the source for the purpose of attaining and maintaining
36 compliance; and

37 (B) within 180 days after the source comes into compliance—
38 (i) provide reimbursement with interest (to be paid by the
39 State or Secretary of the Treasury, as the case may be) at
40 appropriate prevailing rates (as determined by the Secretary

1 of the Treasury) for any overpayment by the owner or opera-
2 tor; or

3 (ii) assess and collect an additional payment with interest
4 at appropriate prevailing rates (as determined by the Sec-
5 retary of the Treasury) for any underpayment by the owner
6 or operator.

7 (4) QUARTERLY NONPAYMENT PENALTY.—An owner or operator
8 that fails to pay the amount of any penalty with respect to any source
9 under this section on a timely basis shall be required to pay in addition
10 a quarterly nonpayment penalty for each quarter during which the fail-
11 ure to pay persists. The nonpayment penalty shall be in an amount
12 equal to 20 percent of the aggregate amount of the owner or operator's
13 penalties and nonpayment penalties with respect to the source that are
14 unpaid as of the beginning of the quarter.

15 (h) JUDICIAL REVIEW.—Any action pursuant to this section, including
16 any objection of the Administrator under subsection (d)(3), shall be consid-
17 ered a final action for purposes of judicial review of any penalty under sec-
18 tion 211113 of this title.

19 (i) OTHER ORDERS, PAYMENTS, SANCTIONS, OR REQUIREMENTS.—Any
20 orders, payments, sanctions, or other requirements under this section shall
21 be in addition to any other permits, orders, payments, sanctions, or other
22 requirements established under this division and shall in no way affect any
23 civil or criminal enforcement proceedings brought under any provision of
24 this division or State or local law.

25 (j) MORE STRINGENT EMISSION LIMITATIONS OR OTHER REQUIRE-
26 MENTS.—In the case of any emission limitation or other requirement ap-
27 proved or promulgated by the Administrator under this division after Au-
28 gust 7, 1977, that is more stringent than the emission limitation or require-
29 ment for the source in effect prior to such approval or promulgation, if any,
30 or where there was no emission limitation or requirement approved or pro-
31 mulgated before August 7, 1977, the date for imposition of the noncompli-
32 ance penalty under this section shall be the date on which the source is re-
33 quired to be in full compliance with the emission limitation or requirement,
34 but in no event later than 3 years after the approval or promulgation of
35 the emission limitation or requirement.

36 (k) DETERMINATION OF NUMBER OF DAYS.—For purposes of determin-
37 ing the number of days of violation for which an assessment may be made
38 under this section, where the Administrator or an air pollution control agen-
39 cy has notified the source of the violation, and the plaintiff makes a prima
40 facie showing that the conduct or events giving rise to the violation are like-
41 ly to have continued or recurred past the date of notice, the days of viola-

1 tion shall be presumed to include the date of the notice and each day there-
2 after until the violator establishes that continuous compliance has been
3 achieved, except to the extent that the violator can prove by a preponder-
4 ance of the evidence that there were intervening days during which no viola-
5 tion occurred or that the violation was not continuing in nature.

6 **§ 211120. Consultation**

7 (a) PROCESS.—In carrying out the requirements of this division requiring
8 applicable implementation plans to contain—

9 (1) any transportation controls, air quality maintenance plan re-
10 quirements, or preconstruction review of direct sources of air pollution;

11 or

12 (2) any measure described in chapter 213 or 215;

13 a State shall provide a satisfactory process of consultation with general pur-
14 pose local governments, designated organizations of elected officials of local
15 governments, and any Federal land manager having authority over Federal
16 land to which the State plan applies, as part of the plan.

17 (b) REGULATIONS.—The process provided under subsection (a) shall be
18 in accordance with regulations promulgated by the Administrator to ensure
19 adequate consultation.

20 (c) JUDICIAL REVIEW.—Only a general purpose unit of local government,
21 regional agency, or council of governments adversely affected by action of
22 the Administrator approving any portion of a plan described in subsection
23 (a) may petition for judicial review of an action described in subsection (a)
24 on the basis of a violation of the requirements of this section.

25 **§ 211121. Listing of certain unregulated pollutants**

26 (a) RADIOACTIVE POLLUTANTS, CADMIUM, ARSENIC, AND POLYCYCLIC
27 ORGANIC MATTER.—

28 (1) REVIEW AND DETERMINATION.—After notice and opportunity for
29 public hearing, the Administrator shall review all available relevant in-
30 formation and determine whether emissions of radioactive pollutants
31 (including source material, special nuclear material, and byproduct ma-
32 terial), cadmium, arsenic, and polycyclic organic matter into the ambi-
33 ent air will cause, or contribute to, air pollution that may reasonably
34 be anticipated to endanger public health.

35 (2) AFFIRMATIVE DETERMINATION.—If the Administrator makes an
36 affirmative determination with respect to a substance described in
37 paragraph (1), the Administrator, simultaneously with the determina-
38 tion, shall—

39 (A) include the substance in the list published under section
40 211108(a)(1) or 211112(b)(1) of this title (in the case of a sub-
41 stance that, in the judgment of the Administrator, causes, or con-

1 tributes to, air pollution that may reasonably be anticipated to re-
2 sult in an increase in mortality or an increase in serious irrevers-
3 ible, or incapacitating reversible, illness);

4 (B) include each category of stationary sources emitting the
5 substance in significant amounts in the list published under sec-
6 tion 211111(b)(1) of this title, or take any combination of such
7 actions; or

8 (C) take both such actions.

9 (b) REVISION AUTHORITY.—Nothing in subsection (a) shall be construed
10 to affect the authority of the Administrator to revise any list described in
11 subsection (a) with respect to any substance (whether or not enumerated
12 in subsection (a)).

13 (c) SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, AND BYPRODUCT
14 MATERIAL.—

15 (1) CONSULTATION.—Before listing any source material, special nu-
16 clear material, or byproduct material (or component or derivative there-
17 of) as provided in subsection (a), the Administrator shall consult with
18 the Nuclear Regulatory Commission.

19 (2) INTERAGENCY AGREEMENT.—Not later than 6 months after list-
20 ing any source material, special nuclear material, or byproduct material
21 (or component or derivative thereof), the Administrator and the Nu-
22 clear Regulatory Commission shall enter into an interagency agreement
23 with respect to sources and facilities that are under the jurisdiction of
24 the Nuclear Regulatory Commission. The agreement shall, to the maxi-
25 mum extent practicable consistent with this division, minimize duplica-
26 tion of effort and conserve administrative resources in the establish-
27 ment, implementation, and enforcement of emission limitations, stand-
28 ards of performance, and other requirements and authorities (sub-
29 stantive and procedural) under this division respecting the emission of
30 source material, special nuclear material, or byproduct material (and
31 components and derivatives thereof) from those sources or facilities.

32 (3) PUBLIC HEALTH AND SAFETY.—In case of any standard or emis-
33 sion limitation promulgated by the Administrator, under this division
34 or by any State (or the Administrator) under any applicable implemen-
35 tation plan under this division, if the Nuclear Regulatory Commission
36 determines, after notice and opportunity for public hearing that the ap-
37 plication of the standard or limitation to a source or facility under the
38 jurisdiction of the Nuclear Regulatory Commission would endanger
39 public health or safety, the standard or limitation shall not apply to
40 those facilities or sources unless the President determines otherwise
41 within 90 days after the date of the determination.

1 **§ 211122. Stack heights**

2 (a) DEFINITIONS.—In this section:

3 (1) DISPERSION TECHNIQUE.—The term “dispersion technique” in-
4 cludes any intermittent or supplemental control of an air pollutant
5 varying with atmospheric conditions.

6 (2) GOOD ENGINEERING PRACTICE.—

7 (A) IN GENERAL.—The term “good engineering practice”, with
8 respect to the height of a stack at a source, means the height nec-
9 essary to ensure that emissions from the stack do not result in ex-
10 cessive concentrations of any air pollutant in the immediate vicin-
11 ity of the source as a result of atmospheric downwash, eddies, and
12 wakes that may be created by the source itself, nearby structures,
13 or nearby terrain obstacles (as determined by the Administrator).

14 (B) LIMITATION.—For purposes of subparagraph (A), stack
15 height consistent with good engineering practice shall not exceed
16 2½ times the height of a source unless the owner or operator of
17 the source demonstrates, after notice and opportunity for public
18 hearing, to the satisfaction of the Administrator, that a greater
19 height is necessary as provided under subparagraph (A).

20 (b) HEIGHTS IN EXCESS OF GOOD ENGINEERING PRACTICE; OTHER DIS-
21 PERSION TECHNIQUES.—

22 (1) IN GENERAL.—The degree of emission limitation required for
23 control of any air pollutant under an applicable implementation plan
24 under this subdivision shall not be affected in any manner by—

25 (A) so much of the stack height of any source as exceeds good
26 engineering practice (as determined under regulations promulgated
27 by the Administrator); or

28 (B) any other dispersion technique.

29 (2) APPLICABILITY.—Paragraph (1) shall not apply with respect to
30 stack heights in existence before December 31, 1970, or dispersion
31 techniques implemented before that date.

32 (3) EMISSION LIMITATION FOR CERTAIN COAL-FIRED STEAM ELEC-
33 TRIC GENERATING UNITS.—In establishing an emission limitation for
34 coal-fired steam electric generating units are subject to section 211118
35 of this title and that commenced operation before July 1, 1957, the ef-
36 fect of the entire stack height of stacks for which a construction con-
37 tract was awarded before February 8, 1974, may be taken into ac-
38 count.

39 (c) LIMITATION.—In no event may the Administrator prohibit any in-
40 crease in any stack height or restrict in any manner the stack height of any
41 source.

1 (d) REGULATIONS.—After notice and opportunity for public hearing, the
2 Administrator shall promulgate regulations to carry out this section.

3 **§ 211123. Assurance of adequacy of State plans**

4 (a) STATE REVIEW OF IMPLEMENTATION PLANS THAT RELATE TO
5 MAJOR FUEL BURNING SOURCES.—Each State shall review the provisions
6 of its implementation plan that relate to major fuel burning sources and
7 shall determine—

8 (1) the extent to which compliance with requirements of the imple-
9 mentation plan is dependent on the use by major fuel burning station-
10 ary sources of petroleum products or natural gas;

11 (2) the extent to which the implementation plan may reasonably be
12 anticipated to be inadequate to meet the requirements of this division
13 in the State on a reliable and long-term basis by reason of its depend-
14 ence on the use of petroleum products or natural gas; and

15 (3) the extent to which compliance with the requirements of the im-
16 plementation plan is dependent on use of coal or coal derivatives that
17 is not locally or regionally available.

18 (b) SUBMISSION TO ADMINISTRATOR.—Each State shall submit the re-
19 sults of its review and its determination under subsection (a) to the Admin-
20 istrator promptly on completion of the review.

21 (c) PLAN REVISION.—

22 (1) REVISION.—The Administrator shall review the submissions of
23 the States under subsection (b) and shall require a State to revise its
24 implementation plan if, in the judgment of the Administrator, revision
25 is necessary to ensure that the implementation plan will be adequate
26 to ensure compliance with the requirements of this division in the State
27 on a reliable and long-term basis, taking into account the actual or po-
28 tential prohibitions on use of petroleum products or natural gas, or
29 both, under any other authority of law.

30 (2) CONSIDERATIONS; CONSULTATION.—Before requiring an imple-
31 mentation plan revision under this subsection with respect to any
32 State, the Administrator shall—

33 (A) take into account the report of the review conducted by the
34 State under paragraph (1); and

35 (B) consult with the Governor of the State respecting the re-
36 quired revision.

37 **§ 211124. Measures to prevent economic disruption or unem-**
38 **ployment**

39 (a) DEFINITION OF LOCALLY OR REGIONALLY AVAILABLE COAL OR
40 COAL DERIVATIVES.—In this section, the term “locally or regionally avail-
41 able coal or coal derivative” means coal or a coal derivative that is, or in

1 the judgment of a State or the Administrator can feasibly be, mined or pro-
2 duced in the local or regional area (as determined by the Administrator) in
3 which a major fuel burning stationary source is located.

4 (b) DETERMINATION THAT ACTION IS NECESSARY.—After notice and op-
5 portunity for a public hearing, the Governor of any State in which a major
6 fuel burning stationary source described in this subsection (or class or cat-
7 egory thereof) is located, the Administrator or the President (or a designee
8 of the President) may determine that action under subsection (c) is nec-
9 essary to prevent or minimize significant local or regional economic disrup-
10 tion or unemployment that would otherwise result from use by the source
11 (or class or category) of—

- 12 (1) coal or coal derivatives other than locally or regionally available
13 coal;
- 14 (2) petroleum products;
- 15 (3) natural gas; or
- 16 (4) any combination of fuels described in paragraphs (1) through
17 (3);

18 to comply with the requirements of a State implementation plan.

19 (c) USE OF LOCALLY OR REGIONALLY AVAILABLE COAL OR COAL DE-
20 RIVATIVES TO COMPLY WITH IMPLEMENTATION PLAN REQUIREMENTS.—

21 (1) IN GENERAL.—On a determination under subsection (b)—

22 (A) the Governor, with the written consent of the President or
23 a designee of the President;

24 (B) a designee of the President, with the written consent of the
25 Governor; or

26 (C) the President;

27 may by regulation or order prohibit any such major fuel burning sta-
28 tionary source (or class or category thereof) from using fuels other
29 than locally or regionally available coal or coal derivatives to comply
30 with implementation plan requirements.

31 (2) CONSIDERATION OF FINAL COST.—In taking any action under
32 this subsection, the Governor, the President, or the President's des-
33 ignee, as the case may be, shall take into account the final cost to the
34 consumer of such an action.

35 (d) CONTRACTS; SCHEDULES.—

36 (1) IN GENERAL.—The Governor, in the case of an action under sub-
37 section (c)(1)(A), or the Administrator, in the case of an action under
38 subparagraph (B) or (C) of subsection (c)(1), shall, by regulation or
39 order, require each source to which the action applies to—

40 (A) enter into long-term contracts of at least 10 years in dura-
41 tion (except as the President or the President's designee may

1 otherwise permit or require by regulation or order for good cause)
2 for supplies of regionally available coal or coal derivatives;

3 (B) enter into contracts to acquire any additional means of
4 emission limitation that the Administrator or the State determines
5 may be necessary to comply with the requirements of this division
6 while using such coal or coal derivatives as fuel; and

7 (C) comply with such schedules (including increments of
8 progress), timetables, and other requirements as may be necessary
9 to ensure compliance with the requirements of this division.

10 (2) TIMING.—Requirements under this subsection shall be estab-
11 lished simultaneously with, and as a condition of, any action under sub-
12 section (c).

13 (e) EXISTING OR NEW MAJOR FUEL BURNING STATIONARY SOURCES.—
14 This section applies only to existing or new major fuel burning stationary
15 sources that—

16 (1) have the design capacity to produce 250,000,000 British thermal
17 units per hour (or the equivalent), as determined by the Administrator;
18 and

19 (2) are not in compliance with the requirements of an applicable im-
20 plementation plan or are prohibited from burning oil or natural gas,
21 or both, under any other authority of law.

22 (f) ACTIONS NOT TO BE DEEMED MODIFICATIONS OF MAJOR FUEL
23 BURNING STATIONARY SOURCES.—Except as may otherwise be provided by
24 regulation by a State or the Administrator for good cause, any action re-
25 quired to be taken by a major fuel burning stationary source under this sec-
26 tion shall not be deemed to constitute a modification for purposes of para-
27 graphs (2) and (3) of section 211111(a) of this title.

28 (g) TREATMENT OF PROHIBITIONS, REGULATIONS, OR ORDERS AS RE-
29 QUIREMENTS OR PARTS OF PLANS UNDER OTHER PROVISIONS.—For pur-
30 poses of sections 211113 and 211119 of this title, a prohibition under sub-
31 section (c), and a corresponding regulation or order under subsection (d),
32 shall be treated as a requirement of section 211113 of this title. For pur-
33 poses of any plan (or portion thereof) promulgated under section 211110(c)
34 of this title, any regulation or order under subsection (d) corresponding to
35 a prohibition under subsection (c) shall be treated as a part of the plan.
36 For purposes of section 211113 of this title, a prohibition under subsection
37 (c), applicable to any source, and a corresponding regulation or order under
38 subsection (d), shall be treated as part of the applicable implementation
39 plan for the State in which the subject source is located.

40 (h) DELEGATION OF PRESIDENTIAL AUTHORITY.—The President may
41 delegate the President's authority under this section to an officer or em-

1 ployee of the United States designated by the President on a case-by-case
2 basis or in any other manner that the President considers suitable.

3 **§ 211125. Interstate pollution abatement**

4 (a) WRITTEN NOTICE TO ALL NEARBY STATES.—Each applicable imple-
5 mentation plan shall require each major proposed new (or modified)
6 source—

- 7 (1) that is subject to chapter 213; or
8 (2) that may significantly contribute to levels of air pollution in ex-
9 cess of the NAAQSEs in any air quality control region outside the State
10 in which the source intends to locate (or make the modification);

11 to provide written notice to all nearby States the air pollution levels of
12 which may be affected by the source at least 60 days prior to the date on
13 which commencement of construction is to be permitted by the State provid-
14 ing notice.

15 (b) PETITION FOR FINDING THAT MAJOR SOURCES EMIT OR WOULD
16 EMIT PROHIBITED AIR POLLUTANTS.—Any State or political subdivision
17 may petition the Administrator for a finding that any major source or group
18 of stationary sources emits or would emit any air pollutant in violation of
19 section 211110(a)(3)(D)(ii) of this title or this section. Within 60 days after
20 receipt of any petition under this subsection and after public hearing, the
21 Administrator shall make such a finding or deny the petition.

22 (c) VIOLATIONS.—

23 (1) IN GENERAL.—Notwithstanding any permit granted by a State
24 in which a source is located (or intends to locate), it shall be a violation
25 of this section and the applicable implementation plan in that State—

26 (A) for any major proposed new (or modified) source with re-
27 spect to which a finding has been made under subsection (b) to
28 be constructed or to operate in violation of section
29 211110(a)(3)(D)(ii) of this title or this section; or

30 (B) for any major existing source to operate more than 3
31 months after such a finding has been made with respect to it.

32 (2) CONTINUED OPERATION.—The Administrator may permit the
33 continued operation of a source described in paragraph (1)(B) beyond
34 the expiration of the 3-month period if the source complies with such
35 emission limitations and compliance schedules (containing increments
36 of progress) as the Administrator may provide to bring about compli-
37 ance with the requirements contained in section 211110(a)(3)(D)(ii) of
38 this title or this section as expeditiously as practicable, but in no case
39 later than 3 years after the date of the finding.

1 **§ 211126. Public notification**

2 (a) IN GENERAL.—A State implementation plan shall contain measures
3 that will be effective to notify the public during any calendar year on a reg-
4 ular basis of instances or areas in which any primary NAAQS is exceeded
5 or was exceeded during any portion of the preceding calendar year to—

6 (1) advise the public of the health hazards associated with such pol-
7 lution; and

8 (2) enhance public awareness of—

9 (A) the measures that can be taken to prevent those standards
10 from being exceeded; and

11 (B) the ways in which the public can participate in regulatory
12 efforts and other efforts to improve air quality.

13 (b) MEASURES.—Measures under subsection (a) may include—

14 (1) the posting of warning signs on interstate highway access points
15 to metropolitan areas; or

16 (2) television, radio, or press notices or information.

17 (c) GRANTS.—The Administrator may make grants to States to assist in
18 carrying out this section.

19 **§ 211127. State boards**

20 (a) IN GENERAL.—An applicable implementation plan shall contain re-
21 quirements that—

22 (1) any board or body that approves permits or enforcement orders
23 under this division have at least a majority of members who represent
24 the public interest and do not derive any significant portion of their
25 income from persons subject to permits or enforcement orders under
26 this division; and

27 (2) any potential conflicts of interest by members of such a board
28 or body or the head of an executive agency with similar powers be ade-
29 quately disclosed.

30 (b) REQUIREMENTS RESPECTING CONFLICTS OF INTEREST.—A State
31 may adopt any requirements respecting conflicts of interest for boards or
32 bodies or heads of executive agencies described in subsection (a), or any
33 other entities, that are more stringent than the requirements of paragraphs
34 (1) and (2) of subsection (a), and the Administrator shall approve any such
35 more stringent requirements submitted as part of an implementation plan.

36 **§ 211128. Solid waste combustion**

37 (a) DEFINITIONS.—In this section:

38 (1) EXISTING SOLID WASTE INCINERATION UNIT.—The term “exist-
39 ing solid waste incineration unit” means a solid waste unit that is not
40 a new solid waste incineration unit or modified solid waste incineration
41 unit.

1 (2) EXISTING UNIT.—The term “existing unit” means an existing
2 solid waste incineration unit.

3 (3) MEDICAL WASTE.—The term “medical waste” has the meaning
4 established by the Administrator pursuant to the Solid Waste Disposal
5 Act (42 U.S.C. 6901 et seq.).

6 (4) MODIFIED SOLID WASTE INCINERATION UNIT.—The term “modi-
7 fied solid waste incineration unit” means a solid waste incineration unit
8 at which modifications have occurred after the effective date of a stand-
9 ard under subsection (b) if—

10 (A) the cumulative cost of the modifications, over the life of the
11 unit, exceed 50 percent of the original cost of construction and in-
12 stallation of the unit (not including the cost of any land purchased
13 in connection with the construction or installation) updated to cur-
14 rent costs; or

15 (B) the modification is a physical change in or change in the
16 method of operation of the unit that increases the amount of any
17 air pollutant emitted by the unit for which standards have been
18 established under this section or section 211111 of this title.

19 (5) MUNICIPAL WASTE.—

20 (A) IN GENERAL.—The term “municipal waste” means refuse
21 (and refuse-derived fuel) collected from the general public and
22 from residential, commercial, institutional, and industrial sources
23 consisting of paper, wood, yard waste, food waste, plastic, leather,
24 rubber, and other combustible material and noncombustible mate-
25 rial such as metal, glass, and rock.

26 (B) EXCLUSIONS.—The term “municipal waste” does not in-
27 clude industrial process waste or medical waste that is segregated
28 from other waste described in subparagraph (A).

29 (C) INCINERATION UNITS.—An incineration unit shall not be
30 considered to be combusting municipal waste for purposes of this
31 section if the incineration unit combusts a fuel feed stream 30 per-
32 cent or less of the weight of which is comprised, in aggregate, of
33 municipal waste.

34 (6) NEW SOLID WASTE INCINERATION UNIT.—The term “new solid
35 waste incineration unit”, with respect to any requirement that the Ad-
36 ministrator proposes under this section establishing an emission stand-
37 ard or other requirement that would be applicable to the unit or a
38 modified solid waste incineration unit, means a solid waste incineration
39 unit the construction of which is commenced after the date on which
40 the Administrator proposes the requirement.

1 (7) NEW UNIT.—The term “new unit” means a new solid waste in-
2 cineration unit.

3 (8) SOLID WASTE.—The term “solid waste” has the meaning estab-
4 lished by the Administrator pursuant to the Solid Waste Disposal Act
5 (42 U.S.C. 6901 et seq.).

6 (9) SOLID WASTE INCINERATION UNIT.—

7 (A) IN GENERAL.—The term “solid waste incineration unit”
8 means a distinct operating unit of any facility that combusts any
9 solid waste material from commercial or industrial establishments
10 or the general public (including single and multiple residences, ho-
11 tels, and motels).

12 (B) EXCLUSIONS.—The term “solid waste incineration unit”
13 does not include—

14 (i) an incinerator or other unit required to have a permit
15 under section 3005 of the Solid Waste Disposal Act (42
16 U.S.C. 6925);

17 (ii) a materials recovery facility (including a primary or
18 secondary smelter) that combusts waste for the primary pur-
19 pose of recovering metal;

20 (iii) a qualifying small power production facility (as defined
21 in section 3(17)(C) of the Federal Power Act (16 U.S.C.
22 796(17)(C)) or qualifying cogeneration facility (as defined in
23 section 3(18)(B) of the Federal Power Act (16 U.S.C.
24 796(18)(B)) that burns homogeneous waste (such as a unit
25 that burns tires or used oil, but not including refuse-derived
26 fuel) for the production of electric energy or in the case of
27 a qualifying cogeneration facility that burns homogeneous
28 waste for the production of electric energy and steam or
29 forms of useful energy (such as heat) that are used for indus-
30 trial, commercial, heating or cooling purposes; or

31 (iv) an air curtain incinerator, if the air curtain incinerator
32 burns only wood waste, yard waste, and clean lumber and
33 complies with opacity limitations established by the Adminis-
34 trator by regulation.

35 (10) UNIT.—The term “unit” means a solid waste incineration unit.

36 (b) NEW SOURCE PERFORMANCE STANDARDS.—

37 (1) IN GENERAL.—The Administrator shall establish performance
38 standards and other requirements pursuant to this section and section
39 211111 of this title for each category of solid waste incineration units.
40 The standards shall include emission limitations and other require-
41 ments applicable to new units and guidelines (under section 211111(d)

1 of this title and this section) and other requirements applicable to ex-
2 isting units.

3 (2) EMISSION STANDARD.—

4 (A) MAXIMUM DEGREE OF REDUCTION IN EMISSIONS.—Stand-
5 ards applicable to solid waste incineration units promulgated
6 under this section and section 211111 of this title shall reflect the
7 maximum degree of reduction in emissions of air pollutants listed
8 under paragraph (4) that the Administrator, taking into consider-
9 ation the cost of achieving such emission reduction, and any non-
10 air-quality health and environmental impacts and energy require-
11 ments, determines is achievable for new units or existing units in
12 each category.

13 (B) CLASSES, TYPES, AND SIZES OF UNITS.—The Administrator
14 may distinguish among classes, types (including mass-burn,
15 refuse-derived fuel, modular, and other types of units), and sizes
16 of units within a category in establishing the standards.

17 (C) STRINGENCY.—The degree of reduction in emissions that is
18 considered achievable for new units in a category shall not be less
19 stringent than the emission control that is achieved in practice by
20 the best controlled similar unit, as determined by the Adminis-
21 trator. Emission standards for existing units in a category may be
22 less stringent than standards for new units in the same category
23 but shall not be less stringent than the average emission limitation
24 achieved by the best performing 12 percent of units in the cat-
25 egory (excluding units that first met lowest achievable emission
26 rates 18 months before the date on which the emission standards
27 are proposed or 30 months before the date on which the emission
28 standards are promulgated, whichever is later).

29 (3) CONTROL METHODS AND TECHNOLOGIES.—Standards under this
30 section and section 211111 of this title applicable to solid waste incin-
31 eration units shall—

32 (A) be based on methods and technologies for removal or de-
33 struction of pollutants before, during, or after combustion; and

34 (B) incorporate for new units siting requirements that minimize,
35 on a site-specific basis, to the maximum extent practicable, poten-
36 tial risks to public health or the environment.

37 (4) NUMERICAL EMISSION LIMITATIONS.—

38 (A) IN GENERAL.—The performance standards promulgated
39 under this section and section 211111 of this title and applicable
40 to solid waste incineration units shall specify numerical emission
41 limitations for the following:

- 1 (i) particulate matter (total and fine);
- 2 (ii) opacity (as appropriate);
- 3 (iii) sulfur dioxide;
- 4 (iv) hydrogen chloride;
- 5 (v) nitrogen oxides;
- 6 (vi) carbon monoxide;
- 7 (vii) lead;
- 8 (viii) cadmium;
- 9 (ix) mercury; and
- 10 (x) dioxins and dibenzofurans.

11 (B) SURROGATE SUBSTANCES.—The Administrator may pro-
12 mulgate numerical emission limitations or provide for the monitor-
13 ing of postcombustion concentrations of surrogate substances, pa-
14 rameters, or periods of residence time in excess of stated tempera-
15 tures with respect to pollutants other than those listed in this
16 paragraph.

17 (5) REVIEW AND REVISION.—Not later than 5 years after the initial
18 promulgation of any performance standards and other requirements
19 under this section and section 211111 of this title applicable to a cat-
20 egory of units, and at 5 year intervals thereafter, the Administrator
21 shall review, and in accordance with this section and section 211111
22 of this title, revise the standards and requirements.

23 (c) EXISTING UNITS.—

24 (1) GUIDELINES.—Performance standards under this section and
25 section 211111 of this title for units shall include guidelines promul-
26 gated pursuant to this section and section 211111(d) of this title appli-
27 cable to existing units. The guidelines shall include, as provided in this
28 section, each of the elements required by subsections (b) (notwithstand-
29 ing any restriction in section 211111(d) of this title regarding issuance
30 of such limitations), (d), (e), (f), and (h)(3).

31 (2) STATE PLANS.—Not later than 1 year after the Administrator
32 promulgates guidelines for a category of units, a State in which units
33 in the category are operating shall submit to the Administrator a plan
34 to implement and enforce the guidelines with respect to that category
35 of units. The State plan shall be at least as protective as the guidelines
36 promulgated by the Administrator and shall provide that each unit sub-
37 ject to the guidelines shall be in compliance with all requirements of
38 this section not later than 3 years after the State plan is approved by
39 the Administrator but not later than 5 years after the guidelines are
40 promulgated. The Administrator shall approve or disapprove any State
41 plan within 180 days of the submission, and if a plan is disapproved,

1 the Administrator shall state the reasons for disapproval in writing. A
2 State may modify and resubmit a plan that has been disapproved by
3 the Administrator.

4 (3) FEDERAL PLAN.—The Administrator shall develop, implement,
5 and enforce a plan for existing units within any category located in any
6 State that has not submitted an approvable plan under this subsection
7 with respect to units in that category within 2 years after the date on
8 which the Administrator promulgated the relevant guidelines. The plan
9 shall ensure that each unit subject to the plan is in compliance with
10 all provisions of the guidelines not later than 5 years after the date
11 on which the relevant guidelines are promulgated.

12 (d) MONITORING.—

13 (1) IN GENERAL.—The Administrator shall, as part of each perform-
14 ance standard promulgated pursuant to subsection (b) and section
15 211111 of this title, promulgate regulations requiring the owner or op-
16 erator of each solid waste incineration unit—

17 (A) to monitor emissions from the unit at the point at which
18 the emissions are emitted into the ambient air (or within the
19 stack, combustion chamber, or pollution control equipment, as ap-
20 propriate) and at such other points as are necessary to protect
21 public health and the environment;

22 (B) to monitor such other parameters relating to the operation
23 of the unit and its pollution control technology as the Adminis-
24 trator determines are appropriate; and

25 (C) to report the results of the monitoring.

26 (2) CONTENTS.—The regulations shall—

27 (A) contain provisions regarding the frequency of monitoring,
28 test methods, and procedures validated on solid waste incineration
29 units, and the form and frequency of reports containing the results
30 of monitoring;

31 (B) require that any monitoring reports or test results indicat-
32 ing an exceedance of any standard under this section be reported
33 separately and in a manner that facilitates review for purposes of
34 enforcement actions; and

35 (C) require that copies of the results of the monitoring be main-
36 tained on file at the facility concerned and that copies be made
37 available for inspection and copying by members of the public dur-
38 ing business hours.

39 (e) OPERATOR TRAINING.—The Administrator shall develop and promote
40 a model State program for the training and certification of unit operators
41 and high-capacity fossil fuel-fired plant operators. The Administrator may

1 authorize any State to implement a model program for the training of unit
2 operators and high-capacity fossil fuel-fired plant operators if the State
3 adopts a program that is at least as effective as the model program devel-
4 oped by the Administrator. Beginning on the date 36 months after the date
5 on which performance standards and guidelines are promulgated under sub-
6 section (b) and section 211111 of this title for any category of units, it shall
7 be unlawful to operate any unit in the category unless each person with con-
8 trol over processes affecting emissions from the unit has satisfactorily com-
9 pleted a training program meeting the requirements established by the Ad-
10 ministrator under this subsection.

11 (f) PERMITS.—

12 (1) IN GENERAL.—Beginning on the later of—

13 (A) the date that is 36 months after the promulgation of a per-
14 formance standard under subsection (b) and section 211111 of
15 this title applicable to a category of units; or

16 (B) the effective date of a permit program under subdivision 6
17 in the State in which the unit is located;

18 each unit in the category shall operate pursuant to a permit issued
19 under this subsection and subdivision 6.

20 (2) RENEWAL.—A permit required by this subsection may be re-
21 newed under subdivision 6.

22 (3) DURATION.—Notwithstanding any other provision of this divi-
23 sion, a permit for a unit combusting municipal waste issued under this
24 division shall be issued for a period of up to 12 years and shall be re-
25 viewed every 5 years after date of issuance or reissuance. A permit
26 shall continue in effect after the date of issuance until the date of ter-
27 mination, unless the Administrator or State determines that the unit
28 is not in compliance with all standards and conditions contained in the
29 permit. Such a determination shall be made at regular intervals of not
30 more than 5 years during the term of the permit, after public comment
31 and public hearing.

32 (4) LIMITATION.—No permit for a unit may be issued under this di-
33 vision by an agency, instrumentality, or person that is also responsible,
34 in whole or part, for the design and construction or operation of the
35 unit.

36 (5) COMPLIANCE WITH EMISSION LIMITATIONS OR IMPLEMENTATION
37 OF OTHER MEASURES.—

38 (A) IN GENERAL.—Notwithstanding any other provision of this
39 subsection, the Administrator or the State shall require the owner
40 or operator of any unit to comply with emission limitations or im-
41 plement any other measures, if the Administrator or the State de-

1 termines that emissions in the absence of such limitations or
2 measures may reasonably be anticipated to endanger public health
3 or the environment.

4 (B) DISCRETIONARY DECISION.—The Administrator’s deter-
5 mination under subparagraph (A) is a discretionary decision.

6 (g) EFFECTIVE DATE AND ENFORCEMENT.—

7 (1) NEW UNITS.—Performance standards and other requirements
8 promulgated pursuant to this section and section 211111 of this title
9 and applicable to new solid waste incineration units shall be effective
10 as of the date that is 6 months after the date of promulgation.

11 (2) EXISTING UNITS.—Performance standards and other require-
12 ments promulgated pursuant to this section and section 211111 of this
13 title and applicable to existing units shall be effective as expeditiously
14 as practicable after approval of a State plan under subsection (c)(2)
15 (or promulgation of a plan by the Administrator under subsection
16 (c)(3)) but in no event later than 3 years after the State plan is ap-
17 proved or 5 years after the date on which the standards or require-
18 ments are promulgated, whichever is earlier.

19 (3) PROHIBITION.—It shall be unlawful for any owner or operator
20 of any solid waste incineration unit to which a performance standard,
21 emission limitation, or other requirement promulgated pursuant to this
22 section and section 211111 of this title applies to operate the unit in
23 violation of the performance standard, emission limitation, or require-
24 ment or for any other person to violate an applicable requirement of
25 this section.

26 (4) COORDINATION WITH OTHER AUTHORITIES.—For purposes of
27 sections 203102, 203103, 203104, 211111(j), 211113, 211114,
28 211116, and 211119 of this title and other provisions for the enforce-
29 ment of this division, each performance standard, emission limitation,
30 or other requirement established pursuant to this section by the Ad-
31 ministrator or a State or local government shall be treated in the same
32 manner as a standard of performance under section 211111 of this
33 title that is an emission limitation.

34 (h) OTHER AUTHORITY.—

35 (1) STATE AUTHORITY.—Nothing in this section shall preclude or
36 deny the right of any State or political subdivision thereof to adopt or
37 enforce any regulation, requirement, limitation, or standard relating to
38 solid waste incineration units that is more stringent than a regulation,
39 requirement, limitation, or standard in effect under this section or
40 under any other provision of this division.

1 (2) OTHER AUTHORITY UNDER THIS DIVISION.—Nothing in this sec-
2 tion shall diminish the authority of the Administrator or a State to es-
3 tablish any other requirements applicable to solid waste incineration
4 units under any other authority of law, including the authority to es-
5 tablish for any air pollutant a NAAQS, except that no solid waste in-
6 cineration unit subject to performance standards under this section and
7 section 211111 of this title shall be subject to standards under section
8 211112(d) of this title.

9 (3) RESIDUAL RISK.—

10 (A) IN GENERAL.—The Administrator shall promulgate stand-
11 ards under section 211112(f) of this title for a category of solid
12 waste incineration units, if promulgation of such standards is re-
13 quired under section 211112(f) of this title.

14 (B) STANDARDS.—For purposes of subparagraph (A) only—

15 (i) the performance standards under subsection (b) and
16 section 211111 of this title applicable to a category of units
17 shall be deemed to be standards under section 211112(d)(2)
18 of this title; and

19 (ii) the Administrator shall consider and regulate, if re-
20 quired, the pollutants listed under subsection (b)(4) and no
21 others.

22 (4) ACID RAIN.—A solid waste incineration unit shall not be a utility
23 unit as defined in subdivision 5 if more than 80 percent of its annual
24 average fuel consumption measured on a British thermal unit basis,
25 during a period or periods to be determined by the Administrator, is
26 from a fuel (including any waste burned as a fuel) other than a fossil
27 fuel.

28 (5) REQUIREMENTS OF CHAPTERS 213 AND 215.—No requirement of
29 an applicable implementation plan under section 213107 or
30 215102(e)(5) of this title may be used to weaken the standards in ef-
31 fect under this section.

32 **§ 211129. Emission factors**

33 (a) DEFINITION OF EMISSION FACTOR.—In this section, the term “emis-
34 sion factor” means a method by which to estimate the quantity of emissions
35 of an air pollutant for purposes of this division.

36 (b) REVIEW AND REVISION OF EMISSION FACTORS.—At least every 3
37 years, the Administrator shall review and, if necessary, revise, the emission
38 factors for carbon monoxide, volatile organic compounds, and nitrogen ox-
39 ides from sources of those air pollutants (including area sources and mobile
40 sources).

1 (c) ADDITIONAL EMISSION FACTORS.—The Administrator shall establish
2 emission factors for sources for which no emission factors have previously
3 been established by the Administrator.

4 (d) EMISSIONS ESTIMATING TECHNIQUES.—The Administrator shall per-
5 mit any person to demonstrate improved emissions estimating techniques,
6 and following approval of such techniques, the Administrator shall authorize
7 the use of the techniques. Any such technique may be approved only after
8 appropriate public participation.

9 **§ 211130. Land use authority**

10 Nothing in this division—

11 (1) constitutes an infringement on the authority of counties and cit-
12 ies to plan or control land use; or

13 (2) provides or transfers authority over land use.

14 **Chapter 213—Prevention of Significant**
15 **Deterioration of Air Quality**

Subchapter I—General Provisions

Sec.

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16 **Subchapter I—General Provisions**

17 **§ 213101. Purposes**

18 The purposes of this chapter are—

19 (1) to protect public health and welfare from any actual or potential
20 adverse effect that in the Administrator's judgment may reasonably be
21 anticipated to occur from air pollution or from exposures to pollutants
22 in other media, which pollutants originate as emissions to the ambient
23 air, notwithstanding attainment and maintenance of all NAAQSEs;

24 (2) to preserve, protect, and enhance the air quality in national
25 parks, national wilderness areas, national monuments, national sea-
26 shores, and other areas of special national or regional natural, rec-
27 reational, scenic, or historic value;

28 (3) to ensure that economic growth will occur in a manner consistent
29 with the preservation of existing clean air resources;

30 (4) to ensure that emissions from any source in any State will not
31 interfere with any portion of the applicable implementation plan to pre-
32 vent significant deterioration of air quality for any other State; and

1 (5) to ensure that any decision to permit increased air pollution in
2 any area to which this chapter applies is made only after careful eval-
3 uation of all the consequences of such a decision and after adequate
4 procedural opportunities for informed public participation in the deci-
5 sionmaking process.

6 **§ 213102. Definitions**

7 In this chapter:

8 (1) BASELINE CONCENTRATION.—

9 (A) IN GENERAL.—The term “baseline concentration” means,
10 with respect to a pollutant, the ambient concentration levels that
11 exist at the time of the 1st application for a permit in an area
12 subject to this chapter, based on air quality data available in EPA
13 or a State air pollution control agency and on such monitoring
14 data as the permit applicant is required to submit.

15 (B) PROJECTED EMISSIONS TAKEN INTO ACCOUNT.—Ambient
16 concentration levels described in subparagraph (A) shall take into
17 account all projected emissions in, or that may affect, the area
18 from any major emitting facility on which construction commenced
19 prior to January 6, 1975, but that had not begun operation by
20 the date of the baseline air quality concentration determination.

21 (C) SULFUR OXIDES; PARTICULATE MATTER.—Emissions of sul-
22 fur oxides and particulate matter from any major emitting facility
23 on which construction commences after January 6, 1975, shall not
24 be included in the baseline and shall be counted against the maxi-
25 mum allowable increases in pollutant concentrations established
26 under this chapter.

27 (2) BEST AVAILABLE CONTROL TECHNOLOGY.—The term “best
28 available control technology” means an emission limitation that—

29 (A) is based on the maximum degree of reduction of each pollut-
30 ant subject to regulation under this division emitted from or that
31 results from any major emitting facility, which the permitting au-
32 thority, on a case-by-case basis, taking into account energy, envi-
33 ronmental, and economic impacts and other costs, determines is
34 achievable for the major emitting facility through application of
35 production processes and available methods, systems, and tech-
36 niques, including fuel cleaning, clean fuels, or treatment or innova-
37 tive fuel combustion techniques for control of each such pollutant;

38 (B) does not result in emissions of any pollutants that will ex-
39 ceed the emissions allowed by any applicable standard established
40 pursuant to section 211111 or 211112 of this title; and

1 (C) does not allow emissions from any source utilizing clean
2 fuels, or any other means, to comply with this paragraph to in-
3 crease above levels that would have been required under section
4 169(3) of the Clean Air Act (42 U.S.C. 7479(3)) as in effect be-
5 fore November 15, 1990.

6 (3) COMMENCE.—The term “commence”, as applied to construction
7 of a major emitting facility, means to—

8 (A) obtain all necessary preconstruction approvals or permits re-
9 quired by Federal, State, or local air pollution emissions and air
10 quality laws (including regulations); and

11 (B)(i) begin, or cause to begin, a continuous program of phys-
12 ical on-site construction of the major emitting facility; or

13 (ii) enter into a binding agreement or contractual obligation,
14 which cannot be canceled or modified without substantial loss to
15 the owner or operator, to undertake a program of construction of
16 the major emitting facility to be completed within a reasonable
17 time.

18 (4) CONSTRUCTION.—The term “construction”, when used in con-
19 nection with any source or facility, includes the modification (as de-
20 fined in section 211111(a) of this title) of the source or facility.

21 (5) MAJOR EMITTING FACILITY.—

22 (A) IN GENERAL.—The term “major emitting facility” means—

23 (i) any of the stationary sources of air pollutants identified
24 in subparagraph (B) that emit, or have the potential to emit,
25 100 tons per year or more of any air pollutant from the types
26 of stationary sources identified in subparagraph (B); and

27 (ii) any other source with the potential to emit 250 tons
28 per year or more of any air pollutant.

29 (B) IDENTIFIED STATIONARY SOURCES.—The stationary
30 sources referred to in subparagraph (A)(i) are—

31 (i) fossil fuel-fired steam electric plants of more than
32 250,000,000 British thermal units per hour heat input;

33 (ii) coal cleaning plants (thermal dryers);

34 (iii) kraft pulp mills;

35 (iv) Portland cement plants;

36 (v) primary zinc smelters;

37 (vi) iron and steel mill plants;

38 (vii) primary aluminum ore reduction plants;

39 (viii) primary copper smelters;

40 (ix) municipal incinerators capable of charging more than
41 50 tons of refuse per day;

- 1 (x) hydrofluoric, sulfuric, and nitric acid plants;
- 2 (xi) petroleum refineries;
- 3 (xii) lime plants;
- 4 (xiii) phosphate rock processing plants;
- 5 (xiv) coke oven batteries;
- 6 (xv) sulfur recovery plants;
- 7 (xvi) carbon black plants (furnace process);
- 8 (xvii) primary lead smelters;
- 9 (xviii) fuel conversion plants;
- 10 (xix) sintering plants;
- 11 (xx) secondary metal production facilities;
- 12 (xxi) chemical process plants;
- 13 (xxii) fossil-fuel boilers of more than 250,000,000 British
- 14 thermal units per hour heat input;
- 15 (xxiii) petroleum storage and transfer facilities with a ca-
- 16 pacity exceeding 300,000 barrels;
- 17 (xxiv) taconite ore processing facilities;
- 18 (xxv) glass fiber processing plants; and
- 19 (xxvi) charcoal production facilities.

20 (C) EXCLUSIONS.—The term “major emitting facility” does not
 21 include a new or modified facility that is a nonprofit health or
 22 education institution that has been exempted by a State.

23 (6) NECESSARY PRECONSTRUCTION APPROVALS OR PERMITS.—The
 24 term “necessary preconstruction approvals or permits” means the per-
 25 mits or approvals required by a permitting authority as a precondition
 26 to undertaking any activity described in paragraph (3)(B).

27 **§ 213103. Plan requirements**

28 In accordance with the policy of section 211101(b)(1) of this title, each
 29 applicable implementation plan shall contain emission limitations and such
 30 other measures as may be necessary, as determined under regulations pro-
 31 mulgated under this chapter, to prevent significant deterioration of air qual-
 32 ity in each region (or portion thereof) designated pursuant to section
 33 211107 of this title as attainment or unclassifiable.

34 **§ 213104. Initial classifications**

35 (a) AREAS DESIGNATED AS CLASS I.—

36 (1) AREAS THAT MAY NOT BE REDESIGNATED.—All—

- 37 (A) international parks;
- 38 (B) national wilderness areas that exceed 5,000 acres;
- 39 (C) national memorial parks that exceed 5,000 acres; and
- 40 (D) national parks that exceed 6,000 acres;

1 that were in existence on August 7, 1977, shall be class I areas and
 2 may not be redesignated.

3 (2) AREAS THAT MAY BE REDESIGNATED.—All areas that were re-
 4 designated as class I under regulations promulgated before August 7,
 5 1977, shall be class I areas that may be redesignated as provided in
 6 this chapter.

7 (3) BOUNDARY CHANGES.—The extent of the areas designated as
 8 class I under this section shall conform to any changes in the bound-
 9 aries of those areas that occur.

10 (b) AREAS DESIGNATED AS CLASS II.—All areas in a State designated
 11 pursuant to section 211107(d) of this title as attainment or unclassifiable
 12 that are not established as class I under subsection (a) shall be class II
 13 areas unless redesignated under section 213106 of this title.

14 **§ 213105. Increments and ceilings**

15 (a) PARTICULATE MATTER AND SULFUR OXIDE; REQUIREMENT THAT
 16 MAXIMUM ALLOWABLE INCREASES AND MAXIMUM ALLOWABLE CON-
 17 CENTRATIONS NOT BE EXCEEDED.—In the case of particulate matter and
 18 sulfur oxide, an applicable implementation plan shall contain measures en-
 19 suring that maximum allowable increases over baseline concentrations of,
 20 and maximum allowable concentrations of, particulate matter and sulfur
 21 oxide shall not be exceeded. In the case of any maximum allowable increase
 22 (except an allowable increase specified under section
 23 213107(d)(2)(C)(iii)(II) of this title) for a pollutant based on concentrations
 24 permitted under NAAQSEs for any period other than an annual period, reg-
 25 ulations shall permit such maximum allowable increase to be exceeded dur-
 26 ing 1 such period per year.

27 (b) MAXIMUM ALLOWABLE INCREASES IN CONCENTRATIONS OVER BASE-
 28 LINE CONCENTRATIONS.—

29 (1) CLASS I AREAS.—For any class I area, the maximum allowable
 30 increase in concentrations of particulate matter and sulfur oxide over
 31 the baseline concentration of those pollutants shall not exceed the fol-
 32 lowing amounts:

Pollutant	Maximum al- lowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

33 (2) CLASS II AREAS.—For any class II area, the maximum allowable
 34 increase in concentrations of particulate matter and sulfur oxide over

1 the baseline concentration of those pollutants shall not exceed the fol-
 2 lowing amounts:

Pollutant	Maximum al- lowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

3 (3) CLASS III AREAS.—For any class III area, the maximum allow-
 4 able increase in concentrations of particulate matter and sulfur oxide
 5 over the baseline concentration of those pollutants shall not exceed the
 6 following amounts:

Pollutant	Maximum al- lowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

7 (4) ANY AREA TO WHICH THIS CHAPTER APPLIES.—The maximum
 8 allowable concentration of any air pollutant in any area to which this
 9 chapter applies shall not exceed a concentration for that pollutant for
 10 each period of exposure equal to—

- 11 (A) the concentration permitted under the secondary NAAQS;
- 12 or
- 13 (B) the concentration permitted under the primary NAAQS;
- 14 whichever concentration is lower for the pollutant for that period of ex-
- 15 posure.

16 (e) ORDERS OR REGULATIONS FOR DETERMINING COMPLIANCE WITH
 17 MAXIMUM ALLOWABLE INCREASES IN AMBIENT CONCENTRATIONS OF AIR
 18 POLLUTANTS.—

19 (1) CONCENTRATIONS OF CERTAIN POLLUTANTS NOT TAKEN INTO
 20 ACCOUNT.—In the case of any State that has a plan approved by the
 21 Administrator for purposes of carrying out this chapter, the Governor
 22 of the State may, after notice and opportunity for public hearing, issue
 23 orders or promulgate regulations providing that for purposes of deter-
 24 mining compliance with the maximum allowable increases in ambient
 25 concentrations of an air pollutant, the following concentrations of the
 26 pollutant shall not be taken into account:

- 27 (A) Concentrations of the pollutant attributable to the increase
- 28 in emissions from stationary sources that have converted from the

1 use of petroleum products, or natural gas, or both, by reason of
2 an order that is in effect under subsections (a) and (b) of section
3 2 of the Energy Supply and Environmental Coordination Act of
4 1974 (15 U.S.C. 792) (or any subsequent legislation that super-
5 sedes those subsections) over the emissions from those stationary
6 sources before the effective date of the order.

7 (B) Concentrations of the pollutant attributable to the increase
8 in emissions from stationary sources that have converted from
9 using natural gas by reason of a natural gas curtailment pursuant
10 to a natural gas curtailment plan in effect pursuant to the Federal
11 Power Act (16 U.S.C. 791a et seq.) over the emissions from those
12 stationary sources before the effective date of the plan.

13 (C) Concentrations of particulate matter attributable to the in-
14 crease in emissions from construction or other temporary emis-
15 sion-related activities.

16 (D) The increase in concentrations attributable to new sources
17 outside the United States over the concentrations attributable to
18 existing sources that are included in the baseline concentration.

19 (2) TIME PERIOD.—No action taken with respect to a source under
20 subparagraph (A) or (B) of paragraph (1) shall apply more than 5
21 years after the effective date of an order described in paragraph (1)(A)
22 or the plan described to in paragraph (1)(B), whichever is applicable.
23 If both such an order and such a plan are applicable, no such action
24 shall apply more than 5 years after the later of the effective dates.

25 (3) SUBMISSION TO THE ADMINISTRATOR.—No action under this
26 subsection shall take effect unless the Governor submits the order or
27 regulation providing for an exclusion to the Administrator and the Ad-
28 ministrator determines that the order or regulation is in compliance
29 with this subsection.

30 § 213106. Area redesignation

31 (a) AUTHORITY OF STATES TO REDESIGNATE AREAS.—

32 (1) CLASS I.—Except as otherwise provided under subsection (c), a
33 State may redesignate such areas as the State considers appropriate
34 as class I areas.

35 (2) CLASS I OR CLASS II.—

36 (A) IN GENERAL.—The following areas may be redesignated
37 only as class I or class II:

38 (i) An area that exceeds 10,000 acres and is a national
39 monument, national primitive area, national preserve, na-
40 tional recreation area, national wild and scenic river, national
41 wildlife refuge, national lakeshore, or national seashore.

1 (ii) A national park or national wilderness area established
2 after August 7, 1977, that exceeds 10,000 acres.

3 (B) EXTENT OF AREAS.—The extent of the areas described in
4 clauses (i) and (ii) of subparagraph (A) shall conform to any
5 changes in the boundaries of those areas that occur.

6 (3) CLASS III.—

7 (A) IN GENERAL.—Any area (other than an area described in
8 clause (i) or (ii) of paragraph (2)(A) or an area established as
9 class I under section 213104(a)(1) of this title) may be redesign-
10 nated by a State as class III if—

11 (i)(I) the redesignation has been specifically approved by
12 the Governor of the State, after consultation with the appro-
13 priate committees of the legislature if it is in session or with
14 the leadership of the legislature if it is not in session (unless
15 State law provides that such redesignation must be specifi-
16 cally approved by State legislation); and

17 (II) general purpose units of local government representing
18 a majority of the residents of the area to be redesignated
19 enact legislation (including for such units of local government
20 resolutions where appropriate) concurring in the State's re-
21 designation;

22 (ii) the redesignation will not cause, or contribute to, con-
23 centrations of any air pollutant that exceed any maximum al-
24 lowable increase or maximum allowable concentration per-
25 mitted under the classification of any other area; and

26 (iii) the redesignation otherwise meets the requirements of
27 this chapter.

28 (B) INDIAN TRIBES.—Subparagraph (A)(i)(I) does not apply to
29 area redesignations by an Indian tribe.

30 (b) PROCEDURE.—

31 (1) NOTICE AND HEARING; NOTICE TO FEDERAL LAND MANAGER;
32 WRITTEN COMMENTS AND RECOMMENDATIONS; REGULATIONS; DIS-
33 APPROVAL OF REDESIGNATION.—

34 (A) NOTICE OF HEARING.—Prior to redesignation of any area
35 under this chapter, notice shall be afforded and public hearings
36 shall be conducted in areas proposed to be redesignated and in
37 areas that may be affected by the proposed redesignation. Prior
38 to any such public hearing, a satisfactory description and analysis
39 of the health, environmental, economic, social, and energy effects
40 of the proposed redesignation shall be prepared and made avail-
41 able for public inspection, and prior to any such redesignation, the

1 description and analysis of those effects shall be reviewed and ex-
2 amined by the redesignating authorities.

3 (B) FEDERAL LAND MANAGERS.—Prior to the issuance of no-
4 tice under subparagraph (A) respecting the redesignation of any
5 area under this subsection, if the area includes any Federal land,
6 the State shall provide written notice to the appropriate Federal
7 land manager and afford adequate opportunity (but not in excess
8 of 60 days) to confer with the State respecting the intended notice
9 of redesignation and to submit written comments and recom-
10 mendations with respect to the intended notice of redesignation.
11 In redesignating any area under this section with respect to which
12 a Federal land manager has submitted written comments and rec-
13 ommendations, the State shall publish a list of any inconsistency
14 between the redesignation and the recommendations and an expla-
15 nation of the inconsistency (including the reasons for making the
16 redesignation against the recommendation of the Federal land
17 manager).

18 (C) REGULATIONS.—The Administrator shall promulgate regu-
19 lations to ensure, insofar as practicable, that prior to any public
20 hearing on redesignation of any area, there shall be available for
21 public inspection any specific plans for any new or modified major
22 emitting facility that may be permitted to be constructed and op-
23 erated only if the area is designated or redesignated as class III.

24 (2) DISAPPROVAL OF REDESIGNATION.—The Administrator may dis-
25 approve the redesignation of any area only if the Administrator finds,
26 after notice and opportunity for public hearing, that the redesignation
27 does not meet the procedural requirements of this section or is incon-
28 sistent with the requirements of section 213104(a) of this title or of
29 subsection (a). If any such disapproval occurs, the classification of the
30 area shall be that which was in effect prior to the redesignation that
31 was disapproved.

32 (e) INDIAN RESERVATIONS.—Land within the exterior boundaries of a
33 reservation of a federally recognized Indian tribe may be redesignated only
34 by the appropriate Indian governing body.

35 (d) RESOLUTION OF DISPUTES BETWEEN STATES AND INDIAN
36 TRIBES.—

37 (1) NEGOTIATIONS.—If any State affected by the redesignation of an
38 area by an Indian tribe or any Indian tribe affected by the redesigna-
39 tion of an area by a State disagrees with the redesignation of any area,
40 or if a permit is proposed to be issued for any new major emitting fa-
41 cility proposed for construction in any State that the Governor of an

1 affected State or governing body of an affected Indian tribe determines
2 will cause or contribute to a cumulative change in air quality in excess
3 of that allowed in this subchapter within the affected State or tribal
4 reservation, the Governor or Indian governing body may request the
5 Administrator to enter into negotiations with the parties involved to re-
6 solve the dispute.

7 (2) RECOMMENDATIONS.—If requested by any State or Indian tribe
8 involved, the Administrator shall make a recommendation to resolve the
9 dispute and protect the air quality related values of the land involved.

10 (3) FAILURE TO REACH AGREEMENT.—If the parties involved do not
11 reach agreement, the Administrator shall resolve the dispute and the
12 Administrator's determination, or the results of agreements reached
13 through other means, shall become part of the applicable plan and shall
14 be enforceable as part of the plan. In resolving such disputes relating
15 to area redesignation, the Administrator shall consider the extent to
16 which the land involved is of sufficient size to allow effective air quality
17 management or have air quality-related values of such an area.

18 **§ 213107. Preconstruction requirements**

19 (a) MAJOR EMITTING FACILITIES ON WHICH CONSTRUCTION IS COM-
20 MENCED.—No major emitting facility may be constructed in any area to
21 which this chapter applies unless—

22 (1) a permit is issued for the proposed major emitting facility in ac-
23 cordance with this chapter setting forth emission limitations for the
24 major emitting facility that conform to the requirements of this chap-
25 ter;

26 (2)(A) the proposed permit is subjected to a review in accordance
27 with this section;

28 (B) the required analysis is conducted in accordance with regulations
29 promulgated by the Administrator; and

30 (C) a public hearing is held with opportunity for interested persons
31 including representatives of the Administrator to appear and submit
32 written or oral presentations on—

- 33 (i) the air quality impact of the source;
34 (ii) alternatives thereto;
35 (iii) control technology requirements; and
36 (iv) other appropriate considerations;

37 (3) the owner or operator of the major emitting facility dem-
38 onstrates, as required pursuant to section 211110(h) of this title, that
39 emissions from construction or operation of the major emitting facility
40 will not cause, or contribute to, air pollution in excess of—

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1 (A) any maximum allowable increase or maximum allowable
2 concentration for any pollutant in any area to which this chapter
3 applies more than 1 time per year;

4 (B) any NAAQS in any air quality control region; or

5 (C) any other applicable emission standard or standard of per-
6 formance under this division;

7 (4) the proposed major emitting facility is subject to the best avail-
8 able control technology for each pollutant subject to regulation under
9 this division emitted from, or that results from, the major emitting fa-
10 cility;

11 (5) the provisions of subsection (d) with respect to protection of class
12 I areas are complied with for the major emitting facility;

13 (6) there is an analysis of any air quality impacts projected for the
14 area as a result of growth associated with the major emitting facility;

15 (7) the person that owns or operates, or proposes to own or operate,
16 a major emitting facility for which a permit is required under this
17 chapter agrees to conduct such monitoring as may be necessary to de-
18 termine the effect that emissions from any such major emitting facility
19 may have, or is having, on air quality in any area that may be affected
20 by emissions from the source; and

21 (8) in the case of a source that proposes to construct in a class III
22 area, emissions from which would cause or contribute to exceeding the
23 maximum allowable increments applicable in a class II area and where
24 no standard under section 211111 of this title has been promulgated
25 subsequent to August 7, 1977, for that source category, the Adminis-
26 trator has approved the determination of best available technology as
27 set forth in the permit.

28 (b) EXCEPTION.—The demonstration pertaining to maximum allowable
29 increases required under subsection (a)(3) shall not apply to maximum al-
30 lowable increases for class II areas in the case of an expansion or modifica-
31 tion of a major emitting facility that was in existence on August 7, 1977,
32 whose allowable emissions of air pollutants, after compliance with subsection
33 (a)(4), will be less than 50 tons per year and for which the owner or opera-
34 tor of the major emitting facility demonstrates that emissions of particulate
35 matter and sulfur oxides will not cause or contribute to ambient air quality
36 levels in excess of the secondary NAAQS for particulate matter or sulfur
37 oxides.

38 (c) PERMIT APPLICATIONS.—Any completed permit application under sec-
39 tion 211110 of this title for a major emitting facility in any area to which
40 this chapter applies shall be granted or denied not later than 1 year after
41 the date of filing of the completed application.

1 (d) ACTION TAKEN ON PERMIT APPLICATIONS; NOTICE; ADVERSE IM-
2 PACT ON AIR QUALITY RELATED VALUES; VARIANCE; EMISSION LIMITA-
3 TIONS.—

4 (1) TRANSMITTAL OF COPY OF PERMIT APPLICATION TO ADMINIS-
5 TRATOR; NOTICE OF ACTION.—Each State shall—

6 (A) transmit to the Administrator a copy of each permit appli-
7 cation relating to a major emitting facility received by the State;
8 and

9 (B) provide notice to the Administrator of every action related
10 to the consideration of the permit.

11 (2) FEDERAL LAND MANAGER; FEDERAL OFFICIAL CHARGED WITH
12 RESPONSIBILITY.—

13 (A) NOTICE.—The Administrator shall provide notice of the
14 permit application to the Federal land manager and the Federal
15 official charged with direct responsibility for management of any
16 land within a class I area that may be affected by emissions from
17 the proposed major emitting facility.

18 (B) RESPONSIBILITY.—The Federal land manager and the Fed-
19 eral official charged with direct responsibility for management of
20 land within a class I area that may be affected by emissions from
21 the proposed major emitting facility shall have an affirmative re-
22 sponsibility to protect the air quality-related values (including visi-
23 bility) of any such land within a class I area and to consider, in
24 consultation with the Administrator, whether a proposed major
25 emitting facility will have an adverse impact on those values.

26 (C) CHANGE IN AIR QUALITY; ADVERSE IMPACT ON AIR QUAL-
27 ITY-RELATED VALUES; NO ADVERSE IMPACT.—

28 (i) CHANGE IN AIR QUALITY.—In any case where the Fed-
29 eral official charged with direct responsibility for management
30 of any land within a class I area or the Federal land manager
31 of the land, the Administrator, or the Governor of an adja-
32 cent State containing a class I area files a notice alleging that
33 emissions from a proposed major emitting facility may cause
34 or contribute to a change in the air quality in the area and
35 identifying the potential adverse impact of the change, a per-
36 mit shall not be issued unless the owner or operator of the
37 major emitting facility demonstrates that emissions of particu-
38 late matter and sulfur dioxide will not cause or contribute
39 to concentrations that exceed the maximum allowable in-
40 creases for a class I area.

1 (ii) ADVERSE IMPACT ON THE AIR QUALITY-RELATED VAL-
 2 UES.—In any case where the Federal land manager dem-
 3 onstrates to the satisfaction of the State that the emissions
 4 from the major emitting facility will have an adverse impact
 5 on the air quality-related values (including visibility) of the
 6 land, notwithstanding the fact that the change in air quality
 7 resulting from emissions from the major emitting facility will
 8 not cause or contribute to concentrations that exceed the
 9 maximum allowable increases for a class I area, a permit
 10 shall not be issued.

11 (iii) NO ADVERSE IMPACT ON AIR QUALITY-RELATED VAL-
 12 UES.—

13 (I) IN GENERAL.—In any case where the owner or op-
 14 erator of the major emitting facility demonstrates to the
 15 satisfaction of the Federal land manager, and the Fed-
 16 eral land manager so certifies, that the emissions from
 17 the major emitting facility will have no adverse impact
 18 on the air quality-related values of the land (including
 19 visibility), notwithstanding the fact that the change in
 20 air quality resulting from emissions from the major emit-
 21 ting facility will cause or contribute to concentrations
 22 that exceed the maximum allowable increases for class I
 23 areas, the State may issue a permit.

24 (II) COMPLIANCE WITH EMISSION LIMITATIONS.—In
 25 the case of a permit issued pursuant to subelause (I), the
 26 major emitting facility shall comply with such emission
 27 limitations under the permit as may be necessary to en-
 28 sure that emissions of particulate matter and sulfur ox-
 29 ides from the major emitting facility will not cause or
 30 contribute to concentrations of particulate matter or sul-
 31 fur oxides that exceed the following maximum allowable
 32 increases over the baseline concentration for particulate
 33 matter and sulfur oxides:

	Maximum al- lowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	325

34 (D) VARIANCE.—

1 (i) IN GENERAL.—In any case where the owner or operator
2 of a proposed major emitting facility that has been denied a
3 permit under subparagraph (C)(iii)(I) demonstrates to the
4 satisfaction of the Governor, after notice and public hearing,
5 and the Governor finds, that the facility cannot be con-
6 structed by reason of any maximum allowable increase for
7 sulfur dioxide for periods of 24 hours or less applicable to any
8 class I area and, in the case of Federal mandatory class I
9 areas, that a variance under this clause will not adversely af-
10 fect the air quality related values of the area (including visi-
11 bility), the Governor, after consideration of the Federal land
12 manager’s recommendation (if any) and subject to the con-
13 currence of the Federal land manager, may grant a variance
14 from the maximum allowable increase. If a variance is grant-
15 ed, a permit may be issued to the source pursuant to the re-
16 quirements of this subparagraph.

17 (ii) NO CONCURRENCE.—In any case in which a Governor
18 recommends a variance under this subparagraph in which the
19 Federal land manager does not concur, the recommendations
20 of the Governor and the Federal land manager shall be trans-
21 mitted to the President. The President may approve the Gov-
22 ernor’s recommendation if the President finds that the vari-
23 ance is in the national interest. No Presidential finding shall
24 be reviewable in any court. The variance shall take effect if
25 the President approves the Governor’s recommendations. The
26 President shall approve or disapprove the recommendation
27 within 90 days after receipt by the President of the recom-
28 mendations of the Governor and the Federal land manager.

29 (iii) COMPLIANCE WITH EMISSION LIMITATIONS.—

30 (I) DEFINITIONS.—

31 (aa) HIGH TERRAIN AREA.—In this clause, the
32 term “high terrain area”, with respect to any major
33 emitting facility, means any area having an ele-
34 vation of 900 feet or more above the base of the
35 stack of the major emitting facility.

36 (bb) LOW TERRAIN AREA.—The term “low ter-
37 rain area” means any area other than a high ter-
38 rain area.

39 (II) COMPLIANCE.—In the case of a permit issued
40 pursuant to this subparagraph, the major emitting facil-
41 ity shall comply with such emission limitations under the

1 permit as may be necessary to ensure that emissions of
 2 sulfur oxides from the major emitting facility will not
 3 (during any day on which the otherwise applicable maxi-
 4 mum allowable increases are exceeded) cause or contrib-
 5 ute to concentrations that exceed the following maximum
 6 allowable increases for such areas over the baseline con-
 7 centration for sulfur oxides and to ensure that the emis-
 8 sions will not cause or contribute to concentrations that
 9 exceed the otherwise applicable maximum allowable in-
 10 creases for periods of exposure of 24 hours or less on
 11 more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE
 (In micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

12 (e) ANALYSIS.—

13 (1) IN GENERAL.—The review provided for in subsection (a) shall be
 14 preceded by an analysis of the ambient air quality at the proposed site
 15 and in areas that may be affected by emissions from the major emit-
 16 ting facility for each pollutant subject to regulation under this division
 17 that will be emitted from the major emitting facility. The review shall
 18 be conducted in accordance with regulations of the Administrator, pro-
 19 mulgated under this subsection, and may be conducted by the State,
 20 any general purpose unit of local government, or the major emitting
 21 facility applying for a permit.

22 (2) CONTINUOUS AIR QUALITY MONITORING.—The analysis required
 23 by this subsection shall include continuous air quality monitoring data
 24 gathered for purposes of determining whether emissions from the major
 25 emitting facility will exceed the maximum allowable increases or the
 26 maximum allowable concentration permitted under this chapter. The
 27 data shall be gathered over a period of 1 calendar year preceding the
 28 date of application for a permit under this chapter unless the State,
 29 in accordance with regulations promulgated by the Administrator, de-
 30 termines that a complete and adequate analysis for such purposes may
 31 be accomplished in a shorter period. The results of the analysis shall
 32 be available at the time of the public hearing on the application for the
 33 permit.

34 (3) REGULATIONS.—

1 (A) IN GENERAL.—The Administrator shall promulgate regula-
2 tions respecting the analysis required under this subsection.

3 (B) CONTENTS.—The regulations—

4 (i) shall not require the use of any automatic or uniform
5 buffer zone or zones;

6 (ii) shall require an analysis of—

7 (I) the ambient air quality, climate and meteorology,
8 terrain, soils and vegetation, and visibility at the site of
9 the proposed major emitting facility and in the area po-
10 tentially affected by the emissions from the major emit-
11 ting facility for each pollutant regulated under this divi-
12 sion that will be emitted from, or that results from the
13 construction or operation of, the major emitting facility;

14 (II) the size and nature of the proposed major emit-
15 ting facility;

16 (III) the degree of continuous emission reduction that
17 could be achieved by the major emitting facility; and

18 (IV) such other factors as may be relevant in deter-
19 mining the effect of emissions from a proposed major
20 emitting facility on any air quality control region;

21 (iii) shall require that the results of the analysis be avail-
22 able at the time of the public hearing on the application for
23 the permit; and

24 (iv) shall specify with reasonable particularity each air
25 quality model to be used under specified sets of conditions for
26 purposes of this chapter.

27 (4) ADJUSTMENT OF MODELS.—Any model or models designated
28 under the regulations may be adjusted based on a determination, after
29 notice and opportunity for public hearing, by the Administrator that
30 an adjustment is necessary to take into account unique terrain or mete-
31 orological characteristics of an area potentially affected by emissions
32 from a source applying for a permit required under this chapter.

33 **§ 213108. Other pollutants**

34 (a) HYDROCARBONS, CARBON MONOXIDE, PETROCHEMICAL OXIDANTS,
35 AND NITROGEN OXIDES.—In the case of the pollutants hydrocarbons, car-
36 bon monoxide, photochemical oxidants, and nitrogen oxides, the Adminis-
37 trator shall conduct a study and promulgate regulations to prevent the sig-
38 nificant deterioration of air quality that would result from the emissions of
39 those pollutants. In the case of pollutants for which NAAQSES are promul-
40 gated after August 7, 1977, the Administrator shall promulgate such regu-

1 lations not more than 2 years after the date of promulgation of the
2 NAAQses.

3 (b) EFFECTIVE DATE OF REGULATIONS.—Regulations under subsection
4 (a) shall become effective 1 year after the date of promulgation.

5 (c) STATE IMPLEMENTATION PLAN PROVISIONS.—A State implementa-
6 tion plan shall contain provisions to conform the regulations under sub-
7 section (a), which provisions shall be submitted to the Administrator, who
8 shall approve or disapprove the provisions within 25 months after the date
9 of promulgation of the regulations in the same manner as is required under
10 section 211110 of this title.

11 (d) CONTENTS OF REGULATIONS.—The regulations shall—

12 (1) provide—

13 (A) specific numerical measures against which permit applica-
14 tions may be evaluated;

15 (B) a framework for stimulating improved control technology;
16 and

17 (C) protection of air quality values; and

18 (2) fulfill the goals and purposes set forth in sections 211101 and
19 213101 of this title.

20 (e) SPECIFIC MEASURES TO FULFILL GOALS AND PURPOSES.—The reg-
21 ulations—

22 (1) shall provide specific measures at least as effective as the incre-
23 ments established in section 213105 of this title to fulfill the goals and
24 purposes set forth in sections 211101 and 213101 of this title; and

25 (2) may contain air quality increments, emission density require-
26 ments, or other measures.

27 (f) AREA CLASSIFICATION PLAN NOT REQUIRED.—

28 (1) IN GENERAL.—With respect to any air pollutant (other than a
29 sulfur oxide or particulate matter) for which a NAAQS is established,
30 an area classification plan shall not be required under this section if
31 the implementation plan adopted by the State and submitted for the
32 Administrator's approval or promulgated by the Administrator under
33 section 211110(c) of this title contains other provisions that, when con-
34 sidered as a whole, the Administrator finds will carry out the purposes
35 of section 213101 of this title at least as effectively as an area classi-
36 fication plan for that pollutant.

37 (2) MAXIMUM ALLOWABLE INCREASES.—The other provisions de-
38 scribed in paragraph (1) need not require the establishment of maxi-
39 mum allowable increases with respect to a pollutant for any area to
40 which this section applies.

41 (g) PM-10 INCREMENTS.—

1 (1) IN GENERAL.—The Administrator may substitute, for the maxi-
2 mum allowable increases in particulate matter specified in sections
3 213105(b) and 213107(d)(2)(C)(iii)(II) of this title, maximum allow-
4 able increases in particulate matter with an aerodynamic diameter
5 smaller than or equal to 10 micrometers.

6 (2) STRINGENCY.—Such substituted maximum allowable increases
7 shall be of equal stringency in effect as those specified in the provisions
8 for which they are substituted.

9 **§ 213109. Enforcement**

10 The Administrator shall, and a State may, take such measures, including
11 issuance of an order or seeking injunctive relief, as are necessary to prevent
12 the construction or modification of a major emitting facility that—

13 (1) does not conform to the requirements of this chapter; or

14 (2)(A) is proposed to be constructed in any area designated pursuant
15 to section 211107(d) of this title as attainment or unclassifiable; and

16 (B) is not subject to an implementation plan that meets the require-
17 ments of this chapter.

18 **Subchapter II—Visibility Protection**

19 **§ 213201. Visibility protection for mandatory class I Federal**
20 **areas**

21 (a) DEFINITIONS.—In this section:

22 (1) AS EXPEDITIOUSLY AS PRACTICABLE.—The term “as expedi-
23 tiously as practicable” means as expeditiously as practicable but in no
24 event later than 5 years after the date of approval of a plan revision
25 under this section (or the date of promulgation of such a plan revision
26 in the case of action by the Administrator under section 211110(e) of
27 this title for purposes of this section).

28 (2) BEST AVAILABLE RETROFIT TECHNOLOGY.—The term “best
29 available retrofit technology”, with respect to a source, means retrofit
30 technology that a State (or the Administrator in determining emission
31 limitations that reflect such technology) determines is the best available
32 after taking into consideration—

33 (A) the costs of compliance;

34 (B) the energy and non-air-quality environmental impacts of
35 compliance;

36 (C) any existing pollution control technology in use at the
37 source;

38 (D) the remaining useful life of the source; and

39 (E) the degree of improvement in visibility that may reasonably
40 be anticipated to result from the use of the technology.

- 1 (3) IMPAIRMENT OF VISIBILITY.—The term “impairment of visi-
2 bility” includes reduction in visual range and atmospheric discoloration.
- 3 (4) MAJOR STATIONARY SOURCE.—The term “major stationary
4 source” means the following types of stationary sources with the poten-
5 tial to emit 250 tons or more of any pollutant:
- 6 (A) Fossil fuel-fired steam electric plants of more than
7 250,000,000 British thermal units per hour heat input.
- 8 (B) Coal cleaning plants (thermal dryers).
- 9 (C) Kraft pulp mills.
- 10 (D) Portland cement plants.
- 11 (E) Primary zinc smelters.
- 12 (F) Iron and steel mill plants.
- 13 (G) Primary aluminum ore reduction plants.
- 14 (H) Primary copper smelters.
- 15 (I) Municipal incinerators capable of charging more than 250
16 tons of refuse per day.
- 17 (J) Hydrofluoric, sulfuric, and nitric acid plants.
- 18 (K) Petroleum refineries.
- 19 (L) Lime plants.
- 20 (M) Phosphate rock processing plants.
- 21 (N) Coke oven batteries.
- 22 (O) Sulfur recovery plants.
- 23 (P) Carbon black plants (furnace process).
- 24 (Q) Primary lead smelters.
- 25 (R) Fuel conversion plants.
- 26 (S) Sintering plants.
- 27 (T) Secondary metal production facilities.
- 28 (U) Chemical process plants.
- 29 (V) Fossil-fuel boilers of more than 250,000,000 British ther-
30 mal units per hour heat input.
- 31 (W) Petroleum storage and transfer facilities with a capacity ex-
32 ceeding 300,000 barrels.
- 33 (X) Taconite ore processing facilities.
- 34 (Y) Glass fiber processing plants.
- 35 (Z) Charcoal production facilities.
- 36 (5) MANDATORY CLASS I FEDERAL AREA.—The term “mandatory
37 class I Federal area” means a Federal area that may not be designated
38 as other than class I under this chapter.
- 39 (6) MANMADE AIR POLLUTION.—The term “manmade air pollution”
40 means air pollution that results directly or indirectly from human activ-
41 ity.

1 (7) REASONABLE PROGRESS.—The term “reasonable progress”, with
2 respect to a source, means progress that is determined to be reasonable
3 after taking into consideration—

4 (A) the costs of compliance;

5 (B) the time necessary for compliance;

6 (C) the energy and non-air-quality environmental impacts of
7 compliance; and

8 (D) the remaining useful life of the source.

9 (b) PREVENTION OF FUTURE AND REMEDYING OF EXISTING IMPAIR-
10 MENT OF VISIBILITY.—

11 (1) NATIONAL GOAL.—Congress declares as a national goal the pre-
12 vention of any future impairment of visibility, and the remedying of
13 any existing impairment of visibility, in mandatory class I Federal
14 areas that results from manmade air pollution.

15 (2) IDENTIFICATION OF AREAS WHERE VISIBILITY IS AN IMPORTANT
16 VALUE.—The Secretary of the Interior, in consultation with other Fed-
17 eral land managers, shall review all mandatory class I Federal areas
18 and identify those where visibility is an important value of the area.
19 From time to time the Secretary of the Interior may revise the identi-
20 fications. The Administrator shall, after consultation with the Secretary
21 of the Interior, promulgate a list of mandatory class I Federal areas
22 in which the Secretary of the Interior determines that visibility is an
23 important value.

24 (3) REPORT.—

25 (A) IN GENERAL.—The Administrator shall complete a study
26 and report to Congress on available methods for implementing the
27 national goal set forth in paragraph (1).

28 (B) CONTENTS OF REPORT.—The report shall—

29 (i) include recommendations for—

30 (I) methods for identifying, characterizing, determin-
31 ing, quantifying, and measuring impairment of visibility
32 in mandatory class I Federal areas;

33 (II) modeling techniques (or other methods) for deter-
34 mining the extent to which manmade air pollution may
35 reasonably be anticipated to cause or contribute to im-
36 pairment of visibility; and

37 (III) methods for preventing and remedying such man-
38 made air pollution and resulting impairment of visibility;
39 and

40 (ii) identify the classes or categories of sources and the
41 types of air pollutants that, alone or in conjunction with other

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1 sources or pollutants, may reasonably be anticipated to cause
2 or contribute significantly to impairment of visibility.

3 (c) REGULATIONS.—

4 (1) IN GENERAL.—After notice and public hearing, the Adminis-
5 trator shall promulgate regulations to ensure—

6 (A) reasonable progress toward meeting the national goal speci-
7 fied in subsection (b)(1); and

8 (B) compliance with the requirements of this section.

9 (2) CONTENTS.—Regulations under paragraph (1) shall—

10 (A) provide guidelines to the States, taking into account the rec-
11 ommendations under subsection (b)(3) on appropriate techniques
12 and methods for implementing this section (as provided in sub-
13 clauses (I) through (III) of subsection (b)(3)(B)(i)); and

14 (B) require each applicable implementation plan for a State in
15 which any area listed by the Administrator under subsection (b)(2)
16 is located (or for a State the emissions from which may reasonably
17 be anticipated to cause or contribute to any impairment of visi-
18 bility in any mandatory class I Federal area) to contain such emis-
19 sion limitations, schedules of compliance, and other measures as
20 may be necessary to make reasonable progress toward meeting the
21 national goal specified in subsection (b)(1), including—

22 (i) except as otherwise provided pursuant to subsection (d),
23 a requirement that each major stationary source that was in
24 existence on August 7, 1977, but which had not been in oper-
25 ation for more than 15 years as of that date, and which, as
26 determined by the State (or the Administrator in the case of
27 a plan promulgated under section 211110(c) of this title)
28 emits any air pollutant that may reasonably be anticipated to
29 cause or contribute to any impairment of visibility in any
30 mandatory class I Federal area, shall procure, install, and op-
31 erate, as expeditiously as practicable (and maintain there-
32 after) the best available retrofit technology, as determined by
33 the State (or the Administrator in the case of a plan promul-
34 gated under section 211110(e) of this title) for controlling
35 emissions from the source for the purpose of eliminating or
36 reducing any impairment of visibility; and

37 (ii) a long-term (10- to 15-year) strategy for making rea-
38 sonable progress toward meeting the national goal specified in
39 subsection (b)(1).

40 (3) CERTAIN FOSSIL FUEL-FIRED GENERATING POWERPLANTS.—In
41 the case of a fossil fuel-fired generating powerplant having a total gen-

1 erating capacity in excess of 750 megawatts, the emission limitations
2 required under this subsection shall be determined pursuant to guide-
3 lines promulgated by the Administrator under paragraph (2)(A).

4 (d) EXEMPTIONS.—

5 (1) IN GENERAL.—The Administrator may, by regulation, after no-
6 tice and opportunity for public hearing, exempt any major stationary
7 source from the requirement of subsection (c)(2)(B)(i), on a determina-
8 tion by the Administrator that the source does not or will not, by itself
9 or in combination with other sources, emit any air pollutant that may
10 reasonably be anticipated to cause or contribute to a significant impair-
11 ment of visibility in any mandatory class I Federal area.

12 (2) CERTAIN FOSSIL FUEL-FIRED POWERPLANTS.—Paragraph (1)
13 does not apply to any fossil fuel-fired powerplant with total design ca-
14 pacity of 750 megawatts or more unless the owner or operator of the
15 powerplant demonstrates to the satisfaction of the Administrator that
16 the powerplant is located at such a distance from all mandatory class
17 I Federal areas listed by the Administrator under subsection (b)(2)
18 that the powerplant does not or will not, by itself or in combination
19 with other sources, emit any air pollutant that may reasonably be an-
20 ticipated to cause or contribute to significant impairment of visibility
21 in any mandatory class I Federal area.

22 (3) CONCURRENCE.—An exemption under this subsection shall be ef-
23 fective only on concurrence by the appropriate Federal land manager
24 or Federal land managers with the Administrator's determination
25 under this subsection.

26 (e) CONSULTATION WITH APPROPRIATE FEDERAL LAND MANAGERS.—
27 Before holding a public hearing on the proposed revision of an applicable
28 implementation plan to meet the requirements of this section, the State (or
29 the Administrator, in the case of a plan promulgated under section
30 211110(c) of this title) shall—

31 (1) consult in person with the appropriate Federal land manager or
32 Federal land managers; and

33 (2) include a summary of the conclusions and recommendations of
34 the Federal land managers in the notice to the public.

35 (f) BUFFER ZONES.—In promulgating regulations under this section, the
36 Administrator shall not require the use of any automatic or uniform buffer
37 zone or zones.

38 (g) NONDISCRETIONARY DUTY.—For purposes of section 203104(b)(2) of
39 this title, the meeting of the national goal specified in subsection (b)(1) by
40 any specific date or dates shall not be considered to be a nondiscretionary
41 duty of the Administrator.

1 **§ 213202. Visibility**

2 (a) STUDIES.—

3 (1) RESEARCH.—

4 (A) IN GENERAL.—The Administrator, in conjunction with the
5 National Park Service and other appropriate Federal agencies,
6 shall conduct research to identify and evaluate—

7 (i) sources and source regions of visibility impairment in
8 class I areas; and

9 (ii) regions that provide predominantly clean air in class I
10 areas.

11 (B) INCLUSIONS.—The research shall include—

12 (i) expansion of current visibility-related monitoring in
13 class I areas;

14 (ii) assessment of current sources of visibility-impairing
15 pollution and clean air corridors;

16 (iii) adaptation of regional air quality models for the as-
17 sessment of visibility; and

18 (iv) studies of atmospheric chemistry and physics of visi-
19 bility.

20 (2) ASSESSMENT AND EVALUATION.—Based on the findings available
21 from the research required in paragraph (1), other available scientific
22 and technical data, studies, and other available information pertaining
23 to visibility source-receptor relationships, the Administrator shall con-
24 duct an assessment and evaluation that identifies, to the extent pos-
25 sible, sources and source regions of visibility impairment including nat-
26 ural sources and source regions of clear air for class I areas.

27 (b) IMPACTS OF OTHER PROVISIONS.—Every 5 years, the Administrator
28 shall conduct an assessment of actual progress and improvement in visibility
29 in class I areas. The Administrator shall prepare a written report on each
30 assessment and transmit copies of the reports to the appropriate committees
31 of Congress.

32 (c) VISIBILITY TRANSPORT COMMISSIONS.—

33 (1) VISIBILITY TRANSPORT REGIONS.—

34 (A) ESTABLISHMENT.—When, on the Administrator's motion or
35 by petition from the Governors of at least 2 affected States, the
36 Administrator has reason to believe that the current or projected
37 interstate transport of air pollutants from 1 or more States con-
38 tributes significantly to visibility impairment in class I areas lo-
39 cated in the affected States, the Administrator may establish a
40 visibility transport region for such pollutants that includes those
41 States.

1 (B) ADDITION AND REMOVAL OF STATES.—The Administrator,
2 on the Administrator’s own motion, on petition from the Governor
3 of any affected State, or on the recommendations of a visibility
4 transport commission established under paragraph (2), may—

5 (i) add any State or portion of a State to a visibility trans-
6 port region when the Administrator determines that the inter-
7 state transport of air pollutants from that State significantly
8 contributes to visibility impairment in a class I area located
9 within the visibility transport region; or

10 (ii) remove any State or portion of a State from a visibility
11 transport region when the Administrator has reason to believe
12 that the control of emissions in that State or portion of the
13 State pursuant to this section will not significantly contribute
14 to the protection or enhancement of visibility in any class I
15 area in the visibility transport region.

16 (2) VISIBILITY TRANSPORT COMMISSIONS.—

17 (A) ESTABLISHMENT.—When the Administrator establishes a
18 visibility transport region under paragraph (1), the Administrator
19 shall establish a visibility transport commission comprised of (as
20 a minimum) each of the following members:

21 (i) The Governor of each State in the visibility transport
22 region, or the Governor’s designee.

23 (ii) The Administrator, or the Administrator’s designee.

24 (iii) A representative of each Federal agency charged with
25 the direct management of each class I area within the visi-
26 bility transport region.

27 (B) VOTING.—Decisions of, and recommendations and requests
28 to the Administrator, by a visibility transport commission may be
29 made only by a majority vote of all members other than the Ad-
30 ministrator and the Federal agency representatives (or designees).

31 (C) FEDERAL ADVISORY COMMITTEE ACT.—A visibility trans-
32 port commission shall not be subject to the Federal Advisory Com-
33 mittee Act (5 U.S.C. App.).

34 (d) DUTIES.—

35 (1) IN GENERAL.—A visibility transport commission—

36 (A) shall assess the scientific and technical data, studies, and
37 other currently available information, including studies conducted
38 pursuant to subsection (a)(1), pertaining to adverse impacts on
39 visibility from potential or projected growth in emissions from
40 sources located in the visibility transport region; and

1 (B) shall, within 4 years after establishment of the visibility
 2 transport commission, issue a report to the Administrator rec-
 3 commending what measures, if any, should be taken under this di-
 4 vision to remedy the adverse impacts.

5 (2) MEASURES TO BE ADDRESSED.—A report under paragraph
 6 (1)(B) shall address at least the following measures:

7 (A) The establishment of clean air corridors in which additional
 8 restrictions on increases in emissions may be appropriate to pro-
 9 tect visibility in affected class I areas.

10 (B) The imposition of the requirements of chapter 215 affecting
 11 the construction of new major stationary sources or major modi-
 12 fications to existing sources in such clean air corridors specifically
 13 including the alternative siting analysis provisions of section
 14 215103(a)(1)(E) of this title.

15 (C) The promulgation of regulations under section 213201 of
 16 this title to address long range strategies for addressing regional
 17 haze that impairs visibility in affected class I areas.

18 (e) DUTIES OF ADMINISTRATOR.—

19 (1) IN GENERAL.—The Administrator shall, taking into account the
 20 studies pursuant to subsection (a)(1) and the reports pursuant to sub-
 21 section (d) and any other relevant information, within 18 months after
 22 receipt of the report described in subsection (d), carry out the Adminis-
 23 trator's regulatory responsibilities under section 213201 of this title,
 24 including criteria for measuring reasonable progress toward the na-
 25 tional goal.

26 (2) REGULATIONS.—Any regulations promulgated under section
 27 213201 of this title pursuant to this subsection shall require affected
 28 States to revise within 12 months their implementation plans under
 29 section 211110 of this title to contain such emission limitations, sched-
 30 ules of compliance, and other measures as may be necessary to carry
 31 out regulations promulgated pursuant to this subsection.

32 (f) GRAND CANYON VISIBILITY TRANSPORT COMMISSION.—The Adminis-
 33 trator pursuant to subsection (e) shall establish a visibility transport com-
 34 mission for the region affecting visibility in Grand Canyon National Park.

35 **Chapter 215—Plan Requirements for** 36 **Nonattainment Areas**

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1 **Subchapter I—Nonattainment Areas In**
 2 **General**

3 **§ 215101. Definitions**

4 In this chapter:

5 (1) **LOWEST ACHIEVABLE EMISSION RATE.**—

6 (A) **IN GENERAL.**—The term “lowest achievable emission rate”,
 7 with respect to a source, means the rate of emissions that reflects
 8 the more stringent of—

9 (i) the most stringent emission limitation that is contained
 10 in the implementation plan of any State for that class or cat-
 11 egory of source, unless the owner or operator of the proposed
 12 source demonstrates that such an emission limitation is not
 13 achievable; or

14 (ii) the most stringent emission limitation that is achieved
 15 in practice by that class or category of source.

16 (B) **EFFECT OF APPLICATION OF TERM.**—In no event shall the
 17 application of the term “lowest achievable emission rate” permit
 18 a proposed new or modified source to emit any pollutant in excess
 19 of the amount allowable under applicable new source standards of
 20 performance.

21 (2) **MODIFY.**—

1 (A) IN GENERAL.—The term “modify”, with respect to a sta-
2 tionary source, means to make or undergo any physical change in,
3 or change in the method of operation of, the stationary source
4 that—

5 (i) increases the amount of any air pollutant emitted by the
6 stationary source; or

7 (ii) results in the emission of any air pollutant not pre-
8 viously emitted.

9 (B) CONVERSION TO COAL.—A conversion to coal by reason of
10 an order under section 2(a) of the Energy Supply and Environ-
11 mental Coordination Act of 1974 (15 U.S.C. 792(a)) or any enact-
12 ment that supersedes that Act shall not be considered to be a
13 modification for purposes of subparagraph (A).

14 (3) NONATTAINMENT AREA.—The term “nonattainment area”
15 means, for any air pollutant, an area that is designated nonattainment
16 with respect to that air pollutant within the meaning of section
17 211107(d) of this title.

18 (4) REASONABLE FURTHER PROGRESS.—The term “reasonable fur-
19 ther progress” means such annual incremental reductions in emissions
20 of an air pollutant as are required by this chapter or may reasonably
21 be required by the Administrator for the purpose of ensuring attain-
22 ment of the applicable NAAQS by the applicable date.

23 **§ 215102. Nonattainment plan provisions in general**

24 (a) CLASSIFICATIONS AND ATTAINMENT DATES.—

25 (1) CLASSIFICATIONS.—

26 (A) IN GENERAL.—On or after the date on which the Adminis-
27 trator promulgates the designation of an area as a nonattainment
28 area pursuant to section 211107(d) of this title with respect to
29 any NAAQS (or any revised standard), the Administrator may
30 classify the area for the purpose of applying an attainment date
31 pursuant to paragraph (2), and for other purposes. In determining
32 the appropriate classification, if any, for a nonattainment area, the
33 Administrator may consider such factors as the severity of non-
34 attainment in the area and the availability and feasibility of the
35 pollution control measures that the Administrator believes may be
36 necessary to provide for attainment of the standard in that area.

37 (B) PROCEDURE.—The Administrator shall publish a notice in
38 the Federal Register announcing each classification under sub-
39 paragraph (A), except that the Administrator shall provide an op-
40 portunity for at least 30 days for written comment. A classifica-
41 tion shall not be subject to sections 553 to 557 of title 5 and shall

1 not be subject to judicial review until the Administrator takes final
2 action under subsection (i) or (j) of section 211110 or section
3 215111 of this title with respect to any plan submissions required
4 by virtue of the classification.

5 (C) NONAPPLICABILITY.—This paragraph shall not apply with
6 respect to nonattainment areas for which classifications are spe-
7 cifically provided under other provisions of this chapter.

8 (2) ATTAINMENT DATES FOR NONATTAINMENT AREAS.—

9 (A) PRIMARY NAAQSES.—The attainment date for an area des-
10 signated nonattainment with respect to a primary NAAQS shall be
11 the date by which attainment can be achieved as expeditiously as
12 practicable, but not later than 5 years after the date on which the
13 area was designated nonattainment under section 211107(d) of
14 this title, except that the Administrator may extend the attain-
15 ment date to the extent that the Administrator determines to be
16 appropriate, for a period not longer than 10 years after the date
17 of designation as nonattainment, considering the severity of non-
18 attainment and the availability and feasibility of pollution control
19 measures.

20 (B) SECONDARY NAAQSES.—The attainment date for an area
21 designated nonattainment with respect to a secondary NAAQS
22 shall be the date by which attainment can be achieved as expedi-
23 tiously as practicable after the date on which the area was des-
24 signated nonattainment under section 211107(d) of this title.

25 (C) EXTENSION.—

26 (i) IN GENERAL.—On application by any State, the Admin-
27 istrator may extend for 1 additional year (referred to in this
28 subparagraph as the “extension year”) the attainment date
29 determined by the Administrator under subparagraph (A) or
30 (B) if—

31 (I) the State has complied with all requirements and
32 commitments pertaining to the area in the applicable im-
33 plementation plan; and

34 (II) in accordance with guidance published by the Ad-
35 ministrator, not more than a minimal number of
36 exceedances of the relevant NAAQS has occurred in the
37 area in the year preceding the extension year.

38 (ii) LIMITATION.—Not more than 2 one-year extensions
39 may be issued under this subparagraph for a single non-
40 attainment area.

1 (D) NONAPPLICABILITY.—This paragraph shall not apply with
2 respect to nonattainment areas for which attainment dates are
3 specifically provided under other provisions of this chapter.

4 (b) SCHEDULE FOR PLAN SUBMISSIONS.—At the time at which the Ad-
5 ministrator promulgates the designation of an area as nonattainment with
6 respect to a NAAQS under section 211107(d) of this title, the Adminis-
7 trator shall establish a schedule according to which the State containing the
8 area shall submit a plan or plan provision (including plan items) meeting
9 the applicable requirements of subsection (c) and section 211110(a)(3) of
10 this title. The schedule shall, at a minimum, include a date or dates, extend-
11 ing not later than 3 years after the date of the nonattainment designation,
12 for the submission of a plan or plan provision (including plan items) meet-
13 ing the applicable requirements of subsection (c) and section 211110(a)(3)
14 of this title.

15 (c) NONATTAINMENT PLAN PROVISIONS.—

16 (1) IN GENERAL.—The plan provisions (including plan items) shall
17 provide for—

18 (A) implementation of all reasonably available control measures
19 as expeditiously as practicable (including such reductions in emis-
20 sions from existing sources in the area as may be obtained
21 through the adoption, at a minimum, of reasonably available con-
22 trol technology); and

23 (B) attainment of the primary NAAQSeS.

24 (2) REASONABLE FURTHER PROGRESS.—The plan provisions (in-
25 cluding plan items) shall require reasonable further progress.

26 (3) INVENTORY.—The plan provisions (including plan items) shall
27 include a comprehensive, accurate, current inventory of actual emis-
28 sions from all sources of the relevant pollutant or pollutants in the
29 area, including such periodic revisions as the Administrator may deter-
30 mine to be necessary to ensure that the requirements of this chapter
31 are met.

32 (4) IDENTIFICATION AND QUANTIFICATION.—The plan provisions
33 (including plan items) shall expressly identify and quantify the emis-
34 sions, if any, of any such pollutant or pollutants that will be allowed,
35 in accordance with section 215103(a)(1)(A)(ii) of this title, from the
36 construction and operation of major new or modified stationary sources
37 in each such area. The plan shall demonstrate to the satisfaction of the
38 Administrator that the emissions quantified for this purpose will be
39 consistent with the achievement of reasonable further progress and will
40 not interfere with attainment of the applicable NAAQS by the applica-
41 ble attainment date.

1 (5) PERMITS FOR NEW AND MODIFIED MAJOR STATIONARY
2 SOURCES.—The plan provisions (including plan items) shall require
3 permits for the construction and operation of new or modified major
4 stationary sources anywhere in the nonattainment area, in accordance
5 with section 215103 of this title.

6 (6) OTHER MEASURES.—The plan provisions (including plan items)
7 shall include enforceable emission limitations and such other control
8 measures, means, or techniques (including economic incentives such as
9 fees, marketable permits, and auctions of emission rights) and sched-
10 ules and timetables for compliance as may be necessary or appropriate
11 to provide for attainment of the standard in the area by the applicable
12 attainment date specified in this chapter.

13 (7) COMPLIANCE WITH SECTION 211110(a)(3).—The plan provisions
14 (including plan items) shall meet the applicable provisions of section
15 211110(a)(3) of this title.

16 (8) EQUIVALENT TECHNIQUES.—On application by any State, the
17 Administrator may allow the use of equivalent modeling, emission in-
18 ventory, and planning procedures, unless the Administrator determines
19 that the proposed techniques are, in the aggregate, less effective than
20 the methods specified by the Administrator.

21 (9) CONTINGENCY MEASURES.—The plan (including plan items)
22 shall provide for the implementation of specific measures to be under-
23 taken if the area fails to make reasonable further progress or to attain
24 the primary NAAQS by the attainment date applicable under this
25 chapter. The measures shall be included in the plan as contingency
26 measures to take effect in any such case without further action by the
27 State or the Administrator.

28 (d) PLAN PROVISIONS REQUIRED IN RESPONSE TO FINDING OF PLAN
29 INADEQUACY.—

30 (1) IN GENERAL.—Any plan provision for a nonattainment area that
31 is required to be submitted in response to a finding by the Adminis-
32 trator pursuant to section 211110(i)(5) of this title shall—

33 (A) correct the plan deficiency (or deficiencies) specified by the
34 Administrator; and

35 (B) meet all other applicable plan requirements of section
36 211110 of this title and this chapter.

37 (2) ADJUSTMENT OF DATES.—The Administrator may reasonably
38 adjust the dates otherwise applicable under those requirements to the
39 provision (except for attainment dates that have not yet elapsed) to the
40 extent necessary to achieve a consistent application of the require-
41 ments.

1 (3) GUIDELINES, INTERPRETATIONS, AND INFORMATION.—

2 (A) IN GENERAL.—In order to facilitate submittal by the States
3 of adequate and approvable plans consistent with the applicable
4 requirements of this division, the Administrator shall, as appro-
5 priate and from time to time, issue written guidelines, interpreta-
6 tions, and information to the States, taking into consideration any
7 such guidelines, interpretations, or information provided before
8 November 15, 1990.

9 (B) PUBLIC AVAILABILITY.—Guidelines, interpretations, and in-
10 formation issued under subparagraph (A) shall be available to the
11 public.

12 (e) FUTURE MODIFICATION OF STANDARD.—If the Administrator relaxes
13 a primary NAAQS, the Administrator shall, within 12 months after the re-
14 laxation, promulgate requirements applicable to all areas that have not at-
15 tained that standard as of the date of the relaxation. The requirements shall
16 provide for controls that are not less stringent than the controls applicable
17 to areas designated nonattainment before the relaxation.

18 **§ 215103. Permit requirements**

19 (a) IN GENERAL.—

20 (1) IN GENERAL.—The permit program required by section
21 215102(e)(5) of this title shall provide that permits to construct and
22 operate may be issued if—

23 (A) in accordance with regulations issued by the Administrator
24 for the determination of baseline emissions in a manner consistent
25 with the assumptions underlying the applicable implementation
26 plan approved under section 211110 of this title and this chapter,
27 the permitting agency determines that—

28 (i) by the time the source is to commence operation, suffi-
29 cient offsetting emissions reductions have been obtained, such
30 that total allowable emissions from existing sources in the re-
31 gion, from new or modified sources that are not major emit-
32 ting facilities and from the proposed source, will be suffi-
33 ciently less than total emissions from existing sources (as de-
34 termined in accordance with the regulations under this sub-
35 paragraph) prior to the application for the permit to con-
36 struct or modify so as to represent (when considered together
37 with the plan provisions required under section 215102 of
38 this title) reasonable further progress; or

39 (ii) in the case of a new or modified major stationary
40 source that is located in a zone (within the nonattainment
41 area) identified by the Administrator, in consultation with the

1 Secretary of Housing and Urban Development, as a zone to
2 which economic development should be targeted, that emis-
3 sions of the pollutant resulting from the proposed new or
4 modified major stationary source will not cause or contribute
5 to emissions levels that exceed the allowance permitted for the
6 pollutant for the area from new or modified major stationary
7 sources under section 215102(e) of this title;

8 (B) the proposed source is required to comply with the lowest
9 achievable emission rate;

10 (C) the owner or operator of the proposed new or modified
11 source has demonstrated that all major stationary sources owned
12 or operated by the owner or operator (or by any entity controlling,
13 controlled by, or under common control with the owner or opera-
14 tor) in the State are subject to emission limitations and are in
15 compliance, or on a schedule for compliance, with all applicable
16 emission limitations and standards under this division;

17 (D) the Administrator has not determined that the applicable
18 implementation plan is not being adequately implemented for the
19 nonattainment area in which the proposed source is to be con-
20 structed or modified in accordance with the requirements of this
21 chapter; and

22 (E) an analysis of alternative sites, sizes, production processes,
23 and environmental control techniques for the proposed source
24 demonstrates that benefits of the proposed source significantly
25 outweigh the environmental and social costs imposed as a result
26 of its location, construction, or modification.

27 (2) **FEDERALLY ENFORCEABLE EMISSION REDUCTIONS.**—Any emis-
28 sion reductions required as a precondition of the issuance of a permit
29 under paragraph (1)(A) shall be federally enforceable before a permit
30 may be issued.

31 (b) **PROHIBITION OF USE OF OLD GROWTH ALLOWANCES.**—Any growth
32 allowance included in an applicable implementation plan to meet the re-
33 quirements of section 172(b)(5) of the Clean Air Act (42 U.S.C.
34 7502(b)(5)) (as in effect on November 14, 1990) shall not be valid for use
35 in any area that received a notice under section 110(a)(2)(H)(ii) of the
36 Clean Air Act (42 U.S.C. 7410(a)(2)(H)(ii)) (as in effect on November 14,
37 1990) or under section 211110(i)(1) of this title that its applicable imple-
38 mentation plan containing the allowance is substantially inadequate.

39 (c) **OFFSETS.**—

40 (1) **IN GENERAL.**—The owner or operator of a new or modified
41 major stationary source may comply with any offset requirement in ef-

1 fect under this chapter for increased emissions of any air pollutant only
2 by obtaining emission reductions of the air pollutant from the same
3 source or other sources in the same nonattainment area, except that
4 the State may allow the owner or operator of a source to obtain the
5 emission reductions in another nonattainment area if—

6 (A) the other area has a nonattainment classification that is
7 equal to or higher than that of the area in which the source is
8 located; and

9 (B) emissions from the other area contribute to a violation of
10 the NAAQS in the nonattainment area in which the source is lo-
11 cated.

12 (2) EMISSION REDUCTION REQUIREMENTS.—Emission reductions re-
13 quired under paragraph (1)—

14 (A) shall be, by the time a new or modified source commences
15 operation, in effect and enforceable; and

16 (B) shall ensure that the total tonnage of increased emissions
17 of the air pollutant from the new or modified source shall be offset
18 by an equal or greater reduction, as applicable, in the actual emis-
19 sions of the air pollutant from the same or other sources in the
20 area.

21 (3) CREDITABILITY.—Emission reductions otherwise required by this
22 division shall not be creditable as emissions reductions for purposes of
23 any such offset requirement. Incidental emission reductions that are
24 not otherwise required by this division shall be creditable as emission
25 reductions for such purposes if the emission reductions meet the re-
26 quirements of paragraph (1).

27 (d) CONTROL TECHNOLOGY INFORMATION.—A State shall provide that
28 control technology information from permits issued under this section will
29 be promptly submitted to the Administrator for purposes of making such
30 information available through the RACT/BACT/LAER clearinghouse to
31 other States and to the general public.

32 (e) ROCKET ENGINES OR MOTORS.—

33 (1) IN GENERAL.—The permitting authority of a State shall allow
34 a source to offset by alternative or innovative means emission increases
35 from rocket engine and motor firing, and cleaning related to such fir-
36 ing, at an existing or modified major source that tests rocket engines
37 or motors under the following conditions:

38 (A) PURPOSE.—Any modification proposed is solely for the pur-
39 pose of expanding the testing of rocket engines or motors at an
40 existing source that was permitted to test such engines on Novem-
41 ber 15, 1990.

1 (B) OFFSETS.—The source demonstrates to the satisfaction of
2 the permitting authority of the State that—

3 (i) the source has used all reasonable means to obtain and
4 utilize offsets, as determined on an annual basis, for the
5 emissions increases beyond allowable levels;

6 (ii) all available offsets are being used; and

7 (iii) sufficient offsets are not available to the source.

8 (C) NATIONAL SECURITY.—The source has obtained a written
9 finding from the Department of Defense, Department of Trans-
10 portation, National Aeronautics and Space Administration, or
11 other appropriate Federal agency that the testing of rocket motors
12 or engines at the facility is required for a program essential to na-
13 tional security.

14 (D) ALTERNATIVE MEASURE.—The source will comply with an
15 alternative measure, imposed by the permitting authority, designed
16 to offset any emission increases beyond permitted levels not di-
17 rectly offset by the source.

18 (2) EMISSION FEE.—In lieu of imposing any alternative offset meas-
19 ures, the permitting authority may impose an emission fee to be paid
20 to the permitting authority, which shall be in an amount not greater
21 than 1.5 times the average cost of stationary source control measures
22 adopted in that area during the previous 3 years. The permitting au-
23 thority shall utilize the fees in a manner that maximizes emission re-
24 ductions in that area.

25 **§ 215104. Planning procedures**

26 (a) IN GENERAL.—

27 (1) UPDATED OR NEW PLANNING PROCEDURES.—For any ozone,
28 carbon monoxide, or PM-10 nonattainment area, the State containing
29 the area and elected officials of affected local governments shall, before
30 the date required for submittal of the inventory described under section
31 215203(a)(2) or 215303(a)(2) of this title, jointly review and update
32 as necessary the planning procedures adopted pursuant to section
33 174(a) of the Clean Air Act (42 U.S.C. 7504(a)) as in effect on No-
34 vember 14, 1990, or develop new planning procedures pursuant to this
35 subsection, as appropriate.

36 (2) DETERMINATION.—In preparing the procedures, the State and
37 local elected officials shall determine which elements of a revised imple-
38 mentation plan will be developed, adopted, and implemented (through
39 means including enforcement) by the State and which by local govern-
40 ments or regional agencies, or any combination of local governments,
41 regional agencies, or the State.

1 (3) PREPARATION.—The implementation plan required by this chap-
2 ter shall be prepared by an organization certified by the State, in con-
3 sultation with elected officials of local governments and in accordance
4 with the determination under paragraph (2).

5 (4) ORGANIZATION.—The organization shall include—

6 (A) elected officials of local governments in the affected area;

7 and

8 (B) representatives of—

9 (i) the State air quality planning agency;

10 (ii) the State transportation planning agency;

11 (iii) the metropolitan planning organization designated to
12 conduct the continuing, cooperative, and comprehensive trans-
13 portation planning process for the area under section 134 of
14 title 23;

15 (iv) the organization responsible for the air quality mainte-
16 nance planning process under regulations implementing this
17 division; and

18 (v) any other organization with responsibilities for develop-
19 ing, submitting, or implementing the plan required by this
20 chapter.

21 (5) SAME ORGANIZATION.—The organization may be an organization
22 that carried out the functions described in this subsection before No-
23 vember 15, 1990.

24 (b) COORDINATION.—The preparation of implementation plan provisions
25 and subsequent plan revisions under the continuing transportation-air qual-
26 ity planning process described in section 211108(e) of this title shall be
27 coordinated with the continuing, cooperative, and comprehensive transpor-
28 tation planning process required under section 134 of title 23, and those
29 planning processes shall take into account the requirements of this chapter.

30 (c) JOINT PLANNING.—In the case of a nonattainment area that is in-
31 cluded within more than 1 State, the affected States may jointly, through
32 interstate compact or otherwise, undertake and implement all or part of the
33 planning procedures described in this section.

34 **§ 215105. EPA grants**

35 (a) PLAN PROVISION DEVELOPMENT COSTS.—The Administrator shall
36 make grants to any organization of local elected officials with transportation
37 or air quality maintenance planning responsibilities recognized by a State
38 under section 215104(a) of this title for payment of the reasonable costs
39 of developing a plan provision under this chapter.

40 (b) GRANT FUNDS.—The amount granted to any organization under sub-
41 section (a) shall be 100 percent of any additional costs of developing a plan

1 provision under this chapter for the 1st 2 fiscal years following receipt of
2 the grant under this paragraph, and shall supplement any funds available
3 under Federal law to the organization for transportation or air quality
4 maintenance planning. Grants under this section shall not be used for con-
5 struction.

6 **§ 215106. Maintenance plans**

7 (a) PLAN PROVISION.—A State that submits a request under section
8 211107(d) of this title for redesignation of a nonattainment area for any
9 air pollutant as an area that has attained the primary NAAQS for that air
10 pollutant shall submit an applicable State implementation plan provision
11 that—

12 (1) provides for the maintenance of the primary NAAQS for that air
13 pollutant in the area for at least 10 years after the redesignation; and

14 (2) contains such additional measures, if any, as may be necessary
15 to ensure such maintenance.

16 (b) SUBSEQUENT PLAN PROVISIONS.—Eight years after redesignation of
17 any area as an attainment area under section 211107(d) of this title, the
18 State shall submit to the Administrator an additional applicable State im-
19 plementation plan provision for maintaining the primary NAAQS for 10
20 years after the expiration of the 10-year period described in subsection (a).

21 (c) NONATTAINMENT REQUIREMENTS APPLICABLE PENDING PLAN AP-
22 PROVAL.—Until a plan provision under subsection (b) is approved and an
23 area is redesignated as attainment for any area designated as a nonattain-
24 ment area, the requirements of this chapter shall continue in effect with re-
25 spect to the area.

26 (d) CONTINGENCY PROVISIONS.—A plan provision submitted under this
27 section shall contain such contingency provisions as the Administrator con-
28 siders necessary to ensure that the State will promptly correct any violation
29 of the standard that occurs after the redesignation of the area as an attain-
30 ment area. The contingency provisions shall include a requirement that the
31 State will implement all measures with respect to the control of the air pol-
32 lutant concerned that were contained in the State implementation plan for
33 the area before redesignation of the area as an attainment area. The failure
34 of any area redesignated as an attainment area to maintain the NAAQS
35 concerned shall not result in a requirement that the State revise its State
36 implementation plan unless the Administrator, in the Administrator's discre-
37 tion, requires the State to submit a revised State implementation plan.

38 **§ 215107. Limitations on certain Federal assistance**

39 (a) ACTIVITIES NOT CONFORMING TO APPROVED OR PROMULGATED
40 PLANS.—

41 (1) LIMITATION.—

1 (A) IN GENERAL.—No department, agency, or instrumentality
2 of the Federal Government shall engage in, support in any way
3 or provide financial assistance for, license or permit, or approve
4 any activity that does not conform to an implementation plan after
5 the implementation plan has been approved or promulgated under
6 section 211110 of this title. No metropolitan planning organiza-
7 tion designated under section 134 of title 23, shall give its ap-
8 proval to any project, program, or plan that does not conform to
9 an implementation plan approved or promulgated under section
10 211110 of this title. The assurance of conformity to such an im-
11 plementation plan shall be an affirmative responsibility of the head
12 of a department, agency, or instrumentality.

13 (B) CONFORMITY.—An activity shall be considered to conform
14 to an implementation plan if the activity—

15 (i) conforms to an implementation plan's purpose of elimi-
16 nating or reducing the severity and number of violations of
17 the NAAQSeS and achieving expeditious attainment of the
18 NAAQSeS; and

19 (ii) will not—

20 (I) cause or contribute to any new violation of any
21 NAAQS in any area;

22 (II) increase the frequency or severity of any existing
23 violation of any NAAQS in any area; or

24 (III) delay timely attainment of any NAAQS or any
25 required interim emission reductions or other milestones
26 in any area.

27 (C) BASIS OF DETERMINATION.—The determination of conform-
28 ity shall be based on the most recent estimates of emissions, and
29 those estimates shall be determined from the most recent popu-
30 lation, employment, travel, and congestion estimates as determined
31 by the metropolitan planning organization or other agency author-
32 ized to make such estimates.

33 (2) TRANSPORTATION PLANS AND PROGRAMS.—

34 (A) IN GENERAL.—Any transportation plan or program devel-
35 oped pursuant to title 23 or chapter 53 of title 49 shall implement
36 the transportation provisions of any applicable implementation
37 plan approved under this division applicable to all or part of the
38 area covered by the transportation plan or program. No Federal
39 agency may approve, accept, or fund any transportation plan, pro-
40 gram, or project unless the plan, program, or project has been

1 found to conform to any applicable implementation plan in effect
2 under this division.

3 (B) PARTICULAR CASES.—In particular—

4 (i) no transportation plan or transportation improvement
5 program may be adopted by a metropolitan planning organi-
6 zation designated under title 23 or chapter 53 of title 49, or
7 be found to be in conformity by a metropolitan planning orga-
8 nization, until a final determination has been made that—

9 (I) emissions expected from implementation of the
10 plans and programs are consistent with estimates of
11 emissions from motor vehicles and necessary emissions
12 reductions contained in the applicable implementation
13 plan; and

14 (II) the plan or program will conform to the require-
15 ments of paragraph (1)(B)(ii);

16 (ii) no metropolitan planning organization or other recipi-
17 ent of funds under title 23 or chapter 53 of title 49 shall
18 adopt or approve a transportation improvement program of
19 projects until the recipient of funds determines that the pro-
20 gram provides for timely implementation of transportation
21 control measures consistent with schedules included in the ap-
22 plicable implementation plan; and

23 (iii) a transportation project may be adopted or approved
24 by a metropolitan planning organization or any recipient of
25 funds designated under title 23 or chapter 53 of title 49, or
26 found in conformity by a metropolitan planning organization
27 or approved, accepted, or funded by the Department of
28 Transportation only if—

29 (I) the transportation project meets the requirements
30 of subparagraph (C); or

31 (II)(aa) the transportation project comes from a con-
32 forming plan and program;

33 (bb) the design concept and scope of the transpor-
34 tation project have not changed significantly since the
35 conformity finding regarding the plan and program from
36 which the project derived; and

37 (cc) the design concept and scope of the transportation
38 project at the time of the conformity determination for
39 the program was adequate to determine emissions.

40 (C) TREATMENT OF CERTAIN PROJECTS AS CONFORMING.—Any
41 project not described in subparagraph (B)(iii) shall be treated as

1 conforming to the applicable implementation plan only if it is dem-
2 onstrated that the projected emissions from the project, when con-
3 sidered together with emissions projected for the conforming
4 transportation plans and programs within the nonattainment area,
5 do not cause those plans and programs to exceed the emission re-
6 duction projections and schedules assigned to the plans and pro-
7 grams in the applicable implementation plan.

8 (D) REDETERMINATION OF CONFORMITY.—The appropriate
9 metropolitan planning organization shall redetermine conformity of
10 existing transportation plans and programs not later than 2 years
11 after the date on which the Administrator—

12 (i) finds a motor vehicle emissions budget to be adequate
13 in accordance with section 93.118(e)(4) of title 40, Code of
14 Federal Regulations (as in effect on October 1, 2004);

15 (ii) approves an implementation plan that establishes a
16 motor vehicle emissions budget if that budget has not yet
17 been determined to be adequate in accordance with clause (i);
18 or

19 (iii) promulgates an implementation plan that establishes
20 or revises a motor vehicle emissions budget.

21 (3) DEMONSTRATION OF CONFORMITY.—

22 (A) IN GENERAL.—Until such time as the implementation plan
23 provision described in paragraph (4)(E) is approved, conformity of
24 plans, programs, and projects described in this paragraph will be
25 demonstrated if—

26 (i) the transportation plans and programs—

27 (I) are consistent with the most recent estimates of
28 mobile source emissions;

29 (II) provide for the expeditious implementation of
30 transportation control measures in the applicable imple-
31 mentation plan; and

32 (III) with respect to ozone and carbon monoxide non-
33 attainment areas, contribute to annual emissions reduc-
34 tions consistent with sections 215203(b)(2) and
35 215303(a)(8) of this title; and

36 (ii) the transportation projects—

37 (I) come from a conforming transportation plan and
38 program as defined in clause (i); and

39 (II) in carbon monoxide nonattainment areas, elimi-
40 nate or reduce the severity and number of violations of

1 the carbon monoxide standards in the area substantially
2 affected by the project.

3 (B) DETERMINATION FOR TRANSPORTATION PROGRAM OR INDI-
4 VIDUAL PROJECT.—With regard to subparagraph (A)(ii)(II), the
5 determination may be made as part of the conformity determina-
6 tion for the transportation program or for the individual project
7 taken as a whole during the environmental review phase of project
8 development.

9 (4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

10 (A) IN GENERAL.—The Administrator shall promulgate, and pe-
11 riodically update, criteria and procedures for determining conform-
12 ity (except in the case of transportation plans, programs, and
13 projects) of, and for keeping the Administrator informed about,
14 the activities described in paragraph (1).

15 (B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The
16 Administrator, with the concurrence of the Secretary of Transpor-
17 tation, shall promulgate, and periodically update, criteria and pro-
18 cedures for demonstrating and ensuring conformity in the case of
19 transportation plans, programs, and projects.

20 (C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action
21 may be brought against the Administrator and the Secretary of
22 Transportation under section 203104 of this title to compel pro-
23 mulgation of criteria and procedures under subparagraphs (A) and
24 (B), and a United States district court shall have jurisdiction to
25 order such promulgation.

26 (D) REQUIREMENTS.—The procedures and criteria shall, at a
27 minimum—

28 (i) address the consultation procedures to be undertaken by
29 metropolitan planning organizations and the Secretary of
30 Transportation with State and local air quality agencies and
31 State departments of transportation before the organizations
32 and the Secretary make conformity determinations;

33 (ii) address the appropriate frequency for making conform-
34 ity determinations, but the frequency for making conformity
35 determinations on updated transportation plans and pro-
36 grams shall be every 4 years, except in a case in which—

37 (I) the metropolitan planning organization elects to
38 update a transportation plan or program more fre-
39 quently; or

1 (II) the metropolitan planning organization is required
2 to determine conformity in accordance with paragraph
3 (2)(D); and

4 (iii) address how conformity determinations will be made
5 with respect to maintenance plans.

6 (E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—The
7 procedures under subparagraph (A) shall include a requirement
8 that each State include in the State implementation plan criteria
9 and procedures for consultation required by subparagraph (D)(i),
10 and enforcement and enforceability (pursuant to sections
11 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regu-
12 lations) in accordance with the Administrator’s criteria and proce-
13 dures for consultation, enforcement, and enforceability.

14 (F) TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS.—Compli-
15 ance with the regulations of the Administrator for determining the
16 conformity of transportation plans, programs, and projects funded
17 or approved under title 23 or chapter 53 of title 49 to State or
18 Federal implementation plans shall not be required for traffic sig-
19 nal synchronization projects prior to the funding, approval or im-
20 plementation of such projects. The supporting regional emissions
21 analysis for any conformity determination made with respect to a
22 transportation plan, program, or project shall consider the effect
23 on emissions of any such project funded, approved, or imple-
24 mented prior to the conformity determination.

25 (5) APPLICABILITY.—This subsection shall apply only with respect
26 to—

27 (A) a nonattainment area and each pollutant for which the area
28 is designated as a nonattainment area; and

29 (B) an area that was designated as a nonattainment area but
30 that was later redesignated by the Administrator as an attainment
31 area and that is required to develop a maintenance plan under sec-
32 tion 215106 of this title with respect to the specific pollutant for
33 which the area was designated nonattainment.

34 (6) NONAPPLICABILITY.—Notwithstanding paragraph (5), this sub-
35 section shall not apply with respect to an area designated nonattain-
36 ment under section 211107(d)(1) of this title until 1 year after the
37 area is first designated nonattainment for a specific NAAQS. This
38 paragraph applies only with respect to the NAAQS for which an area
39 is newly designated nonattainment and does not affect the area’s re-
40 quirements with respect to all other NAAQSeS for which the area is
41 designated nonattainment or has been redesignated from nonattain-

1 ment to attainment with a maintenance plan pursuant to section
2 215106 of this title (including any pre-existing NAAQS for a pollutant
3 for which a new or revised standard has been issued).

4 (7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

5 (A) DEFINITION OF AIR POLLUTION CONTROL AGENCY.—In this
6 paragraph, the term “air pollution control agency” means an air
7 pollution control agency (as defined in section 201101 of this title)
8 that is responsible for developing plans or controlling air pollution
9 within the area covered by a transportation plan.

10 (B) IN GENERAL.—Each conformity determination required
11 under this section for a transportation plan under section 134(i)
12 of title 23 or section 5303(i) of title 49 shall require a demonstra-
13 tion of conformity for—

14 (i) the period ending on the final year of the transportation
15 plan; or

16 (ii) at the election of the metropolitan planning organiza-
17 tion, after consultation with the air pollution control agency
18 and solicitation of public comments and consideration of the
19 comments, the longest of the following periods:

20 (I) The 1st 10-year period of the transportation plan.

21 (II) The period ending on the latest year in the imple-
22 mentation plan applicable to the area that contains a
23 motor vehicle emission budget.

24 (III) The period ending on the year after the comple-
25 tion date of a regionally significant project if the project
26 is included in the transportation improvement program
27 or the project requires approval before the subsequent
28 conformity determination.

29 (C) REGIONAL EMISSIONS ANALYSIS.—The conformity deter-
30 mination shall be accompanied by a regional emissions analysis for
31 the last year of the transportation plan and for any year shown
32 to exceed emission budgets by a prior analysis, if that year extends
33 beyond the applicable period as determined under subparagraph
34 (B).

35 (D) EXCEPTION.—In any case in which an area has an imple-
36 mentation plan provision under section 215106(b) of this title and
37 the Administrator finds the motor vehicles emissions budgets from
38 that revision to be adequate in accordance with section
39 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect
40 on October 1, 2004), or approves the provision, the demonstration
41 of conformity, at the election of the metropolitan planning organi-

1 zation, after consultation with the air pollution control agency and
2 solicitation of public comments and consideration of such com-
3 ments, shall be required to extend only through the last year of
4 the implementation plan required under section 215106(b) of this
5 title.

6 (E) EFFECT OF ELECTION.—Any election by a metropolitan
7 planning organization under this paragraph shall continue in ef-
8 fect until the metropolitan planning organization elects otherwise.

9 (8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

10 (A) IN GENERAL.—Transportation control measures that are
11 specified in an implementation plan may be replaced or added to
12 the implementation plan with alternate or additional transpor-
13 tation control measures if—

14 (i) the substitute measures achieve equivalent or greater
15 emissions reductions than the control measure to be replaced,
16 as demonstrated with an emissions impact analysis that is
17 consistent with the current methodology used for evaluating
18 the replaced control measure in the implementation plan;

19 (ii) the substitute control measures are implemented—

20 (I) in accordance with a schedule that is consistent
21 with the schedule provided for control measures in the
22 implementation plan; or

23 (II) if the implementation plan date for implementa-
24 tion of the control measure to be replaced has passed, as
25 soon as practicable after the implementation plan date
26 but not later than the date on which emission reductions
27 are necessary to achieve the purpose of the implementa-
28 tion plan;

29 (iii) the substitute and additional control measures are ac-
30 companied by evidence of adequate personnel and funding
31 and authority under State or local law to implement, monitor,
32 and enforce the control measures;

33 (iv) the substitute and additional control measures are de-
34 veloped through a collaborative process that includes—

35 (I) participation by representatives of all affected ju-
36 risdictions (including local air pollution control agencies,
37 the State air pollution control agency, and State and
38 local transportation agencies);

39 (II) consultation with the Administrator; and

40 (III) reasonable public notice and opportunity for com-
41 ment; and

1 (v) the metropolitan planning organization, the State air
2 pollution control agency, and the Administrator concur with
3 the equivalency of the substitute or additional control meas-
4 ures.

5 (B) ADOPTION.—

6 (i) EFFECT OF CONCURRENCE.—Concurrence by the met-
7 ropolitan planning organization, the State air pollution con-
8 trol agency, and the Administrator as required by subpara-
9 graph (A)(v) shall constitute adoption of the substitute or ad-
10 ditional control measures so long as the requirements of
11 clauses (i), (ii), (iii) and (iv) of subparagraph (A) are met.

12 (ii) STATE IMPLEMENTATION PLAN; FEDERAL ENFORCE-
13 ABILITY.—Once adopted, the substitute or additional control
14 measures become, by operation of law, part of the State im-
15 plementation plan and become federally enforceable.

16 (iii) SUBMITTAL.—Within 90 days of its concurrence under
17 subparagraph (A)(v), the State air pollution control agency
18 shall submit the substitute or additional control measure to
19 the Administrator for incorporation in the codification of the
20 applicable implementation plan.

21 (iv) NO ADDITIONAL PROCESS.—Notwithstanding any other
22 provision of this division, no additional State process shall be
23 necessary to support such an applicable plan provision.

24 (C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substi-
25 tution or addition of a transportation control measure in accord-
26 ance with this paragraph and the funding or approval of such a
27 control measure shall not be contingent on the existence of any
28 provision in the applicable implementation plan that expressly per-
29 mits such a substitution or addition.

30 (D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINA-
31 TION.—The substitution or addition of a transportation control
32 measure in accordance with this paragraph shall not require—

33 (i) a new conformity determination for the transportation
34 plan; or

35 (ii) a revision of the implementation plan.

36 (E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—
37 A control measure that is being replaced by a substitute control
38 measure under this paragraph shall remain in effect until the sub-
39 stitute control measure is adopted by the State pursuant to sub-
40 paragraph (B).

1 (F) EFFECT OF ADOPTION.—Adoption of a substitute control
 2 measure shall constitute rescission of the previously applicable
 3 control measure.

4 (9) LAPSE OF CONFORMITY.—

5 (A) IN GENERAL.—A transportation plan shall lapse if—

6 (i) a conformity determination required under this sub-
 7 section for a transportation plan under section 134(i) of title
 8 23 or section 5303(i) of title 49, or a transportation improve-
 9 ment program under section 134(j) of title 23 or under sec-
 10 tion 5303(j) of title 49 is not made by the applicable dead-
 11 line; and

12 (ii) the failure to make a conformity determination is not
 13 corrected by—

14 (I) additional measures to reduce motor vehicle emis-
 15 sions sufficient to demonstrate compliance with the re-
 16 quirements of this subsection within 12 months after the
 17 deadline; or

18 (II) other measures sufficient to correct the failures.

19 (B) EFFECT OF LAPSE.—If a transportation plan lapses under
 20 subparagraph (A)—

21 (i) the conformity determination for the transportation plan
 22 or transportation improvement program expires; and

23 (ii) there is no currently conforming transportation plan or
 24 transportation improvement program.

25 (b) PRIORITY OF ACHIEVING AND MAINTAINING PRIMARY NAAQSES.—

26 Each department, agency, or instrumentality of the Federal Government
 27 having authority to conduct or support any program with air quality-related
 28 transportation consequences shall give priority in the exercise of that au-
 29 thority, consistent with statutory requirements for allocation among States
 30 or other jurisdictions, to the implementation of the portions of plans pre-
 31 pared under this section to achieve and maintain the primary NAAQS. The
 32 authority to which this subsection extends includes authority exercised
 33 under chapter 53 of title 49, title 23, the Housing and Urban Development
 34 Act of 1965 (79 Stat. 451), the Housing and Urban Development Act of
 35 1968 (82 Stat. 476), the Housing and Urban Development Act of 1969 (83
 36 Stat. 379), and the Housing and Urban Development Act of 1970 (84 Stat.
 37 1770).

38 **§ 215108. Interstate transport commissions**

39 (a) INTERSTATE TRANSPORT REGIONS.—

40 (1) ESTABLISHMENT.—When, on the Administrator's own motion or
 41 by petition from the Governor of any State, the Administrator has rea-

1 son to believe that the interstate transport of air pollutants from 1 or
2 more States contributes significantly to a violation of a NAAQS in 1
3 or more other States, the Administrator may establish, by regulation,
4 an interstate transport region for the pollutant that includes those
5 States.

6 (2) ADDITION AND REMOVAL OF STATES.—The Administrator, on
7 the Administrator's own motion, on petition from the Governor of any
8 State, or on the recommendation of an interstate transport commission
9 established under subsection (b), may—

10 (A) add any State or portion of a State to an interstate trans-
11 port region established under this subsection when the Adminis-
12 trator has reason to believe that the interstate transport of air pol-
13 lutants from that State significantly contributes to a violation of
14 the NAAQS in the interstate transport region; or

15 (B) remove any State or portion of a State from an interstate
16 transport region when the Administrator has reason to believe that
17 the control of emissions in that State or portion of the State pur-
18 suant to this section will not significantly contribute to the attain-
19 ment of the NAAQS in any area in the interstate transport region.

20 (3) PROCEDURE.—

21 (A) APPROVAL OR DISAPPROVAL.—The Administrator shall ap-
22 prove or disapprove a petition or recommendation under subpara-
23 graph (A) or (B) of paragraph (2) within 18 months after its re-
24 ceipt.

25 (B) PUBLIC PARTICIPATION.—The Administrator shall establish
26 appropriate proceedings for public participation regarding motions,
27 petitions, and recommendations under subparagraphs (A) and (B)
28 of paragraph (2), including notice and comment.

29 (b) INTERSTATE TRANSPORT COMMISSIONS.—

30 (1) ESTABLISHMENT.—When the Administrator establishes an inter-
31 state transport region under subsection (a), the Administrator shall es-
32 tablish a transport commission comprised of (at a minimum) each of
33 the following members:

34 (A) The Governor of each State in the interstate transport re-
35 gion or the Governor's designee.

36 (B) The Administrator, or the Administrator's designee.

37 (C) The Regional Administrator (or the Administrator's des-
38 ignee) for each Regional Office for each EPA region affected by
39 the interstate transport region.

40 (D) An air pollution control official representing each State in
41 the interstate transport region, appointed by the Governor.

1 (2) VOTING.—Decisions of, and recommendations and requests to
2 the Administrator, by an interstate transport commission may be made
3 only by a majority vote of all members other than the Administrator
4 and the Regional Administrators (or designees).

5 (3) RECOMMENDATIONS.—An interstate transport commission
6 shall—

7 (A) assess the degree of interstate transport of the pollutant or
8 precursors to the pollutant throughout the interstate transport re-
9 gion;

10 (B) assess strategies for mitigating the interstate pollution; and

11 (C) recommend to the Administrator such measures as the
12 interstate transport commission determines to be necessary to en-
13 sure that the implementation plans for the States in the interstate
14 transport region meet the requirements of section
15 211110(a)(3)(D) of this title.

16 (4) FEDERAL ADVISORY COMMITTEE ACT.—An interstate transport
17 commission shall not be subject to the Federal Advisory Committee Act
18 (5 U.S.C. App.).

19 (e) COMMISSION REQUESTS.—

20 (1) REQUEST.—An interstate transport commission may request the
21 Administrator to issue a finding under section 211110(i)(5) of this title
22 that the implementation plan for 1 or more of the States in the inter-
23 state transport region is substantially inadequate to meet the require-
24 ments of section 211110(a)(3)(D) of this title.

25 (2) PUBLIC PARTICIPATION; SPECIFIC RECOMMENDATIONS.—In act-
26 ing on a request under paragraph (1), the Administrator shall provide
27 an opportunity for public participation and shall address each specific
28 recommendation made by the commission.

29 (3) APPROVAL OR DISAPPROVAL.—The Administrator shall approve,
30 disapprove, or partially approve and partially disapprove a request
31 under paragraph (1) within 18 months after its receipt and, to the ex-
32 tent that the Administrator approves the request, issue the finding
33 under section 211110(i)(5) of this title at the time of approval. Ap-
34 proval or disapproval of a request shall constitute final agency action
35 within the meaning of section 203102(b) of this title.

36 **§215109. New motor vehicle emission standards in non-**
37 **attainment areas**

38 (a) IN GENERAL.—Notwithstanding section 221109(a) of this title, any
39 State that has implementation plan provisions approved under this chapter
40 may adopt and enforce for any model year standards relating to control of
41 emissions from new motor vehicles or new motor vehicle engines and take

1 such other actions as are described in section 221109(a) of this title re-
2 specting such vehicles if—

3 (1) the standards are identical to the California standards for which
4 a waiver has been granted for that model year; and

5 (2) California and that State adopt the standards at least 2 years
6 before commencement of the model year (as determined by regulations
7 of the Administrator).

8 (b) EFFECT OF SECTION.—Nothing in this section or in subdivision 3
9 shall be construed as authorizing any State described in subsection (a) to—

10 (1) prohibit or limit, directly or indirectly, the manufacture or sale
11 of a new motor vehicle or motor vehicle engine that is certified in Cali-
12 fornia as meeting California standards; or

13 (2) take any action to create, or have the effect of creating, a motor
14 vehicle or motor vehicle engine different from a motor vehicle or engine
15 certified in California under California standards (referred to in this
16 section as a “3d vehicle”) or otherwise create a 3d vehicle.

17 **§ 215110. Guidance documents respecting the lowest achiev-**
18 **able emission rate**

19 (a) IN GENERAL.—The Administrator shall issue guidance documents
20 under section 211108 of this title for purposes of assisting States in imple-
21 menting requirements of this chapter respecting the lowest achievable emis-
22 sion rate.

23 (b) REVISION.—The guidance documents shall be revised at least every
24 2 years.

25 **§ 215111. Sanctions and consequences of failure to attain**

26 (a) STATE FAILURE.—

27 (1) IN GENERAL.—Except as provided in paragraph (2), for any im-
28 plementation plan or plan revision required under this chapter (or re-
29 quired in response to a finding of substantial inadequacy as described
30 in section 211110(i)(5) of this title), if the Administrator—

31 (A) finds that a State has failed, for an area designated non-
32 attainment under section 211107(d) of this title, to submit a plan,
33 or to submit 1 or more of the elements (as determined by the Ad-
34 ministrator) required by the provisions of this division applicable
35 to such an area, or has failed to make a submission for such an
36 area that satisfies the minimum criteria established in relation to
37 any such element under section 211110(i) of this title;

38 (B) disapproves a submission under section 211110(i) of this
39 title for an area designated nonattainment under section 211107
40 of this title, based on the submission’s failure to meet 1 or more

1 of the elements required by the provisions of this division applica-
2 ble to such an area;

3 (C)(i) determines that a State has failed to make any submis-
4 sion as required under this division (other than a submission de-
5 scribed under subparagraph (A) or (B)), including an adequate
6 maintenance plan that satisfies the minimum criteria established
7 in relation to the submission under section 211110(i)(1)(A) of this
8 title; or

9 (ii) disapproves in whole or in part a submission under section
10 211110(i)(1)(A) of this title; or

11 (D) finds that any requirement of an approved plan (or ap-
12 proved part of a plan) is not being implemented;

13 unless the deficiency is corrected within 18 months after the finding,
14 disapproval, or determination under subparagraph (A), (B), (C), or
15 (D), 1 of the sanctions described in subsection (b) shall apply, as se-
16 lected by the Administrator, until the Administrator determines that
17 the State has come into compliance.

18 (2) LACK OF GOOD FAITH.—If the Administrator finds a lack of
19 good faith, sanctions under both paragraphs (2) and (3) of subsection
20 (b) shall apply until the Administrator determines that the State has
21 come into compliance.

22 (3) DEFICIENCY NOT CORRECTED WITHIN 6 MONTHS.—If the Ad-
23 ministrator has selected 1 of the sanctions under subsection (b) and
24 the deficiency is not corrected within 6 months thereafter, sanctions
25 under both paragraphs (2) and (3) of subsection (b) shall apply until
26 the Administrator determines that the State has come into compliance.

27 (4) WITHHOLDING OF GRANT.—In addition to any other sanction ap-
28 plicable as provided in this section, the Administrator may withhold all
29 or part of a grant for support of air pollution planning and control pro-
30 grams that the Administrator may award under section 211105 of this
31 title.

32 (b) SANCTIONS.—

33 (1) IN GENERAL.—The sanctions available to the Administrator
34 under subsection (a) are as provided in this subsection.

35 (2) HIGHWAY SANCTIONS.—

36 (A) IN GENERAL.—The Administrator may impose a prohibi-
37 tion, applicable to a nonattainment area, on the approval by the
38 Secretary of Transportation of any projects or the awarding by the
39 Secretary of any grants under title 23, other than a project or
40 grant for—

1 (i) safety, if the Secretary determines, based on accident or
2 other appropriate data submitted by the State, that the prin-
3 cipal purpose of the project is an improvement in safety to
4 resolve a demonstrated safety problem and likely will result
5 in a significant reduction in, or avoidance of, accidents;

6 (ii) capital programs for public transit;

7 (iii) construction or restriction of certain roads or lanes
8 solely for the use of passenger buses or high occupancy vehi-
9 cles;

10 (iv) planning for requirements for employers to reduce em-
11 ployee work-trip-related vehicle emissions;

12 (v) highway ramp metering, traffic signalization, and relat-
13 ed programs that improve traffic flow and achieve a net emis-
14 sion reduction;

15 (vi) fringe and transportation corridor parking facilities
16 serving multiple occupancy vehicle programs or transit oper-
17 ations;

18 (vii) programs to limit or restrict vehicle use in downtown
19 areas or other areas of emission concentration particularly
20 during periods of peak use, through road use charges, tolls,
21 parking surcharges, or other pricing mechanisms, vehicle re-
22 stricted zones or periods, or vehicle registration programs;

23 (viii) programs for breakdown and accident scene manage-
24 ment, nonrecurring congestion, and vehicle information sys-
25 tems, to reduce congestion and emissions; and

26 (ix) such other transportation-related programs as the Ad-
27 ministrator, in consultation with the Secretary of Transpor-
28 tation, finds would improve air quality and would not encour-
29 age single occupancy vehicle capacity.

30 (B) CONSIDERATIONS.—In considering measures described in
31 clauses (ii) through (ix) of subparagraph (A), a State should seek
32 to ensure adequate access to downtown, other commercial, and
33 residential areas and avoid increasing or relocating emissions and
34 congestion.

35 (C) EFFECTIVE DATE.—A prohibition under subparagraph (A)
36 shall become effective on the selection by the Administrator of the
37 sanction.

38 (3) OFFSETS.—In applying the emissions offset requirements of sec-
39 tion 215103 of this title to new or modified sources or emissions units
40 for which a permit is required under this chapter, the ratio of emission
41 reductions to increased emissions shall be at least 2 to 1.

1 (c) NOTICE OF FAILURE TO ATTAIN.—

2 (1) DETERMINATION.—As expeditiously as practicable after the ap-
3 plicable attainment date for any nonattainment area, but not later than
4 6 months after that date, the Administrator shall determine, based on
5 the area's air quality as of the attainment date, whether the area at-
6 tained the standard by that date.

7 (2) NOTICE.—On making a determination under paragraph (1), the
8 Administrator shall publish a notice in the Federal Register containing
9 the determination and identifying each area that the Administrator de-
10 termined to have failed to attain.

11 (3) REVISION OR SUPPLEMENTATION.—The Administrator may re-
12 vise or supplement a determination under paragraph (1) at any time
13 based on more complete information or analysis concerning the area's
14 air quality as of the attainment date.

15 (d) CONSEQUENCES FOR FAILURE TO ATTAIN.—

16 (1) REVISION OF IMPLEMENTATION PLAN.—Within 1 year after the
17 Administrator publishes a notice under subsection (c)(2), each State
18 containing a nonattainment area shall submit a revision to the applica-
19 ble implementation plan meeting the requirements of paragraph (2).

20 (2) REQUIREMENTS.—A revision required under paragraph (1)
21 shall—

22 (A) meet the requirements of sections 211110 and 215102 of
23 this title; and

24 (B) include such additional measures as the Administrator may
25 reasonably prescribe, including all measures that can be feasibly
26 implemented in the area in light of technological achievability,
27 costs, and other air quality-related and non-air-quality-related
28 health and environmental impacts.

29 (3) ATTAINMENT DATE.—The attainment date applicable to a revi-
30 sion required under paragraph (1) shall be the same as provided in
31 paragraph (2) of section 215102(a) of this title, except that in applying
32 subparagraph (A) of that paragraph the phrase “after the date of the
33 notice under section 215111(c)(2) of this title” shall be substituted for
34 the phrase “after the date on which the area was designated nonattain-
35 ment under section 211107(d) of this title” and for the phrase “after
36 the date of designation as nonattainment”.

37 **§ 215112. International border areas**

38 (a) IMPLEMENTATION PLANS AND REVISIONS.—Notwithstanding any
39 other provision of law, an implementation plan or plan revision required
40 under this division shall be approved by the Administrator if—

1 (1) the implementation plan or revision meets all the requirements
2 applicable to it under this division other than a requirement that the
3 implementation plan or revision demonstrate attainment and mainte-
4 nance of the relevant NAAQSeS by the attainment date specified under
5 the applicable provision of this division (including a regulation promul-
6 gated under that provision); and

7 (2) the submitting State establishes to the satisfaction of the Admin-
8 istrator that the implementation plan would be adequate to attain and
9 maintain the relevant NAAQSeS by the attainment date specified under
10 the applicable provision of this division (including a regulation promul-
11 gated under that provision) but for emissions emanating from outside
12 the United States.

13 (b) ATTAINMENT OF OZONE LEVELS.—Notwithstanding any other provi-
14 sion of law, a State that establishes to the satisfaction of the Administrator
15 that, with respect to an ozone nonattainment area in the State, the State
16 would have attained the NAAQS for ozone by the applicable attainment
17 date but for emissions emanating from outside the United States, shall not
18 be subject to paragraph (2) or (5) of section 215202(a) or section 215206
19 of this title.

20 (c) ATTAINMENT OF CARBON MONOXIDE LEVELS.—Notwithstanding any
21 other provision of law, a State that establishes to the satisfaction of the Ad-
22 ministrator that, with respect to a carbon monoxide nonattainment area in
23 the State, the State has attained the NAAQS for carbon monoxide by the
24 applicable attainment date but for emissions emanating from outside the
25 United States, shall not be subject to section 215302(b)(2) of this title.

26 (d) ATTAINMENT OF PM-10 LEVELS.—Notwithstanding any other provi-
27 sion of law, a State that establishes to the satisfaction of the Administrator
28 that, with respect to a PM-10 nonattainment area in the State, the State
29 would have attained the NAAQS for carbon monoxide by the applicable at-
30 tainment date but for emissions emanating from outside the United States,
31 shall not be subject to section 215402(b)(2) of this title.

32 **Subchapter II—Additional Provisions for** 33 **Ozone Nonattainment Areas**

34 **§ 215201. Definitions**

35 In this subchapter:

36 (1) APPLICABLE MILESTONE.—The term “applicable milestone”
37 means a reduction in omissions described in section 215203(g)(1) of
38 this title.

39 (2) EXTREME AREA.—The term “extreme area” means an area that
40 is classified as an extreme area under section 215202 of this title.

1 (3) MARGINAL AREA.—The term “marginal area” means an area
2 that is classified as a marginal area under section 215202 of this title.

3 (4) MODERATE AREA.—The term “moderate area” means an area
4 that is classified as a moderate area under section 215202 of this title.

5 (5) NEXT HIGHER CLASSIFICATION.—The term “next higher classi-
6 fication”, with respect to a classification related to any set of design
7 values in table 1, means the classification that is related to the next
8 higher set of design values in table 1.

9 (6) SERIOUS AREA.—The term “serious area” means an area that
10 is classified as a serious area under section 215202 of this title.

11 (7) SEVERE AREA.—The term “severe area” means an area that is
12 classified as a severe area under section 215202 of this title.

13 (8) TABLE 1.—The term “table 1” means table 1 in section
14 215202(a)(1) of this title.

15 **§ 215202. Classifications and attainment dates**

16 (a) CLASSIFICATION AND ATTAINMENT DATES FOR 1989 NONATTAIN-
17 MENT AREAS.—

18 (1) IN GENERAL.—Each area designated nonattainment for ozone
19 pursuant to section 211107(d) of this title shall be classified at the
20 time of designation, under table 1, by operation of law, as a marginal
21 area, moderate area, serious area, severe area, or extreme area based
22 on the design value for the area. The design value shall be calculated
23 according to the interpretation methodology issued by the Adminis-
24 trator most recently before November 15, 1990. For each area classi-
25 fied under this subsection, the primary standard attainment date for
26 ozone shall be achieved as expeditiously as practicable but not later
27 than the date provided in table 1.

TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal	0.121 up to 0.138	3 years after November 15, 1990
Moderate	0.138 up to 0.160	6 years after November 15, 1990
Serious	0.160 up to 0.180	9 years after November 15, 1990
Severe	0.180 up to 0.280	15 years after November 15, 1990
Extreme	0.280 and above	20 years after November 15, 1990

*The design value is measured in parts per million (ppm).

**The primary standard attainment date is measured from November 15, 1990.

28 (2) CERTAIN SEVERE AREAS.—Notwithstanding table 1, in the case
29 of a severe area with a 1988 ozone design value between 0.190 and
30 0.280 part per million, the attainment date shall be 17 years (in lieu
31 of 15 years) after November 15, 1990.

1 (3) NOTICE.—At the time of publication of the notice under section
2 211107(d)(4) of this title for each ozone nonattainment area, the Ad-
3 ministrator shall publish a notice announcing the classification of the
4 ozone nonattainment area. Section 215102(a)(1)(B) of this title shall
5 apply to such a classification.

6 (4) ADJUSTMENT.—

7 (A) IN GENERAL.—If an area classified under paragraph (1)
8 would have been classified in another category if the design value
9 in the area were 5 percent greater or 5 percent less than the level
10 on which the classification was based, the Administrator may,
11 within 90 days after the initial classification, by the procedure re-
12 quired under paragraph (3), adjust the classification to place the
13 area in the other category.

14 (B) CONSIDERATIONS.—In making an adjustment under sub-
15 paragraph (A), the Administrator may consider—

16 (i) the number of exceedances of the primary NAAQS for
17 ozone in the area;

18 (ii) the level of pollution transport between the area and
19 other affected areas, including both intrastate and interstate
20 transport; and

21 (iii) the mix of sources and air pollutants in the area.

22 (5) EXTENSION.—

23 (A) IN GENERAL.—On application by any State, the Adminis-
24 trator may extend for 1 additional year (referred to in this para-
25 graph as an “extension year”) the date specified in table 1 if—

26 (i) the State has complied with all requirements and com-
27 mitments pertaining to the area in the applicable implementa-
28 tion plan; and

29 (ii) not more than 1 exceedance of the NAAQS level for
30 ozone has occurred in the area in the year preceding the ex-
31 tension year.

32 (B) LIMITATION.—Not more than 2 one-year extensions may be
33 issued under this paragraph for a single nonattainment area.

34 (b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

35 (1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is
36 designated attainment or unclassifiable for ozone under section
37 211107(d)(4) of this title and is subsequently redesignated to non-
38 attainment for ozone under section 211107(d)(3) of this title shall, at
39 the time of redesignation, be classified by operation of law in accord-
40 ance with table 1. Upon its classification, the area shall be subject to
41 the same requirements under section 211110 of this title, subchapter

1 I, and this subchapter that would have applied had the area been so
2 classified at the time of the notice under subsection (a)(3), except that
3 any absolute, fixed date applicable in connection with any such require-
4 ment is extended by operation of law by a period equal to the length
5 of time between November 15, 1990, and the date on which the area
6 is classified under this paragraph.

7 (2) RECLASSIFICATION ON FAILURE TO ATTAIN.—

8 (A) DETERMINATION.—Within 6 months following the applica-
9 ble attainment date (including any extension) for an ozone non-
10 attainment area, the Administrator shall determine, based on the
11 area's design value (as of the attainment date), whether the area
12 attained the NAAQS by that date.

13 (B) RECLASSIFICATION.—Except for any severe area or extreme
14 area, any area that the Administrator finds has not attained the
15 NAAQS by that date shall be reclassified by operation of law in
16 accordance with table 1 to the higher of—

17 (i) the next higher classification for the area; or

18 (ii) the classification applicable to the area's design value
19 as determined at the time of the notice required under sub-
20 paragraph (D).

21 (C) NO RECLASSIFICATION AS EXTREME AREA.—No area shall
22 be reclassified as an extreme area under subparagraph (B)(ii).

23 (D) NOTICE.—The Administrator shall publish a notice in the
24 Federal Register, not later than 6 months following the attain-
25 ment date, identifying each area that the Administrator has deter-
26 mined under subparagraph (A) as having failed to attain and iden-
27 tifying the reclassification, if any, described under subparagraph
28 (B).

29 (3) VOLUNTARY RECLASSIFICATION.—The Administrator shall grant
30 the request of any State to reclassify a nonattainment area in that
31 State in accordance with table 1 to a higher classification. The Admin-
32 istrator shall publish a notice in the Federal Register of any such re-
33 quest and of action by the Administrator granting the request.

34 (4) FAILURE OF SEVERE AREA TO ATTAIN STANDARD.—

35 (A) IN GENERAL.—

36 (i) SANCTIONS.—If any severe area fails to achieve the pri-
37 mary NAAQS for ozone by the applicable attainment date
38 (including any extension)—

39 (I) the fee provisions under section 215206 of this
40 title shall apply within the severe area; and

1 (II)(aa) the percent reduction requirements of section
2 215203(c)(4)(C) of this title shall continue to apply to
3 the severe area; and

4 (bb) the State shall demonstrate that the required per-
5 cent reduction has been achieved in each 3-year interval
6 after such failure until the standard is attained.

7 (ii) FAILURE TO MAKE DEMONSTRATION.—Any failure to
8 make a demonstration under clause (i)(II)(bb) shall be sub-
9 ject to the sanctions provided under this chapter.

10 (B) DESIGN VALUE ABOVE 0.140 PART PER MILLION OR FAIL-
11 URE TO ACHIEVE MILESTONE.—In addition to the requirements of
12 subparagraph (A), if the ozone design value for a severe area de-
13 scribed in subparagraph (A) is above 0.140 part per million for
14 the year of the applicable attainment date, or if the severe area
15 has failed to achieve its most recent milestone under section
16 215203(g) of this title, the new source review requirements appli-
17 cable under this subchapter in extreme areas shall apply in the se-
18 vere area, for which purpose the terms “major source” and “major
19 stationary source” as applied to the severe area shall have the
20 same meaning as when applied to extreme areas.

21 (C) ADDITIONAL REQUIREMENTS.—In addition to the require-
22 ments of subparagraph (A), in the case of an area described in
23 subparagraph (A) and not described in subparagraph (B), the pro-
24 visions described in subparagraph (B) shall apply beginning 3
25 years after the applicable attainment date unless the area has at-
26 tained the standard by the end of that 3-year period.

27 (D) MODIFICATION OF METHOD OF DETERMINING COMPLI-
28 ANCE.—If the Administrator modifies the method of determining
29 compliance with the primary NAAQS, a design value or other indi-
30 cator comparable to 0.140 part per million in terms of its relation-
31 ship to the standard shall be used in lieu of 0.140 part per million
32 for purposes of applying subparagraphs (B) and (C).

33 **§ 215203. Plan provisions**

34 (a) MARGINAL AREAS.—

35 (1) IN GENERAL.—Each State in which all or part of a marginal
36 area is located shall, with respect to the marginal area (or portion
37 thereof, to the extent specified in this subsection), include in its appli-
38 cable implementation plan the provisions (including the plan items) de-
39 scribed under this subsection.

40 (2) INVENTORY.—A State shall submit a comprehensive, accurate,
41 current inventory of actual emissions from all sources, as described in

1 section 215102(c)(3) of this title, in accordance with guidance provided
2 by the Administrator.

3 (3) CORRECTIONS TO STATE IMPLEMENTATION PLAN.—

4 (A) IN GENERAL.—Within the periods prescribed in this para-
5 graph, a State shall meet the requirements stated in subpara-
6 graphs (B) and (C).

7 (B) REASONABLY AVAILABLE CONTROL TECHNOLOGY CORREC-
8 TIONS.—For any marginal area (or, in the Administrator's discre-
9 tion, any portion of a marginal area), a State applicable implemen-
10 tation plan shall include, within 6 months after the date of classi-
11 fication under section 215202(a) of this title, such requirements
12 concerning reasonably available control technology as were re-
13 quired under section 172(b) of the Clean Air Act (42 U.S.C.
14 7502(b)) as in effect on November 14, 1990, as interpreted in
15 guidance issued by the Administrator under section 108 of the
16 Clean Air Act (42 U.S.C. 7408) before November 15, 1990.

17 (C) VEHICLE INSPECTION AND MAINTENANCE.—

18 (i) STRINGENCY.—For any marginal area (or, in the Ad-
19 ministrator's discretion, any portion of a marginal area), the
20 plan for which includes, or was required by section
21 172(b)(11)(B) of the Clean Air Act (42 U.S.C.
22 7502(b)(11)(B)) (as in effect before November 15, 1990) to
23 include, a specific schedule for implementation of a vehicle
24 emission control inspection and maintenance program, a
25 State applicable implementation plan shall include any provi-
26 sions necessary to provide for a vehicle inspection and mainte-
27 nance program of no less stringency than that of the more
28 stringent of—

29 (I) the program defined in House Report No. 95-294,
30 95th Congress, 1st Session, 281-291 (1977), as inter-
31 preted in guidance of the Administrator issued pursuant
32 to section 172(b)(11)(B) of the Clean Air Act (42 U.S.C.
33 7502(b)(11)(B)) (as in effect before November 15,
34 1990); or

35 (II) the program previously included in the plan.

36 (ii) GUIDANCE.—

37 (I) IN GENERAL.—The Administrator shall review, re-
38 vise, update, and republish in the Federal Register the
39 guidance for the States for motor vehicle inspection and
40 maintenance programs required by this division, taking

1 into consideration the Administrator's investigations and
2 audits of the program.

3 (II) COVERAGE.—The guidance shall, at a minimum,
4 cover—

5 (aa) the frequency of inspections;

6 (bb) the types of vehicles to be inspected (which
7 shall include leased vehicles that are registered in
8 the nonattainment area);

9 (cc) vehicle maintenance by owners and operators;

10 (dd) audits by the State;

11 (ee) the test method and measures, including
12 whether centralized or decentralized;

13 (ff) inspection methods and procedures;

14 (gg) quality of inspection;

15 (hh) components covered;

16 (ii) assurance that a vehicle subject to a recall no-
17 tice from a manufacturer has complied with that no-
18 tice; and

19 (jj) effective implementation and enforcement, in-
20 cluding ensuring that any retesting of a vehicle
21 after a failure shall include proof of corrective ac-
22 tion and providing for denial of vehicle registration
23 in the case of tampering or misfueling.

24 (III) FLEXIBILITY.—The guidance, which shall be in-
25 corporated in the applicable State implementation plans
26 by the States, shall provide a State with continued rea-
27 sonable flexibility to fashion effective, reasonable, and
28 fair programs for the affected consumer.

29 (IV) SUBMISSION OF REVISION.—Not later than 2
30 years after the Administrator promulgates regulations
31 under section 221102(l)(3) of this title, a State shall
32 submit a revision to the program to meet any require-
33 ments that the Administrator may prescribe under that
34 section.

35 (D) PERMIT PROGRAMS.—A State applicable implementation
36 plan shall include each of the following:

37 (i) Provisions to require permits, in accordance with sec-
38 tions 215102(c)(5) and 215103 of this title, for the construc-
39 tion and operation of each new or modified major stationary
40 source (with respect to ozone) to be located in the marginal
41 area.

1 (ii) Provisions to correct requirements in (or add require-
2 ments to) the plan concerning permit programs as were re-
3 quired under section 172(b)(6) of the Clean Air Act (42
4 U.S.C. 7502(b)(6)) (as in effect before November 15, 1990),
5 as interpreted in regulations of the Administrator promul-
6 gated as of November 15, 1990.

7 (4) PERIODIC INVENTORY.—

8 (A) GENERAL REQUIREMENT.—Not later than the end of each
9 3-year period after submission of the inventory under paragraph
10 (2) until the marginal area is redesignated to attainment, the
11 State shall submit a revised inventory meeting the requirements
12 of paragraph (2).

13 (B) EMISSIONS STATEMENTS.—

14 (i) IN GENERAL.—At least annually, a State shall submit
15 a revision to the State implementation plan to require that
16 the owner or operator of each stationary source of nitrogen
17 oxides or volatile organic compounds provide the State with
18 a statement, in such form as the Administrator may prescribe
19 (or accept an equivalent alternative developed by the State),
20 for classes or categories of sources, showing the actual emis-
21 sions of nitrogen oxides and volatile organic compounds from
22 that source. The statement shall contain a certification that
23 the information contained in the statement is accurate to the
24 best knowledge of the individual certifying the statement.

25 (ii) WAIVER.—A State may waive the application of clause
26 (i) to any class or category of stationary sources that emit
27 less than 25 tons per year of volatile organic compounds or
28 nitrogen oxides if the State, in its submissions under para-
29 graph (2) or subparagraph (A), provides an inventory of
30 emissions from the class or category of sources based on the
31 use of the emission factors established by the Administrator
32 or other methods acceptable to the Administrator.

33 (5) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying
34 the emission offset requirements of this chapter, the ratio of total emis-
35 sion reductions of volatile organic compounds to total increased emis-
36 sions of volatile organic compounds shall be at least 1.1 to 1.

37 (6) SCHEDULE.—The Administrator may require States to submit a
38 schedule for submitting any of the revisions or other items required
39 under this subsection.

40 (7) APPLICABILITY OF SUBSECTION IN LIEU OF OTHER REQUIRE-
41 MENTS.—The requirements of this subsection shall apply in lieu of any

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1 requirement that the State submit a demonstration that the applicable
2 implementation plan provides for attainment of the ozone standard by
3 the applicable attainment date in any marginal area.

4 (8) CONTINGENCY MEASURES.—Section 215102(e)(9) of this title
5 shall not apply to a marginal area.

6 (b) MODERATE AREAS.—

7 (1) IN GENERAL.—Each State in which all or part of a moderate
8 area is located shall include in its applicable implementation plan the
9 provisions described under this subsection and subsection (a).

10 (2) PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS.—

11 (A) DEFINITION OF BASELINE EMISSIONS.—In this paragraph,
12 the term “baseline emissions” means the total amount of actual
13 volatile organic compound or nitrogen oxide emissions from all an-
14 thropogenic sources in a moderate area during calendar year
15 1990, excluding emissions that would be eliminated under the reg-
16 ulations described in clauses (i) and (ii) of subparagraph (D).

17 (B) GENERAL RULE.—

18 (i) PLAN PROVISION.—A State applicable implementation
19 plan shall provide for volatile organic compound emission re-
20 ductions of at least 15 percent from baseline emissions, ac-
21 counting for any growth in emissions after 1990. The plan
22 shall provide for such specific annual reductions in emissions
23 of volatile organic compounds and nitrogen oxides as are nec-
24 essary to attain the primary NAAQS for ozone by the attain-
25 ment date applicable under this division.

26 (ii) PERCENTAGE.—

27 (I) IN GENERAL.—A percentage of less than 15 per-
28 cent may be used for purposes of clause (i) in the case
29 of a State that demonstrates to the satisfaction of the
30 Administrator that—

31 (aa) new source review provisions are applicable
32 in the nonattainment areas in the same manner and
33 to the same extent as are required under subsection
34 (e) in the case of extreme areas (with the exception
35 that, in applying those provisions, the terms “major
36 source” and “major stationary source” shall include
37 (in addition to the sources described in section
38 201101 of this title) any stationary source or group
39 of sources located within a contiguous area and
40 under common control that emits, or has the poten-

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1 tial to emit, at least 5 tons per year of volatile or-
2 ganic compounds);

3 (bb) reasonably available control technology is re-
4 quired for all existing major sources (as defined in
5 item (aa)); and

6 (cc) the plan reflecting a lesser percentage than
7 15 percent includes all measures that can feasibly
8 be implemented in an area, in light of technological
9 achievability.

10 (II) MEASURES ACHIEVED IN PRACTICE.—To qualify
11 for a lesser percentage under this clause, a State shall
12 demonstrate to the satisfaction of the Administrator that
13 the plan for the area includes the measures that are
14 achieved in practice by sources in the same source cat-
15 egory in nonattainment areas of the next higher classi-
16 fication.

17 (iii) APPLICABILITY OF SUBPARAGRAPH.—This subpara-
18 graph shall not apply in the case of nitrogen oxides for areas
19 for which the Administrator determines (when the Adminis-
20 trator approves a plan or plan revision) that additional reduc-
21 tions of nitrogen oxides would not contribute to attainment.

22 (C) GENERAL RULE FOR CREDITABILITY OF REDUCTIONS.—Ex-
23 cept as provided under subparagraph (D), emission reductions are
24 creditable toward the 15 percent required under subparagraph (B)
25 to the extent that the emission reductions have actually occurred,
26 as of 6 years after November 15, 1990, as a result of the imple-
27 mentation of measures required under the applicable implementa-
28 tion plan, regulations promulgated by the Administrator, or a per-
29 mit under subdivision 6.

30 (D) LIMITS ON CREDITABILITY OF REDUCTIONS.—Emission re-
31 ductions from the following measures are not creditable toward the
32 15 percent reductions required under subparagraph (B):

33 (i) Any measure relating to motor vehicle exhaust or evapo-
34 rative emissions promulgated by the Administrator by Janu-
35 ary 1, 1990.

36 (ii) Regulations concerning Reid vapor pressure promul-
37 gated by the Administrator by November 15, 1990, or re-
38 quired to be promulgated under section 221111(h) of this
39 title.

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1 (iii) Measures required under subsection (a)(3)(B) concern-
2 ing corrections to implementation plans prescribed under
3 guidance by the Administrator.

4 (iv) Measures required under subsection (a)(3)(C) concern-
5 ing corrections to motor vehicle inspection and maintenance
6 programs.

7 (3) REASONABLY AVAILABLE CONTROL TECHNOLOGY.—

8 (A) IN GENERAL.—A State applicable implementation plan shall
9 include provisions to require the implementation of reasonably
10 available control technology under section 215102(e)(1) of this
11 title with respect to each of the following:

12 (i) Each category of volatile organic compound sources in
13 the area covered by a control technique guidelines document
14 issued by the Administrator between November 15, 1990, and
15 the date of attainment.

16 (ii) All volatile organic compound sources in the area cov-
17 ered by any control technique guideline issued before Novem-
18 ber 15, 1990.

19 (iii) All other major stationary sources of volatile organic
20 compounds that are located in the area.

21 (B) TIME FOR SUBMISSION.—Each provision described in sub-
22 paragraph (A)(i) shall be submitted within the period set forth by
23 the Administrator in issuing the relevant control technique guide-
24 lines document. The provisions with respect to sources described
25 in clauses (ii) and (iii) of subparagraph (A) shall provide for the
26 implementation of the required measures as expeditiously as prac-
27 ticable.

28 (4) GASOLINE VAPOR RECOVERY.—

29 (A) DEFINITION OF ADOPTION DATE.—In this paragraph, the
30 term “adoption date” means the date of adoption by a State of
31 requirements for the installation and operation of a system for
32 gasoline vapor recovery of emissions from the fueling of motor ve-
33 hicles.

34 (B) GENERAL RULE.—

35 (i) REQUIREMENT.—A State applicable implementation
36 plan shall require all owners or operators of gasoline dispens-
37 ing systems to install and operate, by the date prescribed
38 under subparagraph (C), a system for gasoline vapor recovery
39 of emissions from the fueling of motor vehicles.

40 (ii) GUIDANCE.—The Administrator shall issue guidance as
41 appropriate as to the effectiveness of the system.

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1 (iii) APPLICABILITY.—This subparagraph shall apply only
2 to facilities that sell more than—

3 (I) 10,000 gallons of gasoline per month; or

4 (II) in the case of an independent small business mar-
5 keter of gasoline (as defined in section 209114 of this
6 title), 50,000 gallons per month.

7 (C) EFFECTIVE DATE.—The date required under subparagraph
8 (B) shall be—

9 (i) 6 months after the adoption date, in the case of a gaso-
10 line dispensing facility for which construction commences
11 after November 15, 1990;

12 (ii) 1 year after the adoption date, in the case of a gasoline
13 dispensing facility that dispenses at least 100,000 gallons of
14 gasoline per month, based on average monthly sales for the
15 2-year period before the adoption date, and is not a facility
16 described in clause (i); or

17 (iii) 2 years after the adoption date, in the case of all other
18 gasoline dispensing facilities.

19 (5) MOTOR VEHICLE INSPECTION AND MAINTENANCE.—For all mod-
20 erate areas, a State applicable implementation plan shall include provi-
21 sions necessary to provide for a vehicle inspection and maintenance
22 program as described in subsection (a)(3)(C) (without regard to wheth-
23 er the area was required by section 172(b)(11)(B) of the Clean Air Act
24 (42 U.S.C. 7502(b)(11)(B)) (as in effect before November 15, 1990)
25 to have included a specific schedule for implementation of such a pro-
26 gram).

27 (6) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying
28 the emission offset requirements of this chapter, the ratio of total emis-
29 sion reductions of volatile organic compounds to total increased emis-
30 sions of volatile organic compounds shall be at least 1.15 to 1.

31 (c) SERIOUS AREAS.—

32 (1) IN GENERAL.—Except as otherwise specified in paragraph (6),
33 each State in which all or part of a serious area is located shall, with
34 respect to the serious area (or portion thereof, to the extent specified
35 in this subsection), include in its applicable implementation plan (in-
36 cluding the plan items) the provisions described under this subsection
37 and subsection (b) (except that any reference to an attainment date in
38 subsection (b), incorporated by reference in this subsection, shall refer
39 to the attainment date for serious areas).

40 (2) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any serious
41 area, the terms “major source” and “major stationary source” include

1 (in addition to the sources described in section 201101 of this title)
2 any stationary source or group of sources located within a contiguous
3 area and under common control that emits, or has the potential to
4 emit, at least 50 tons per year of volatile organic compounds.

5 (3) ENHANCED MONITORING.—

6 (A) REGULATIONS.—To obtain more comprehensive and rep-
7 resentative data on ozone air pollution, the Administrator shall
8 promulgate regulations, after notice and public comment, for en-
9 hanced monitoring of ozone, nitrogen oxides, and volatile organic
10 compounds. The regulations shall cover the location and mainte-
11 nance of monitors.

12 (B) STATE ACTION.—Immediately following the promulgation of
13 regulations by the Administrator relating to enhanced monitoring,
14 a State shall commence such actions as may be necessary to adopt
15 and implement a program based on the regulations to improve
16 monitoring for ambient concentrations of ozone, nitrogen oxides,
17 and volatile organic compounds and to improve monitoring of
18 emissions of nitrogen oxides and volatile organic compounds. Each
19 State implementation plan for the area shall contain measures to
20 improve the ambient monitoring of those air pollutants.

21 (4) ATTAINMENT DEMONSTRATIONS; REASONABLE FURTHER
22 PROGRESS DEMONSTRATIONS.—

23 (A) IN GENERAL.—A State applicable implementation plan shall
24 include an attainment demonstration described in subparagraph
25 (B) and a reasonable further progress demonstration described in
26 subparagraph (C).

27 (B) ATTAINMENT DEMONSTRATION.—A State applicable imple-
28 mentation plan shall include a demonstration that the plan will
29 provide for attainment of the ozone NAAQS by the applicable at-
30 tainment date. The attainment demonstration shall be based on
31 photochemical grid modeling or any other analytical method deter-
32 mined by the Administrator, in the Administrator's discretion, to
33 be at least as effective.

34 (C) REASONABLE FURTHER PROGRESS DEMONSTRATION.—

35 (i) VOLATILE ORGANIC COMPOUND CONTROL.—

36 (I) IN GENERAL.—A State applicable implementation
37 plan shall include a demonstration that the plan will re-
38 sult in volatile organic compound emission reductions
39 from the baseline emissions (as defined in subsection
40 (b)(2)(A)) equal to 1 of the following amounts averaged

1 over each consecutive 3-year period beginning 6 years
2 after November 15, 1990, until the attainment date:

3 (aa) At least 3 percent of baseline emissions each
4 year.

5 (bb) An amount less than 3 percent of baseline
6 emissions each year, if the State demonstrates to
7 the satisfaction of the Administrator that the plan
8 reflecting such a lesser amount includes all meas-
9 ures that can feasibly be implemented in the area,
10 in light of technological achievability.

11 (II) LESS THAN 3 PERCENT REDUCTION.—To lessen
12 the 3 percent requirement under subclause (I)(bb), a
13 State shall demonstrate to the satisfaction of the Admin-
14 istrator that the plan for the area includes the measures
15 that are achieved in practice by sources in the same
16 source category in nonattainment areas of the next high-
17 er classification. Any determination to lessen the 3 per-
18 cent requirement shall be reviewed at each applicable
19 milestone under subsection (g) and revised to reflect
20 such new measures (if any) achieved in practice by
21 sources in the same category in any State, allowing a
22 reasonable amount of time to implement the measures.

23 (III) CALCULATION OF EMISSION REDUCTIONS.—The
24 emission reductions described in this clause shall be cal-
25 culated in accordance with subparagraphs (C) and (D)
26 of subsection (b)(2). The reductions creditable for the
27 period beginning 6 years after November 15, 1990, shall
28 include reductions that occurred before that period, cal-
29 culated in accordance with subsection (b)(2), that exceed
30 the 15-percent amount of reductions required under sub-
31 section (b)(2)(B).

32 (ii) NITROGEN OXIDE CONTROL.—A provision under this
33 subparagraph may contain, in lieu of the volatile organic com-
34 pound control demonstration described in clause (i), a dem-
35 onstration to the satisfaction of the Administrator that the
36 applicable implementation plan provides for reductions of
37 emissions of volatile organic compounds and nitrogen oxides
38 (calculated according to the creditability provisions of sub-
39 paragraphs (C) and (D) of subsection (b)(2)), that would re-
40 sult in a reduction in ozone concentrations at least equivalent
41 to that which would result from the amount of emission re-

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1 ductions required under clause (i). The Administrator shall
2 issue guidance concerning the conditions under which nitro-
3 gen oxide control may be substituted for volatile organic com-
4 pound control or may be combined with volatile organic com-
5 pound control to maximize the reduction in ozone air pollu-
6 tion. In accord with such guidance, a lesser percentage of
7 volatile organic compounds may be accepted as an adequate
8 demonstration for purposes of this subsection.

9 (5) ENHANCED VEHICLE INSPECTION AND MAINTENANCE PRO-
10 GRAM.—

11 (A) REQUIREMENT FOR SUBMISSION.—A State shall include in
12 its applicable implementation plan a provision for an enhanced
13 program to reduce hydrocarbon emissions and nitrogen oxide emis-
14 sions from in-use motor vehicles registered in each urbanized area
15 (in the nonattainment area), as defined by the Bureau of the Cen-
16 sus, with a 1980 population of 200,000 or more.

17 (B) EFFECTIVE DATE OF STATE PROGRAMS; GUIDANCE.—

18 (i) IN GENERAL.—The State program required under sub-
19 paragraph (A) shall comply in all respects with guidance pub-
20 lished in the Federal Register (and from time to time revised)
21 by the Administrator for enhanced vehicle inspection and
22 maintenance programs.

23 (ii) CONTENTS.—The guidance shall include—

24 (I) a performance standard achievable by a program
25 combining emission testing, including on-road emission
26 testing, with inspection to detect tampering with emis-
27 sion control devices and misfueling for all light-duty ve-
28 hicles and all light-duty trucks subject to standards
29 under section 221102 of this title; and

30 (II) program administration features necessary to rea-
31 sonably ensure that adequate management resources,
32 tools, and practices are in place to attain and maintain
33 the performance standard.

34 (iii) COMPLIANCE.—Compliance with the performance
35 standard under clause (ii)(I) shall be determined using a
36 method established by the Administrator.

37 (C) STATE PROGRAM.—

38 (i) IN GENERAL.—A State program under subparagraph
39 (A) shall include, at a minimum, each of the following ele-
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(I) Computerized emission analyzers, including on-road testing devices.

(II) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 221107(c) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(III) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of \$450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subdivision 6).

(IV) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990, whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in ensuring that noncomplying vehicles are not operated on public roads).

(V) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program that exceed the requirements of this division, will result in emission reductions that equal or exceed the reductions that can be obtained through annual inspections.

(VI) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(VII) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

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1 (ii) BIENNIAL REPORTS.—Each State shall biennially sub-
2 mit to the Administrator a report that assesses the emission
3 reductions achieved by the program required under this para-
4 graph based on data collected during inspection and repair of
5 vehicles. The methods used to assess the emission reductions
6 shall be those established by the Administrator.

7 (6) CLEAN-FUEL VEHICLE PROGRAMS.—

8 (A) IN GENERAL.—Except to the extent that substitute provi-
9 sions are approved by the Administrator under subparagraph (B),
10 a State applicable implementation plan shall include, for each area
11 described under chapter 225 and for each area that opts into the
12 clean fuel-vehicle program as provided in chapter 225, such meas-
13 ures as may be necessary to ensure the effectiveness of the appli-
14 cable provisions of the clean-fuel vehicle program prescribed under
15 chapter 225, including all measures necessary to make the use of
16 clean alternative fuels in clean-fuel vehicles (as defined in chapter
17 225) economic from the standpoint of vehicle owners.

18 (B) SUBSTITUTE PROVISIONS.—

19 (i) IN GENERAL.—The Administrator shall approve, as a
20 substitute for all or a portion of the clean-fuel vehicle pro-
21 gram prescribed under chapter 225, any provision of a rel-
22 evant applicable implementation plan that in the Administra-
23 tor's judgment will achieve long-term reductions in ozone-pro-
24 ducing and toxic air emissions equal to those achieved under
25 chapter 225, or the percentage thereof attributable to the
26 portion of the clean-fuel vehicle program for which the provi-
27 sion is to substitute.

28 (ii) REQUIREMENT FOR APPROVAL.—The Administrator
29 may approve such a provision only if it consists exclusively of
30 provisions other than those required under this division for
31 the area.

32 (iii) DEADLINE.—Any State seeking approval of such a
33 provision must have submitted the revision to the Adminis-
34 trator within 24 months of November 15, 1990.

35 (iv) RULEMAKING.—The Administrator shall publish the
36 provision submitted by a State in the Federal Register on re-
37 ceipt. The notice shall constitute a notice of proposed rule-
38 making on whether to approve the provision and shall be
39 deemed to comply with the requirements concerning notices of
40 proposed rulemaking contained in sections 553 to 557 of title
41 5.

1 (v) NO PROVISION UNDER SUBPARAGRAPH (A).—Where the
2 Administrator approves such a provision for any area, the
3 State need not submit the provision required by subparagraph
4 (A) for the area with respect to the portions of the Federal
5 clean-fuel vehicle program for which the Administrator has
6 approved the provision as a substitute.

7 (C) FAILURE TO SUBMIT PROGRAM.—If the Administrator de-
8 termines under section 215111 of this title that a State has failed
9 to submit any portion of the program required under subpara-
10 graph (A), in addition to any sanctions available under section
11 215111 of this title, the State may not receive credit, in any dem-
12 onstration of attainment or reasonable further progress for the
13 area, for any emission reductions from implementation of the cor-
14 responding aspects of the Federal clean-fuel vehicle requirements
15 established in chapter 225.

16 (7) TRANSPORTATION CONTROL.—

17 (A) IN GENERAL.—Every 3 years, a State shall submit a dem-
18 onstration whether current aggregate vehicle mileage, aggregate
19 vehicle emissions, congestion levels, and other relevant parameters
20 are consistent with those used for the area's demonstration of at-
21 tainment.

22 (B) EXCEEDANCE.—Where such parameters and emissions lev-
23 els exceed the levels projected for purposes of the area's attain-
24 ment demonstration, the State shall within 18 months develop and
25 submit a revision of the applicable implementation plan that in-
26 cludes a transportation control measures program that includes
27 measures described in section 211108(f) of this title that will re-
28 duce emissions to levels that are consistent with emission levels
29 projected in the demonstration. In considering such measures, the
30 State should ensure adequate access to downtown, other commer-
31 cial, and residential areas and should avoid measures that increase
32 or relocate emissions and congestion rather than reduce them.

33 (C) DEVELOPMENT; SCHEDULES.—A revision under subpara-
34 graph (B)—

35 (i) shall be developed in accordance with guidance issued
36 by the Administrator pursuant to section 211108(e) of this
37 title and with the requirements of section 215104(b) of this
38 title; and

39 (ii) shall include implementation and funding schedules
40 that achieve expeditious emissions reductions in accordance
41 with implementation plan projections.

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1 (8) DE MINIMIS RULE.—The new source review provisions under this
2 chapter shall ensure that increased emissions of volatile organic com-
3 pounds resulting from any physical change in, or change in the method
4 of operation of, a stationary source located in the serious area shall not
5 be considered de minimis for purposes of determining the applicability
6 of the permit requirements established by this division unless the in-
7 crease in net emissions of volatile organic compounds from the station-
8 ary source does not exceed 25 tons when aggregated with all other net
9 increases in emissions from the source over any period of 5 consecutive
10 calendar years that includes the calendar year in which the increase oc-
11 curred.

12 (9) SPECIAL RULE FOR MODIFICATION OF SOURCES EMITTING LESS
13 THAN 100 TONS.—

14 (A) IN GENERAL.—Except as provided in subparagraph (B), in
15 the case of any major stationary source of volatile organic com-
16 pounds located in the serious area (other than a source that emits
17 or has the potential to emit 100 tons or more of volatile organic
18 compounds per year), whenever any change (as described in sec-
19 tion 211111(a)(2) of this title) at that source results in any in-
20 crease (other than a de minimis increase) in emissions of volatile
21 organic compounds from any discrete operation, unit, or other pol-
22 lutant emitting activity at the source, the change shall be consid-
23 ered to be a modification for purposes of sections 215102(c)(5)
24 and 215103(a) of this title, but in applying section
25 215103(a)(1)(B) of this title in the case of any such modification,
26 the best available control technology (as defined in section 213102
27 of this title) shall be substituted for the lowest achievable emission
28 rate.

29 (B) ELECTION TO OFFSET.—A change described in subpara-
30 graph (A) shall not be considered to be a modification for the pur-
31 poses described in subparagraph (A) if the owner or operator of
32 the source elects to offset the increase by a greater reduction in
33 emissions of volatile organic compounds concerned from other op-
34 erations, units, or activities within the source at an internal offset
35 ratio of at least 1.3 to 1.

36 (C) ELECTION NOT MADE.—If the owner or operator does not
37 make the election described in subparagraph (B), the change shall
38 be considered a modification for the purposes described in sub-
39 paragraph (A), but in applying section 215103(a)(1)(B) of this
40 title in the case of any such modification, the best available control

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1 technology, as defined in section 213102 of this title, shall be sub-
2 stituted for the lowest achievable emission rate.

3 (D) POLICIES AND PROCEDURES.—The Administrator shall es-
4 tablish and publish policies and procedures for implementing this
5 paragraph.

6 (10) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING 100
7 TONS OR MORE.—

8 (A) IN GENERAL.—Except as provided in subparagraph (B), in
9 the case of any major stationary source of volatile organic com-
10 pounds located in the serious area that emits or has the potential
11 to emit 100 tons or more of volatile organic compounds per year,
12 whenever any change (as described in section 211111(a)(2) of this
13 title) at that source results in any increase (other than a de mini-
14 mis increase) in emissions of volatile organic compounds from any
15 discrete operation, unit, or other pollutant emitting activity at the
16 source, the change shall be considered a modification for purposes
17 of sections 215102(c)(5) and 215103(a) of this title.

18 (B) ELECTION TO OFFSET.—If the owner or operator of the
19 source elects to offset the increase by a greater reduction in emis-
20 sions of volatile organic compounds from other operations, units,
21 or activities within the source at an internal offset ratio of at least
22 1.3 to 1, the requirements of section 215103(a)(1)(B) of this title
23 shall not apply.

24 (11) CONTINGENCY PROVISIONS.—In addition to the contingency
25 provisions required under section 215102(c)(9) of this title, the plan
26 revision shall provide for the implementation of specific measures to be
27 undertaken if the serious area fails to meet any applicable milestone.
28 The measures shall be included in the plan provision as contingency
29 measures to take effect without further action by the State or the Ad-
30 ministrator on a failure by the State to meet the applicable milestone.

31 (12) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying
32 the emission offset requirements of this chapter, the ratio of total emis-
33 sion reductions of volatile organic compounds to total increase emis-
34 sions of an air pollutant shall be at least 1.2 to 1.

35 (d) SEVERE AREAS.—

36 (1) IN GENERAL.—Each State in which all or part of a severe area
37 is located shall, with respect to the severe area, include in its applicable
38 implementation plan the provisions (including plan items) described
39 under this subsection and subsection (c) (except that any reference to
40 an attainment date in subsection (b) or (c), incorporated by reference
41 in this subsection, shall refer to the attainment date for severe areas).

1 (2) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any severe
2 area, the terms “major source” and “major stationary source” include
3 (in addition to the sources described in section 201101 of this title)
4 any stationary source or group of sources located within a contiguous
5 area and under common control that emits, or has the potential to
6 emit, at least 25 tons per year of volatile organic compounds.

7 (3) VEHICLE MILES TRAVELED.—

8 (A) TRANSPORTATION CONTROL STRATEGIES AND TRANSPOR-
9 TATION CONTROL MEASURES.—

10 (i) IN GENERAL.—A State applicable implementation plan
11 shall include a provision that identifies and adopts specific en-
12 forceable transportation control strategies and transportation
13 control measures to offset any growth in emissions from
14 growth in vehicle miles traveled or numbers of vehicle trips
15 in the severe area and to attain reduction in motor vehicle
16 emissions as necessary, in combination with other emission
17 reduction requirements of this subchapter, to comply with
18 subsections (b)(2) and (c)(4)(C)(i).

19 (ii) CONSIDERATIONS.—The State shall consider measures
20 specified in section 211108(f) of this title and choose from
21 among and implement those measures as necessary to dem-
22 onstrate attainment with the NAAQSEs. In considering such
23 measures, the State should ensure adequate access to down-
24 town, other commercial, and residential areas and should
25 avoid measures that increase or relocate emissions and con-
26 gestion rather than reduce them.

27 (B) PROGRAMS TO REDUCE WORK-RELATED VEHICLE TRIPS
28 AND MILES TRAVELED BY EMPLOYEES.—

29 (i) IN GENERAL.—The State may include in its applicable
30 implementation plan a provision requiring employers in the
31 severe area to implement programs to reduce work-related ve-
32 hicle trips and miles traveled by employees.

33 (ii) GUIDANCE; OCCUPANCY PER VEHICLE.—A provision de-
34 scribed in clause (i) shall be developed in accordance with
35 guidance issued by the Administrator pursuant to section
36 211108(f) of this title and may require that employers in the
37 severe area increase average passenger occupancy per vehicle
38 in commuting trips between home and the workplace during
39 peak travel periods. The guidance of the Administrator may
40 specify average vehicle occupancy rates that vary for locations
41 within a nonattainment area (suburban, center city, business

1 district) or among nonattainment areas reflecting existing oc-
2 cupancy rates and the availability of high occupancy modes.

3 (iii) ALTERNATIVE METHODS.—Any State required to sub-
4 mit a revision under section 182(d)(1)(B) of the Clean Air
5 Act (42 U.S.C. 7511a(d)(1)(B)) (as in effect before Decem-
6 ber 23, 1995) containing provisions requiring employers to re-
7 duce work-related vehicle trips and miles traveled by employ-
8 ees may, in accordance with State law, remove those provi-
9 sions from the implementation plan, or withdraw its submis-
10 sion, if the State notifies the Administrator, in writing, that
11 the State has undertaken, or will undertake, 1 or more alter-
12 native methods that will achieve emission reductions equiva-
13 lent to those to be achieved by the removed or withdrawn pro-
14 visions.

15 (4) OFFSET REQUIREMENT.—For purposes of satisfying the offset
16 requirements pursuant to this chapter, the ratio of total emission re-
17 ductions of volatile organic compounds to total increased emissions of
18 volatile organic compounds shall be at least 1.3 to 1, except that if the
19 State applicable implementation plan requires all existing major sources
20 in the nonattainment area to use best available control technology (as
21 defined in section 213102 of this title) for the control of volatile or-
22 ganic compounds, the ratio shall be at least 1.2 to 1.

23 (5) ENFORCEMENT UNDER SECTION 215206.—The State shall submit
24 a plan revision that includes the provisions required under section
25 215206 of this title.

26 (e) EXTREME AREAS.—

27 (1) IN GENERAL.—Each State in which all or part of an extreme
28 area is located shall, with respect to the extreme area, include in its
29 applicable implementation plan the provisions (including plan items)
30 described under this subsection and subsection (d) (except that any ref-
31 erence to an attainment date in subsection (b), (c), or (d), incorporated
32 by reference in this subsection, shall refer to the attainment date for
33 extreme areas).

34 (2) INAPPLICABILITY OF CERTAIN PROVISIONS.—Subsection
35 (b)(2)(B)(ii) and paragraphs (4)(C)(i)(I)(bb), (8), (9), and (10) of sub-
36 section (c) shall not apply in the case of an extreme area.

37 (3) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any extreme
38 area, the terms “major source” and “major stationary source” include
39 (in addition to the sources described in section 201101 of this title)
40 any stationary source or group of sources located within a contiguous

1 area and under common control that emits, or has the potential to
2 emit, at least 10 tons per year of volatile organic compounds.

3 (4) OFFSET REQUIREMENT.—For purposes of satisfying the offset
4 requirements pursuant to this chapter, the ratio of total emission re-
5 ductions of volatile organic compounds to total increased emissions of
6 volatile organic compounds shall be at least 1.5 to 1, except that if the
7 State plan requires all existing major sources in the nonattainment
8 area to use best available control technology (as defined in section
9 213102 of this title) for the control of volatile organic compounds, the
10 ratio shall be at least 1.2 to 1.

11 (5) MODIFICATIONS.—

12 (A) IN GENERAL.—Except as provided in subparagraph (B),
13 any change (as described in section 211111(a)(2) of this title) at
14 a major stationary source that results in any increase in emissions
15 from any discrete operation, unit, or other pollutant-emitting ac-
16 tivity at the source shall be considered a modification for purposes
17 of sections 215102(c)(5) and 215103(a) of this title.

18 (B) ELECTION TO OFFSET.—For purposes of complying with
19 the offset requirement pursuant to section 215103(a)(1)(A) of this
20 title, any change described in subparagraph (A) shall not be con-
21 sidered to be a modification if the owner or operator of the source
22 elects to offset the increase by a greater reduction in emissions of
23 the air pollutant concerned from other discrete operations, units,
24 or activities within the source at an internal offset ratio of at least
25 1.3 to 1.

26 (C) NONAPPLICABILITY OF OFFSET PROVISIONS.—The offset re-
27 quirements of this chapter shall not be applicable in extreme areas
28 to a modification of an existing source if the modification consists
29 of installation of equipment required to comply with the applicable
30 implementation plan, a permit, or this division.

31 (6) USE OF CLEAN FUELS OR ADVANCED CONTROL TECHNOLOGY.—

32 (A) DEFINITION OF PRIMARY FUEL.—In this paragraph, the
33 term “primary fuel” means the fuel that is used by an electric
34 utility or industrial or commercial boiler 90 percent or more of the
35 operating time.

36 (B) CERTAIN ELECTRIC UTILITIES AND INDUSTRIAL AND COM-
37 Mercial Boilers.—For extreme areas, a State applicable imple-
38 mentation plan shall include a provision requiring that each new,
39 modified, and existing electric utility and industrial and commer-
40 cial boiler that emits more than 25 tons per year of nitrogen ox-
41 ides—

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1 (i) burn as its primary fuel natural gas, methanol, or etha-
2 nol (or a comparably low-polluting fuel); or

3 (ii) use advanced control technology (such as catalytic con-
4 trol technology or other comparably effective control methods)
5 for reduction of emissions of nitrogen oxides.

6 (C) APPLICABILITY.—This paragraph shall not apply during
7 any natural gas supply emergency (as defined in title III of the
8 Natural Gas Policy Act of 1978 (15 U.S.C. 3361 et seq.)).

9 (7) TRAFFIC CONTROL MEASURES DURING HEAVY TRAFFIC
10 HOURS.—For extreme areas, a State applicable implementation plan
11 may contain provisions establishing traffic control measures applicable
12 during heavy traffic hours to reduce the use of high-polluting vehicles
13 or heavy-duty vehicles, notwithstanding any other provision of law.

14 (8) NEW TECHNOLOGIES.—

15 (A) IN GENERAL.—The Administrator may, in accordance with
16 section 211110 of this title, approve provisions of an implementa-
17 tion plan for an extreme area that anticipate development of new
18 control techniques or improvement of existing control technologies,
19 and an attainment demonstration based on such provisions, if the
20 State demonstrates to the satisfaction of the Administrator that—

21 (i) such provisions are not necessary to achieve the incre-
22 mental emission reductions required during the 1st 10 years
23 after November 15, 1990; and

24 (ii) the State has submitted enforceable commitments to
25 develop and adopt contingency measures to be implemented
26 as set forth in subparagraph (B) if the anticipated tech-
27 nologies do not achieve planned reductions.

28 (B) SUBMISSION AND APPROVAL OR DISAPPROVAL OF CONTIN-
29 GENCY MEASURES.—Contingency measures described in subpara-
30 graph (A) shall be submitted to the Administrator not later than
31 3 years before proposed implementation of the plan provisions and
32 approved or disapproved by the Administrator in accordance with
33 section 211110 of this title.

34 (C) ADEQUACY.—The contingency measures shall be adequate
35 to produce emission reductions sufficient, in conjunction with
36 other approved plan provisions, to achieve the periodic emission re-
37 ductions required by subsection (b)(2) or (c)(4) and attainment by
38 the applicable dates.

39 (D) FAILURE TO ACHIEVE EMISSION REDUCTION.—If the Ad-
40 ministrator determines that an extreme area has failed to achieve
41 an emission reduction requirement set forth in subsection (b)(2)

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1 or (c)(4), and that the failure is due in whole or part to an inabil-
2 ity to fully implement provisions approved pursuant to this sub-
3 section, the Administrator shall require the State to implement the
4 contingency measures to the extent necessary to ensure compliance
5 with subsections (b)(2) and (c)(4).

6 (f) NITROGEN OXIDE REQUIREMENTS.—

7 (1) IN GENERAL.—

8 (A) APPLICABILITY OF PROVISIONS RELATING TO VOLATILE OR-
9 GANIC COMPOUNDS.—The plan provisions required under this sub-
10 chapter for major stationary sources of volatile organic compounds
11 shall apply to major stationary sources (as defined in section
12 201101 of this title and subsections (c), (d), and (e)) of nitrogen
13 oxides.

14 (B) NONAPPLICABILITY OF SUBSECTION.—This subsection shall
15 not apply in the case of nitrogen oxides for—

16 (i) sources for which the Administrator determines (when
17 the Administrator approves a plan or plan revision) that net
18 air quality benefits are greater in the absence of reductions
19 of nitrogen oxides from the sources concerned; or

20 (ii)(I) nonattainment areas not within an ozone transport
21 region under section 215205 of this title, if the Administrator
22 determines (when the Administrator approves a plan or plan
23 revision) that additional reductions of nitrogen oxides would
24 not contribute to attainment of the NAAQS for ozone in the
25 area; or

26 (II) nonattainment areas within an ozone transport region
27 under section 215205 of this title, if the Administrator deter-
28 mines (when the Administrator approves a plan or plan revi-
29 sion) that additional reductions of nitrogen oxides would not
30 produce net ozone air quality benefits in the ozone transport
31 region.

32 (C) CONSIDERATIONS.—The Administrator shall, in the Admin-
33 istrator's determinations under subparagraph (B), consider the
34 study required under section 215207 of this title.

35 (2) LIMITATION ON APPLICABILITY.—

36 (A) IN GENERAL.—If the Administrator determines that excess
37 reductions in emissions of nitrogen oxides would be achieved under
38 paragraph (1), the Administrator may limit the application of
39 paragraph (1) to the extent necessary to avoid achieving the excess
40 reductions.

1 (B) EXCESS EMISSION REDUCTIONS.—For purposes of this
2 paragraph, excess reductions in emissions of nitrogen oxides are—

3 (i) emission reductions for which the Administrator deter-
4 mines that net air quality benefits are greater in the absence
5 of such emission reductions; or

6 (ii)(I) for nonattainment areas not within an ozone trans-
7 port region under section 215205 of this title, emission reduc-
8 tions that the Administrator determines would not contribute
9 to attainment of the NAAQS for ozone in the area; or

10 (II) for nonattainment areas within an ozone transport re-
11 gion under section 215205 of this title, emission reductions
12 that the Administrator determines would not produce net
13 ozone air quality benefits in the ozone transport region.

14 (3) PETITION FOR DETERMINATION.—A person may petition the Ad-
15 ministrator for a determination under paragraph (1) or (2) with re-
16 spect to any nonattainment area or any ozone transport region under
17 section 215205 of this title. The Administrator shall grant or deny
18 such a petition within 6 months after its filing with the Administrator.

19 (g) APPLICABLE MILESTONES.—

20 (1) REDUCTIONS IN EMISSIONS.—At intervals of 3 years, a State
21 shall determine whether each nonattainment area (other than a mar-
22 ginal area or moderate area) has achieved a reduction in emissions dur-
23 ing the preceding intervals equivalent to the total emission reductions
24 required to be achieved by the end of that interval pursuant to sub-
25 section (b)(2) and the corresponding requirements of subsections
26 (c)(4)(C), (d), and (e).

27 (2) COMPLIANCE DEMONSTRATION.—For each nonattainment area
28 described in paragraph (1), not later than 90 days after the date on
29 which an applicable milestone occurs (not including an attainment date
30 on which an applicable milestone occurs in a case in which the standard
31 has been attained), each State in which all or part of the area is lo-
32 cated shall submit to the Administrator a demonstration that the appli-
33 cable milestone has been met. A demonstration under this paragraph
34 shall be submitted in such form and manner, and shall contain such
35 information and analysis, as the Administrator shall require, by regula-
36 tion. The Administrator shall determine whether or not a State's dem-
37 onstration is adequate within 90 days after the Administrator's receipt
38 of a demonstration that contains the information and analysis required
39 by the Administrator.

40 (3) SERIOUS AREAS AND SEVERE AREAS.—

1 (A) STATE ELECTION.—If a State fails to submit a demonstra-
2 tion under paragraph (2) for any serious area or severe area with-
3 in the required period or if the Administrator determines that the
4 serious area or severe area has not met any applicable milestone,
5 the State shall elect, within 90 days after the failure or determina-
6 tion—

7 (i) to have the area reclassified to the next higher classi-
8 fication;

9 (ii) to implement specific additional measures that are ade-
10 quate, as determined by the Administrator, to meet the next
11 applicable milestone as provided in the applicable contingency
12 plan; or

13 (iii) to adopt an economic incentive program as described
14 in paragraph (4).

15 (B) ADDITIONAL MEASURES.—If the State makes an election
16 under subparagraph (A)(ii), the Administrator shall—

17 (i) within 90 days after the election, review the applicable
18 contingency plan; and

19 (ii) if the Administrator finds the contingency plan inad-
20 equate, require further measures necessary to meet the appli-
21 cable milestone.

22 (C) ACCEPTANCE OF ELECTION.—If the State makes an elec-
23 tion, the election shall be deemed accepted by the Administrator
24 as meeting the election requirement.

25 (D) FAILURE TO MAKE ELECTION.—If the State fails to make
26 an election required under this paragraph within the required 90-
27 day period or within 6 months thereafter, the serious area or se-
28 vere area shall be reclassified to the next higher classification by
29 operation of law at the expiration of the 6-month period.

30 (E) PLAN REVISION.—Within 12 months after the date required
31 for the State to make an election, the State shall submit a revision
32 of the applicable implementation plan for the serious area or se-
33 vere area that meets the requirements of this paragraph. The Ad-
34 ministrador shall review the plan revision and approve or dis-
35 approve the revision within 9 months after the date of its submis-
36 sion.

37 (4) ECONOMIC INCENTIVE PROGRAM.—

38 (A) IN GENERAL.—

39 (i) CONSISTENCY WITH REGULATIONS; SUFFICIENCY.—An
40 economic incentive program under this paragraph shall be
41 consistent with regulations published by the Administrator

1 and sufficient, in combination with other elements of the
2 State plan, to achieve the next applicable milestone.

3 (ii) ELEMENTS.—The State program may include—

4 (I) a nondiscriminatory system, consistent with appli-
5 cable law regarding interstate commerce, of State-estab-
6 lished emission fees;

7 (II) a system of marketable permits;

8 (III) a system of State fees on sale or manufacture of
9 products the use of which contributes to ozone forma-
10 tion;

11 (IV) incentives and requirements to reduce vehicle
12 emissions and vehicle miles traveled in the serious area
13 or severe area, including any of the transportation con-
14 trol measures identified in section 211108(f) of this title;
15 or

16 (V) any combination of the foregoing or other similar
17 measures.

18 (B) REGULATIONS.—The Administrator shall publish regula-
19 tions for the programs to be adopted pursuant to subparagraph
20 (A). The regulations shall include model plan provisions that may
21 be adopted for reducing emissions from permitted stationary
22 sources, area sources, and mobile sources.

23 (C) GUIDELINES.—The guidelines shall require that any reve-
24 nues generated by the plan provisions adopted pursuant to sub-
25 paragraph (A) shall be used by the State for any of the following:

26 (i) Providing incentives for achieving emission reductions.

27 (ii) Providing assistance for the development of innovative
28 technologies for the control of ozone air pollution and for the
29 development of lower-polluting solvents and surface coatings.
30 Such assistance shall not provide for the payment of more
31 than 75 percent of the costs of any project to develop such
32 a technology or the costs of development of a lower-polluting
33 solvent or surface coating.

34 (iii) Funding the administrative costs of State programs
35 under this division. Not more than 50 percent of such reve-
36 nues may be used for purposes of this clause.

37 (5) EXTREME AREAS.—If a State fails to submit a demonstration
38 under paragraph (2) for any extreme area within the required period,
39 or if the Administrator determines that the area has not met any appli-
40 cable milestone, the State shall, within 9 months after the failure or
41 determination, submit a plan revision to implement an economic incen-

1 tive program that meets the requirements of paragraph (4). The Ad-
2 ministrators shall review the plan revision and approve or disapprove the
3 revision within 9 months after the date of its submission.

4 (h) RURAL TRANSPORT AREAS.—

5 (1) TREATMENT BY OPERATION OF LAW.—Notwithstanding any
6 other provision of this section or section 215202 of this title, a State
7 containing an ozone nonattainment area that does not include, and is
8 not adjacent to, any part of a Metropolitan Statistical Area or, where
9 one exists, a Consolidated Metropolitan Statistical Area (as defined by
10 the Bureau of the Census), which area is treated by the Administrator,
11 in the Administrator's discretion, as a rural transport area within the
12 meaning of paragraph (2), shall be treated by operation of law as satis-
13 fying the requirements of this section if the State applicable implemen-
14 tation plan includes the provisions required under subsection (a).

15 (2) TREATMENT BY THE ADMINISTRATOR.—The Administrator may
16 treat an ozone nonattainment area as a rural transport area if the Ad-
17 ministrator finds that sources of volatile organic compounds emissions
18 (and, where the Administrator determines it to be relevant, nitrogen
19 oxide emissions) within the area do not make a significant contribution
20 to the ozone concentrations measured in the ozone nonattainment area
21 or in other areas.

22 (i) RECLASSIFIED AREAS.—Each State containing an ozone nonattain-
23 ment area reclassified under section 215202(b)(2) of this title shall meet
24 such requirements of subsections (b) through (d) as may be applicable to
25 the area as reclassified, according to the schedules prescribed in connection
26 with those requirements, except that the Administrator may adjust any ap-
27 plicable deadlines (other than attainment dates) to the extent that an ad-
28 justment is necessary or appropriate to ensure consistency among the re-
29 quired provisions.

30 (j) MULTI-STATE OZONE NONATTAINMENT AREAS.—

31 (1) DEFINITION OF MULTI-STATE OZONE NONATTAINMENT AREA.—
32 In this subsection, the term “multi-State ozone nonattainment area”
33 means a single ozone nonattainment area that is located in more than
34 1 State.

35 (2) COORDINATION AMONG STATES.—

36 (A) IN GENERAL.—Each State in which there is located a por-
37 tion of a single ozone nonattainment area shall—

38 (i) take all reasonable steps to coordinate, substantively
39 and procedurally, the provisions and implementation of State
40 implementation plans applicable to the nonattainment area
41 concerned; and

1 (ii) use photochemical grid modeling or any other analytical
2 method determined by the Administrator, in the Administra-
3 tor's discretion, to be at least as effective.

4 (B) NO PLAN PROVISION APPROVAL ABSENT COMPLIANCE.—
5 The Administrator may not approve any provision of a State im-
6 plementation plan submitted under this subchapter for a State in
7 which part of a multi-State ozone nonattainment area is located
8 if the plan revision fails to comply with this paragraph.

9 (3) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in
10 which there is located a portion of a multi-State ozone nonattainment
11 area fails to provide a demonstration of attainment of the NAAQS for
12 ozone in that portion within the required period, the State may petition
13 the Administrator to make a finding that the State would have been
14 able to make such a demonstration but for the failure of 1 or more
15 other States in which other portions of the multi-State ozone non-
16 attainment area are located to commit to the implementation of all
17 measures required under this section. If the Administrator makes such
18 a finding, section 215111 of this title shall not apply, by reason of the
19 failure to make such a demonstration, in the portion of the multi-State
20 ozone nonattainment area within the State submitting the petition.

21 **§ 215204. Federal ozone measures**

22 (a) CONTROL TECHNIQUE GUIDELINES FOR VOLATILE ORGANIC COM-
23 POUND SOURCES.—The Administrator shall issue control technique guide-
24 lines, in accordance with section 211108 of this title, for 11 categories of
25 stationary sources of volatile organic compound emissions for which control
26 technique guidelines had not been issued as of November 15, 1990, not in-
27 cluding the categories described in paragraphs (3) and (4) of subsection (b).
28 The Administrator may issue such additional control technique guidelines as
29 the Administrator considers necessary.

30 (b) EXISTING AND NEW CONTROL TECHNIQUE GUIDELINES.—

31 (1) REVIEW AND UPDATING.—The Administrator shall periodically
32 review and, if necessary, update control technique guidelines issued
33 under section 108 of the Clean Air Act (42 U.S.C. 7408) before No-
34 vember 15, 1990.

35 (2) PRIORITY.—In issuing the control technique guidelines the Ad-
36 ministrator shall give priority to categories that the Administrator con-
37 siders to make the most significant contribution to the formation of
38 ozone air pollution in ozone nonattainment areas, including hazardous
39 waste treatment, storage, and disposal facilities that are permitted
40 under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et

1 seq.). The Administrator shall periodically review and, if necessary, re-
2 vise the control technique guidelines.

3 (3) AEROSPACE COATINGS AND SOLVENTS.—

4 (A) IN GENERAL.—The Administrator shall issue control tech-
5 nique guidelines in accordance with section 211108 of this title to
6 reduce the aggregate emissions of volatile organic compounds into
7 the ambient air from aerospace coatings and solvents. The control
8 technique guidelines shall, at a minimum, be adequate to reduce
9 aggregate emissions of volatile organic compounds into the ambi-
10 ent air from the application of aerospace coatings and solvents to
11 such level as the Administrator determines may be achieved
12 through the adoption of best available control measures. The con-
13 trol technique guidelines shall provide for such reductions in such
14 increments and on such schedules as the Administrator determines
15 to be reasonable, but in no event later than 10 years after the
16 final issuance of the control technique guidelines.

17 (B) CONSULTATION.—In developing control technique guidelines
18 under this paragraph, the Administrator shall consult with the
19 Secretary of Defense, the Secretary of Transportation, and the
20 Administrator of the National Aeronautics and Space Administra-
21 tion with regard to the establishment of specifications for aero-
22 space coatings.

23 (C) CONSIDERATIONS.—In evaluating volatile organic compound
24 reduction strategies, the guidance shall take into account—

- 25 (i) the applicable requirements of section 211112 of this
26 title; and
27 (ii) the need to protect stratospheric ozone.

28 (4) SHIPBUILDING AND SHIP REPAIR PAINTS, COATINGS, AND SOL-
29 VENTS.—

30 (A) IN GENERAL.—The Administrator shall issue control tech-
31 nique guidelines in accordance with section 211108 of this title to
32 reduce the aggregate emissions of volatile organic compounds and
33 PM-10 into the ambient air from paints, coatings, and solvents
34 used in shipbuilding operations and ship repair. The control tech-
35 nique guidelines shall, at a minimum, be adequate to reduce ag-
36 gregate emissions of volatile organic compounds and PM-10 into
37 the ambient air from the removal or application of such paints,
38 coatings, and solvents to such level as the Administrator deter-
39 mines may be achieved through the adoption of the best available
40 control measures. The control technique guidelines shall provide
41 for such reductions in such increments and on such schedules as

1 the Administrator determines to be reasonable, but in no event
2 later than 10 years after the final issuance of the control tech-
3 nique guidelines.

4 (B) CONSULTATION.—In developing control technique guidelines
5 under this paragraph, the Administrator shall consult with the ap-
6 propriate Federal agencies.

7 (c) ALTERNATIVE CONTROL TECHNIQUES.—The Administrator shall
8 issue technical documents that identify alternative controls for all categories
9 of stationary sources of volatile organic compounds and nitrogen oxides that
10 emit, or have the potential to emit, 25 or more tons per year of volatile or-
11 ganic compounds and nitrogen oxides. The Administrator shall revise and
12 update the documents as the Administrator determines to be necessary.

13 (d) GUIDANCE FOR EVALUATING COST-EFFECTIVENESS.—The Adminis-
14 trator shall provide guidance to the States to be used in evaluating the rel-
15 ative cost-effectiveness of various options for the control of emissions from
16 existing stationary sources of air pollutants that contribute to nonattain-
17 ment of the NAAQSeS for ozone.

18 (e) CONTROL OF EMISSIONS FROM CERTAIN SOURCES.—

19 (1) DEFINITIONS.—In this subsection:

20 (A) BEST AVAILABLE CONTROLS.—The term “best available
21 controls” means the degree of emission reduction that the Admin-
22 istrator determines, on the basis of technological and economic
23 feasibility, health, environmental, and energy impacts, is achiev-
24 able through the application of the most effective equipment,
25 measures, processes, methods, systems, or techniques, including
26 chemical reformulation, product or feedstock substitution, repack-
27 aging, and directions for use, consumption, storage, or disposal.

28 (B) CONSUMER OR COMMERCIAL PRODUCT.—

29 (i) IN GENERAL.—The term “consumer or commercial
30 product” means any substance, product (including paints,
31 coatings, and solvents), or article (including any container or
32 packaging) held by any person, the use, consumption, storage,
33 disposal, destruction, or decomposition of which may result in
34 the release of volatile organic compounds.

35 (ii) EXCLUSIONS.—The term “consumer or commercial
36 product” does not include—

37 (I) a fuel or fuel additive regulated under section
38 221111 of this title; or

39 (II) a motor vehicle, nonroad vehicle, or nonroad en-
40 gine (as defined under section 221101 of this title).

1 (C) REGULATED ENTITY.—The term “regulated entity”
2 means—

3 (i) a manufacturer, processor, wholesale distributor, or im-
4 porter of consumer or commercial products for sale or dis-
5 tribution in interstate commerce; or

6 (ii) a manufacturer, processor, wholesale distributor, or im-
7 porter that supplies entities described in clause (i) with con-
8 sumer or commercial products for sale or distribution in
9 interstate commerce.

10 (2) STUDY AND REPORT.—

11 (A) STUDY.—The Administrator shall conduct a study of and
12 submit to Congress a report on the emissions of volatile organic
13 compounds into the ambient air from consumer and commercial
14 products (or any combination thereof) to—

15 (i) determine their potential to contribute to ozone levels
16 that violate the NAAQS for ozone; and

17 (ii) establish criteria for regulating consumer and commer-
18 cial products or classes or categories thereof that shall be
19 subject to control under this subsection.

20 (B) CONSIDERATION OF CERTAIN FACTORS.—In establishing
21 the criteria under subparagraph (A)(ii), the Administrator shall
22 take into consideration each of the following:

23 (i) The uses, benefits, and commercial demand of consumer
24 and commercial products.

25 (ii) The health or safety functions (if any) served by con-
26 sumer and commercial products.

27 (iii) Consumer and commercial products that emit highly
28 reactive volatile organic compounds into the ambient air.

29 (iv) Consumer and commercial products that are subject to
30 the most cost-effective controls.

31 (v) The availability of alternatives (if any) to consumer and
32 commercial products that are of comparable costs, considering
33 health, safety, and environmental impacts.

34 (3) REGULATIONS TO REQUIRE EMISSION REDUCTIONS.—

35 (A) IN GENERAL.—On submission of the report under para-
36 graph (2), the Administrator shall list the categories of consumer
37 or commercial products that the Administrator determines, based
38 on the study, account for at least 80 percent of the volatile organic
39 compound emissions, on a reactivity-adjusted basis, from consumer
40 or commercial products in areas that violate the NAAQSeS for
41 ozone. Credit toward the 80 percent emissions calculation shall be

1 given for emission reductions from consumer or commercial prod-
2 ucts made after November 15, 1990. The Administrator shall di-
3 vide the list into 4 groups and promulgate regulations for all 4
4 groups.

5 (B) BEST AVAILABLE CONTROLS.—The regulations shall require
6 best available controls.

7 (C) HEALTH USE PRODUCTS.—The regulations may exempt
8 health use products for which the Administrator determines there
9 is no suitable substitute.

10 (D) CONTROL OR PROHIBITION OF ACTIVITY.—To carry out this
11 section, the Administrator may, by regulation, control or prohibit
12 any activity (including the manufacture or introduction into com-
13 merce, offering for sale, or sale of any consumer or commercial
14 product) that results in emission of volatile organic compounds
15 into the ambient air.

16 (E) REGULATED ENTITIES.—Regulations under this subsection
17 may be imposed only with respect to regulated entities.

18 (F) USE OF CONTROL TECHNIQUE GUIDELINES.—For any con-
19 sumer or commercial product, the Administrator may issue control
20 technique guidelines under this division in lieu of regulations re-
21 quired under subparagraph (A) if the Administrator determines
22 that control technique guidelines will be substantially as effective
23 as regulations in reducing emissions of volatile organic compounds
24 that contribute to ozone levels in areas that violate the NAAQS
25 for ozone.

26 (4) SYSTEMS OF REGULATION.—The regulations under this sub-
27 section may include any system or systems of regulation as the Admin-
28 istrator considers appropriate, including requirements for registration
29 and labeling, self-monitoring and reporting, prohibitions, limitations, or
30 economic incentives (including marketable permits and auctions of
31 emissions rights) concerning the manufacture, processing, distribution,
32 use, consumption, or disposal of a consumer or commercial product.

33 (5) SPECIAL FUND.—Any amounts collected by the Administrator
34 under the regulations shall be deposited in the Treasury in a special
35 fund for licensing and other services, which thereafter shall be available
36 until expended, subject to annual appropriation Acts, solely to carry
37 out the activities of the Administrator for which such fees, charges, or
38 collections are established or made.

39 (6) ENFORCEMENT.—Any regulation established under this sub-
40 section shall be treated, for purposes of enforcement of this division,
41 as a standard under section 211111 of this title, and any violation of

1 such a regulation shall be treated as a violation of a requirement of
2 section 211111(j) of this title.

3 (7) STATE ADMINISTRATION.—Each State may develop and submit
4 to the Administrator a procedure under State law for implementing
5 and enforcing regulations promulgated under this subsection. If the
6 Administrator finds that the State procedure is adequate, the Adminis-
7 trator shall approve the procedure. Nothing in this paragraph shall
8 prohibit the Administrator from enforcing any applicable regulation
9 under this subsection.

10 (8) SIZE, SHAPE, AND LABELING.—No regulation regarding the size,
11 shape, or labeling of a consumer or commercial may be promulgated,
12 unless the Administrator determines such a regulation to be useful in
13 meeting any NAAQS.

14 (9) STATE CONSULTATION.—Any State that proposes regulations
15 other than those adopted under this subsection shall consult with the
16 Administrator regarding whether any other State or local subdivision
17 has promulgated or is promulgating regulations on any products cov-
18 ered under this chapter. The Administrator shall establish a clearing-
19 house of information, studies, and regulations proposed and promul-
20 gated regarding consumer or commercial products and disseminate the
21 information collected as requested by State or local subdivisions.

22 (f) TANK VESSEL STANDARDS.—

23 (1) IN GENERAL.—

24 (A) STANDARDS.—The Administrator, in consultation with the
25 Secretary of the department in which the Coast Guard is operat-
26 ing, shall promulgate standards applicable to the emission of vola-
27 tile organic compounds and any other air pollutant from loading
28 and unloading of tank vessels (as defined in section 2101 of title
29 46) that the Administrator finds causes, or contributes to, air pol-
30 lution that may be reasonably anticipated to endanger public
31 health or welfare. The standards shall require the application of
32 reasonably available control technology, considering costs, any
33 non-air-quality benefits, environmental impacts, energy require-
34 ments, and safety factors associated with alternative control tech-
35 niques. To the extent practicable, the standards shall apply to
36 loading and unloading facilities and not to tank vessels.

37 (B) EFFECTIVE DATE.—Any regulation promulgated under this
38 subsection (and any revision thereof) shall take effect after such
39 period as the Administrator finds (after consultation with the Sec-
40 retary of the department in which the Coast Guard is operating)
41 necessary to permit the development and application of the req-

1 uisite technology, giving appropriate consideration to the cost of
2 compliance within that period, except that the effective date shall
3 be not more than 2 years after promulgation of the regulations.

4 (2) REGULATIONS ON EQUIPMENT SAFETY.—The Secretary of the
5 department in which the Coast Guard is operating shall issue regula-
6 tions to ensure the safety of the equipment and operations that are to
7 control emissions from the loading and unloading of tank vessels under
8 section 3703 of title 46 and section 6 of the Ports and Waterways
9 Safety Act (33 U.S.C. 1225). The standards promulgated by the Ad-
10 ministrators under paragraph (1) and the regulations issued by a State
11 or political subdivision regarding emissions from the loading and un-
12 loading of tank vessels shall be consistent with the regulations regard-
13 ing safety of the department in which the Coast Guard is operating.

14 (3) AGENCY AUTHORITY.—

15 (A) EMISSION STANDARDS.—The Administrator shall ensure
16 compliance with the tank vessel emission standards promulgated
17 under paragraph (1)(A). The Secretary of the department in
18 which the Coast Guard is operating shall ensure compliance with
19 the tank vessel standards promulgated under paragraph (1)(A).

20 (B) SAFETY REGULATIONS.—The Secretary of the department
21 in which the Coast Guard is operating shall ensure compliance
22 with the regulations issued under paragraph (2).

23 (4) STATE OR LOCAL STANDARDS.—After the Administrator promul-
24 gates standards under this section, no State or political subdivision
25 thereof may adopt or attempt to enforce any standard respecting emis-
26 sions from tank vessels subject to regulation under paragraph (1) un-
27 less the State or local standard is no less stringent than the standards
28 promulgated under paragraph (1).

29 (5) ENFORCEMENT.—Any standard established under paragraph
30 (1)(A) shall be treated, for purposes of enforcement of this division, as
31 a standard under section 211111 of this title, and any violation of such
32 a standard shall be treated as a violation of a requirement of section
33 211111(j) of this title.

34 (g) VEHICLES ENTERING OZONE NONATTAINMENT AREAS.—

35 (1) DEFINITION OF COVERED OZONE NONATTAINMENT AREA.—In
36 this subsection, the term “covered ozone nonattainment area” means
37 a serious area, as classified under section 181 of the Clean Air Act (42
38 U.S.C. 7511) as of October 27, 1998.

39 (2) AUTHORITY REGARDING OZONE INSPECTION AND MAINTENANCE
40 TESTING.—

1 (A) IN GENERAL.—No noncommercial motor vehicle registered
2 in a foreign country and operated by a United States citizen or
3 by an alien who is a permanent resident of the United States, or
4 who holds a visa for the purposes of employment or educational
5 study in the United States, may enter a covered ozone nonattain-
6 ment area from a foreign country bordering the United States and
7 contiguous to the nonattainment area more than twice in a single
8 calendar-month period, if State law has requirements for the in-
9 spection and maintenance of noncommercial motor vehicles under
10 the applicable implementation plan in the nonattainment area.

11 (B) APPLICABILITY.—Subparagraph (A) shall not apply if the
12 operator presents documentation at the United States border entry
13 point establishing that the vehicle has complied with such inspec-
14 tion and maintenance requirements as are in effect and are appli-
15 cable to motor vehicles of the same type and model year.

16 (3) SANCTIONS FOR VIOLATIONS.—The President may impose and
17 collect from the operator of any motor vehicle who violates, or attempts
18 to violate, paragraph (1) a civil penalty of not more than \$200 for the
19 2d violation or attempted violation and \$400 for the 3d and each sub-
20 sequent violation or attempted violation.

21 (4) STATE ELECTION.—The prohibition set forth in paragraph (1)
22 shall not apply in any State that elects to be exempt from the prohibi-
23 tion. Such an election shall take effect on the President's receipt of
24 written notice from the Governor of the State notifying the President
25 of the election.

26 (5) ALTERNATIVE APPROACH.—The prohibition set forth in para-
27 graph (1) shall not apply in a State, and the President may implement
28 an alternative approach, if—

29 (A) the Governor of the State submits to the President a writ-
30 ten description of an alternative approach to facilitate the compli-
31 ance, by some or all foreign-registered motor vehicles, with the
32 motor vehicle inspection and maintenance requirements that are—

- 33 (i) related to emissions of air pollutants;
- 34 (ii) in effect under the applicable implementation plan in
35 the covered ozone nonattainment area; and
- 36 (iii) applicable to motor vehicles of the same types and
37 model years as the foreign-registered motor vehicles; and

38 (B) the President approves the alternative approach as facilitat-
39 ing compliance with the motor vehicle inspection and maintenance
40 requirements described in subparagraph (A).

1 **§ 215205. Control of interstate ozone air pollution**

2 (a) OZONE TRANSPORT REGIONS.—

3 (1) IN GENERAL.—There is established a single interstate transport
4 region for ozone (within the meaning of section 215108(a) of this title),
5 comprised of the States of Connecticut, Delaware, Maine, Maryland,
6 Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania,
7 Rhode Island, Vermont, and the Consolidated Metropolitan Statistical
8 Area that includes the District of Columbia.

9 (2) ADDITION AND REMOVAL OF STATES.—The Administrator, on
10 the Administrator's own motion, on petition from the Governor of any
11 State, or on the recommendation of the interstate transport commission
12 established by paragraph (1) or the interstate transport commission es-
13 tablished for any other interstate transport region for ozone, may—

14 (A) add any State or portion of a State to an interstate trans-
15 port region established under paragraph (1) or other interstate
16 transport region for ozone when the Administrator has reason to
17 believe that the interstate transport of air pollutants from that
18 State significantly contributes to a violation of the NAAQS for
19 ozone in the interstate transport region; or

20 (B) remove any State or portion of a State from an interstate
21 transport region when the Administrator has reason to believe that
22 the control of emissions in that State or portion of the State pur-
23 suant to this section will not significantly contribute to the attain-
24 ment of the NAAQS for ozone in any area in the interstate trans-
25 port region.

26 (3) PROCEDURE.—

27 (A) APPROVAL OR DISAPPROVAL.—The Administrator shall ap-
28 prove or disapprove a petition or recommendation under subpara-
29 graph (A) or (B) of paragraph (2) within 18 months after its re-
30 ceipt.

31 (B) PUBLIC PARTICIPATION.—The Administrator shall establish
32 appropriate proceedings for public participation regarding motions,
33 petitions, and recommendations under subparagraphs (A) and (B)
34 of paragraph (2), including notice and comment.

35 (4) CONVENING OF COMMISSION.—The Administrator shall convene
36 the commission required under section 215108(b) of this title as a re-
37 sult of the establishment of the interstate transport region.

38 (b) PLAN PROVISIONS FOR STATES IN INTERSTATE TRANSPORT REGIONS
39 FOR OZONE.—

40 (1) IN GENERAL.—In accordance with section 211110 of this title,
41 not later than 9 months after the inclusion of a State in an interstate

1 transport region for ozone, each State included in the interstate trans-
2 port region shall submit to the Administrator a State implementation
3 plan provision that—

4 (A) requires that each area in the State that is a metropolitan
5 statistical area or is part of a metropolitan statistical area with
6 a population of 100,000 or more comply with section
7 215203(c)(4)(B) of this title; and

8 (B) requires implementation of reasonably available control
9 technology with respect to all sources of volatile organic com-
10 pounds in the State covered by a control technique guideline.

11 (2) CONTROL MEASURES.—The Administrator shall complete a study
12 identifying control measures capable of achieving emission reductions
13 comparable to those achievable through vehicle refueling controls con-
14 tained in section 215203(b)(4) of this title, and those measures or vehi-
15 cle refueling controls shall be implemented in accordance with this sec-
16 tion. Notwithstanding other deadlines in this section, the applicable im-
17 plementation plan shall be revised to reflect those measures within 1
18 year of completion of the study. For purposes of this section, any sta-
19 tionary source that emits or has the potential to emit at least 50 tons
20 per year of volatile organic compounds shall be considered a major sta-
21 tionary source and subject to the requirements that would be applicable
22 to major stationary sources if the area were classified as a moderate
23 area.

24 (c) ADDITIONAL CONTROL MEASURES.—

25 (1) DEFINITION OF RECEIPT DATE.—In this subsection, the term
26 “receipt date” means the date on which the Administrator receives rec-
27 ommendations prepared by a commission pursuant to paragraph (2).

28 (2) RECOMMENDATIONS.—On petition of any State within a trans-
29 port region established for ozone, and based on a majority vote of the
30 Governors on the commission (or their designees), the commission may,
31 after notice and opportunity for public comment, develop recommenda-
32 tions for additional control measures to be applied within all or a part
33 of the ozone transport region if the commission determines that such
34 measures are necessary to bring any area in the ozone transport region
35 into attainment by the dates provided by this subchapter. The commis-
36 sion shall transmit the recommendations to the Administrator.

37 (3) NOTICE AND REVIEW.—When the Administrator receives recom-
38 mendations prepared by a commission pursuant to paragraph (2), the
39 Administrator shall—

40 (A) immediately publish in the Federal Register a notice stating
41 that the recommendations are available and provide an oppor-

1 tunity for public hearing within 90 days beginning on the receipt
2 date; and

3 (B) commence a review of the recommendations to determine
4 whether the control measures in the recommendations are nec-
5 essary to bring any area in the ozone transport region into attain-
6 ment by the dates provided by this subchapter and are otherwise
7 consistent with this division.

8 (4) CONSULTATION; CONSIDERATIONS.—In undertaking the review
9 required under paragraph (3)(B), the Administrator shall—

10 (A) consult with members of the commission of the affected
11 States; and

12 (B) take into account the data, views, and comments received
13 pursuant to paragraph (3)(A).

14 (5) APPROVAL AND DISAPPROVAL.—

15 (A) IN GENERAL.—Within 9 months after the receipt date, the
16 Administrator shall—

17 (i) determine whether to approve, disapprove, or partially
18 disapprove and partially approve the recommendations;

19 (ii) notify the commission in writing of the approval, dis-
20 approval, or partial disapproval; and

21 (iii) publish the determination in the Federal Register.

22 (B) DISAPPROVAL OR PARTIAL DISAPPROVAL.—If the Adminis-
23 trator disapproves or partially disapproves the recommendations,
24 the Administrator shall specify—

25 (i) why any disapproved additional control measures are
26 not necessary to bring any area in the ozone transport region
27 into attainment by the dates provided by this or are otherwise
28 not consistent with this division; and

29 (ii) recommendations concerning equal or more effective ac-
30 tions that could be taken by the commission to conform the
31 disapproved portion of the recommendations to the require-
32 ments of this section.

33 (6) FINDING.—On approval or partial approval of recommendations
34 submitted by a commission, the Administrator shall issue to each State
35 that is included in the ozone transport region and to which a require-
36 ment of the approved plan applies a finding under section 211110(i)(5)
37 of this title that the implementation plan for that State is inadequate
38 to meet the requirements of section 211110(a)(3)(D) of this title. The
39 finding shall require each such State to revise its implementation plan
40 to include the approved additional control measures within 1 year after
41 the finding is issued.

1 (d) BEST AVAILABLE AIR QUALITY MONITORING AND MODELING.—For
2 purposes of this section, the Administrator shall promulgate criteria for pur-
3 poses of determining the contribution of sources in 1 area to concentrations
4 of ozone in another area that is a nonattainment area for ozone. The cri-
5 teria shall require that the best available air quality monitoring and model-
6 ing techniques be used for purposes of making such determinations.

7 **§ 215206. Enforcement for severe areas and extreme areas**
8 **for failure to attain**

9 (a) GENERAL RULE.—Each implementation plan provision required
10 under subsections (d) and (e) of section 215203 of this title shall provide
11 that, if the severe area or extreme area to which the plan provision applies
12 has failed to attain the primary NAAQS for ozone by the applicable attain-
13 ment date, each major stationary source of volatile organic compounds lo-
14 cated in the severe area or extreme area shall, except as otherwise provided
15 under subsection (c), pay a fee to the State as a penalty for the failure,
16 computed in accordance with subsection (b), for each calendar year begin-
17 ning after the attainment date, until the severe area or extreme area is re-
18 designated as an attainment area for ozone. Each such plan provision
19 should include procedures for assessment and collection of such fees.

20 (b) COMPUTATION OF FEE.—

21 (1) FEE AMOUNT.—The fee shall equal \$5,000, adjusted in accord-
22 ance with paragraph (3), per ton of volatile organic compound emitted
23 by the source during the calendar year in excess of 80 percent of the
24 baseline amount, computed under paragraph (2).

25 (2) BASELINE AMOUNT.—

26 (A) IN GENERAL.—For purposes of this section, the baseline
27 amount shall be computed, in accordance with such guidance as
28 the Administrator may provide, as the lower, during the attain-
29 ment year, of—

30 (i) the amount of actual volatile organic compound emis-
31 sions (referred to in this paragraph as “actuals”); or

32 (ii) the amount of volatile organic compound emissions al-
33 lowed under the permit applicable to the source (or, if no
34 such permit has been issued for the attainment year, the
35 amount of volatile organic compound emissions allowed under
36 the applicable implementation plan) (referred to in this para-
37 graph as “allowables”).

38 (B) PERIOD OF DETERMINATION.—Notwithstanding subpara-
39 graph (A), the Administrator may issue guidance authorizing the
40 baseline amount to be determined in accordance with the lower of
41 average actuals or average allowables, determined over a period of

1 more than 1 calendar year. The guidance may provide that such
2 an average calculation for a specific source may be used if that
3 source's emissions are irregular, cyclical, or otherwise vary signifi-
4 cantly from year to year.

5 (3) ANNUAL ADJUSTMENT.—The fee amount under paragraph (1)
6 shall be adjusted annually, beginning as of 1991, in accordance with
7 section 235102(b)(3)(B)(iv) of this title.

8 (e) EXCEPTION.—Notwithstanding any provision of this section, no
9 source shall be required to pay any fee under subsection (a) with respect
10 to emissions during any year that is treated as an extension year under sec-
11 tion 215202(a)(5) of this title.

12 (d) FEE COLLECTION BY ADMINISTRATOR.—If the Administrator has
13 found that the fee provisions of the implementation plan do not meet the
14 requirements of this section, or if the Administrator makes a finding that
15 the State is not administering and enforcing the fee required under this sec-
16 tion, the Administrator shall, in addition to any other action authorized
17 under this subdivision, collect, in accordance with procedures promulgated
18 by the Administrator, the unpaid fees required under subsection (a). If the
19 Administrator makes such a finding under section 215111(a)(1)(D) of this
20 title, the Administrator may collect fees for periods before the determina-
21 tion, plus interest computed in accordance with section 6621(a)(2) of the
22 Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), to the extent that
23 the Administrator finds that such fees have not been paid to the State.
24 Clauses (ii) through (iii) of section 235102(b)(3)(C) of this title shall apply
25 with respect to fees collected under this subsection.

26 (e) EXEMPTIONS FOR CERTAIN SMALL AREAS.—For a severe area or ex-
27 treme area with a total population under 200,000 that fails to attain the
28 standard by the applicable attainment date, no sanction under this section
29 or under any other provision of this division shall apply if the severe area
30 or extreme area can demonstrate, consistent with guidance issued by the
31 Administrator, that attainment in the severe area or extreme area is pre-
32 vented because of ozone or ozone precursors transported from another area.
33 The prohibition applies only in a case in which the severe area or extreme
34 area has met all requirements and implemented all measures applicable to
35 the severe area or extreme area under this division.

36 **§215207. Nitrogen oxide and volatile organic compound**
37 **study**

38 (a) IN GENERAL.—The Administrator, in conjunction with the National
39 Academy of Sciences, shall conduct a study on the role of ozone precursors
40 in tropospheric ozone formation and control.

41 (b) MATTERS TO BE EXAMINED.—The study shall examine—

- 1 (1) the roles of nitrogen oxide and volatile organic compound emis-
- 2 sion reductions;
- 3 (2) the extent to which nitrogen oxide reductions may contribute (or
- 4 be counterproductive) to achievement of attainment in different non-
- 5 attainment areas;
- 6 (3) the sensitivity of ozone to the control of nitrogen oxides;
- 7 (4) the availability and extent of controls for nitrogen oxides;
- 8 (5) the role of biogenic volatile organic compound emissions; and
- 9 (6) the basic information required for air quality models.

10 (e) INFORMATION AND STUDIES; ADDITIONAL INFORMATION.—The Ad-

11 ministrator shall utilize all available information and studies and develop ad-

12 ditional information in conducting the study required by this section.

13 (d) REPORT.—The Administrator shall submit to Congress a report on

14 the study.

15 **Subchapter III—Additional Provisions for**

16 **Carbon Monoxide Nonattainment Areas**

17 **§ 215301. Definitions**

18 In this subchapter:

- 19 (1) MODERATE AREA.—The term “moderate area” means an area
- 20 that is classified as a moderate area under section 215302 of this title.
- 21 (2) SERIOUS AREA.—The term “serious area” means an area that
- 22 is classified as a serious area under section 215302 of this title.
- 23 (3) TABLE 1.—The term “table 1” means table 1 in section
- 24 215302(a)(1) of this title.

25 **§ 215302. Classification and attainment dates**

26 (a) CLASSIFICATION BY OPERATION OF LAW AND ATTAINMENT DATES

27 FOR NONATTAINMENT AREAS.—

28 (1) IN GENERAL.—Each area designated nonattainment for carbon

29 monoxide pursuant to section 211107(d) of this title shall be classified

30 at the time of designation under table 1, by operation of law, as a mod-

31 erate area or serious area based on the design value for the area. The

32 design value shall be calculated according to the interpretation meth-

33 odology issued by the Administrator most recently before November 15,

34 1990. For each area classified under this subsection, the primary

35 NAAQS attainment date for carbon monoxide shall be as expeditiously

36 as practicable but not later than the date provided in table 1:

TABLE 1

Area classification	Design value	Primary standard attainment date
Moderate	9.1–16.4 ppm	December 31, 1995
Serious	16.5 and above	December 31, 2000

325

1 (2) NOTICE.—At the time of publication of the notice required under
2 section 211107 of this title, the Administrator shall publish a notice
3 announcing the classification of each such carbon monoxide nonattain-
4 ment area. Section 215102(a)(1)(B) of this title shall apply with re-
5 spect to such a classification.

6 (3) ADJUSTMENT.—

7 (A) IN GENERAL.—If an area classified under paragraph (1)
8 would have been classified in another category if the design value
9 in the area were 5 percent greater or 5 percent less than the level
10 on which the classification was based, the Administrator may,
11 within 90 days after November 15, 1990, by the procedure re-
12 quired under paragraph (2), adjust the classification of the area.

13 (B) CONSIDERATIONS.—In making such an adjustment, the Ad-
14 ministrator may consider—

15 (i) the number of exceedances of the primary NAAQS for
16 carbon monoxide in the area;

17 (ii) the level of pollution transport between the area and
18 other affected areas; and

19 (iii) the mix of sources and air pollutants in the area.

20 (4) EXTENSION.—

21 (A) IN GENERAL.—On application by any State, the Adminis-
22 trator may extend for 1 additional year (referred to in this para-
23 graph as an “extension year”) the date specified in table 1 of sub-
24 section (a) if—

25 (i) the State has complied with all requirements and com-
26 mitments pertaining to the area in the applicable implementa-
27 tion plan; and

28 (ii) not more than 1 exceedance of the NAAQS level for
29 carbon monoxide has occurred in the area in the year preced-
30 ing the extension year.

31 (B) LIMITATION.—Not more than 2 one-year extensions may be
32 issued under this paragraph for a single nonattainment area.

33 (b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

34 (1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is
35 designated attainment or unclassifiable for carbon monoxide under sec-
36 tion 211107(d)(4) of this title and is subsequently redesignated to non-
37 attainment for carbon monoxide under section 211107(d)(3) of this
38 title shall, at the time of the redesignation, be classified by operation
39 of law in accordance with table 1. Upon its classification, the area shall
40 be subject to the same requirements under section 211110 of this title,
41 subchapter I, and this subchapter that would have applied had the area

1 been so classified at the time of the notice under subsection (a)(2), ex-
2 cept that any absolute, fixed date applicable in connection with any
3 such requirement is extended by operation of law by a period equal to
4 the length of time between November 15, 1990, and the date the area
5 is classified.

6 (2) RECLASSIFICATION OF MODERATE AREAS ON FAILURE TO AT-
7 TAIN.—

8 (A) DETERMINATION.—Within 6 months after the applicable at-
9 tainment date for a carbon monoxide nonattainment area, the Ad-
10 ministrator shall determine, based on the area's design value as
11 of the attainment date, whether the area has attained the NAAQS
12 by that date.

13 (B) RECLASSIFICATION.—Any moderate area that the Adminis-
14 trator finds has not attained the NAAQS by that date shall be re-
15 classified by operation of law in accordance with table 1 as a seri-
16 ous area.

17 (C) NOTICE.—The Administrator shall publish a notice in the
18 Federal Register, not later than 6 months after the attainment
19 date, identifying each area that the Administrator has determined,
20 under subparagraph (A), as having failed to attain the NAAQS
21 and identifying the reclassification, if any, described under sub-
22 paragraph (B).

23 **§ 215303. Plan submissions and requirements**

24 (a) MODERATE AREAS.—

25 (1) IN GENERAL.—Each State in which all or part of a moderate
26 area is located shall, with respect to the moderate area (or portion
27 thereof, to the extent specified in guidance of the Administrator issued
28 before November 15, 1990), submit to the Administrator the State im-
29 plementation plan provisions (including the plan items) described under
30 this subsection, within such periods as are prescribed under this sub-
31 section, except to the extent that the State has made such submissions
32 as of November 15, 1990.

33 (2) INVENTORY.—A State shall submit a comprehensive, accurate,
34 current inventory of actual emissions from all sources, as described in
35 section 215102(c)(3) of this title, in accordance with guidance provided
36 by the Administrator.

37 (3) VEHICLE MILES TRAVELED; SPECIAL RULE FOR DENVER.—

38 (A) VEHICLE MILES TRAVELED.—For areas with a design value
39 above 12.7 parts per million at the time of classification, the plan
40 provision shall contain a forecast of vehicle miles traveled in a
41 nonattainment area for each year before the year in which the

1 plan projects the NAAQS for carbon monoxide to be attained in
2 the area. The forecast shall be based on guidance published by the
3 Administrator, in consultation with the Secretary of Transporta-
4 tion. The plan provision shall provide for annual updates of the
5 forecasts to be submitted to the Administrator together with an-
6 nual reports regarding the extent to which the forecasts proved to
7 be accurate. The annual reports shall contain estimates of actual
8 vehicle miles traveled in each year for which a forecast was re-
9 quired.

10 (B) SPECIAL RULE FOR DENVER.—In the case of Denver, the
11 State shall submit a provision that includes the transportation
12 control measures as required in section 215203(d)(3)(A) of this
13 title, except that the provision shall be for the purpose of reducing
14 carbon monoxide emissions rather than volatile organic compound
15 emissions. If the State fails to include any such measure, the im-
16 plementation plan shall contain—

17 (i) an explanation why such a measure was not adopted
18 and what emissions reduction measure was adopted to provide
19 a comparable reduction in emissions; or

20 (ii) reasons why such a reduction is not necessary to attain
21 the primary NAAQS for carbon monoxide.

22 (C) ADJUSTMENT.—The Administrator may make the same ad-
23 justment for purposes of this paragraph as may be made under
24 section 215302(a)(3) of this title.

25 (4) CONTINGENCY PROVISIONS.—

26 (A) IN GENERAL.—For areas with a design value above 12.7
27 parts per million at the time of classification, the plan provision
28 shall provide for the implementation of specific measures to be
29 undertaken if—

30 (i) any estimate of vehicle miles traveled in the area that
31 is submitted in an annual report under paragraph (3) exceeds
32 the number predicted in the most recent prior forecast; or

33 (ii) if the area fails to attain the primary NAAQS for car-
34 bon monoxide by the primary standard attainment date.

35 (B) INCLUSION IN PLAN PROVISION.—The measures shall be in-
36 cluded in the plan provision as contingency measures to take effect
37 without further action by the State or the Administrator if—

38 (i) the prior forecast has been exceeded by an updated fore-
39 cast; or

40 (ii) the national standard is not attained by that deadline.

1 (C) ADJUSTMENT.—The Administrator may make the same ad-
2 justment for purposes of this paragraph as may be made under
3 section 215302(a)(3) of this title.

4 (5) SAVINGS CLAUSE FOR VEHICLE INSPECTION AND MAINTENANCE
5 PROVISIONS OF THE STATE IMPLEMENTATION PLAN.—Immediately
6 after November 15, 1990, for any moderate area (or, within the Ad-
7 ministrator's discretion, portion thereof) the plan for which is of the
8 type described in section 215203(a)(3)(C) of this title, the State shall
9 submit any provisions necessary to ensure that the applicable imple-
10 mentation plan includes the vehicle inspection and maintenance pro-
11 gram described in section 215203(a)(3)(C) of this title.

12 (6) PERIODIC INVENTORY.—Not later than the end of each 3-year
13 period after September 30, 1995, until the area is redesignated to at-
14 tainment, the State shall submit a revised inventory meeting the re-
15 quirements of subsection (a)(1).

16 (7) ENHANCED VEHICLE INSPECTION AND MAINTENANCE.—

17 (A) IN GENERAL.—In the case of moderate areas with a design
18 value greater than 12.7 parts per million at the time of classifica-
19 tion, the State shall submit a provision that includes provisions for
20 an enhanced vehicle inspection and maintenance program as re-
21 quired in section 215203(c)(5) of this title, except that the vehicle
22 inspection and maintenance program shall be for the purpose of
23 reducing carbon monoxide rather than hydrocarbon emissions.

24 (B) ADJUSTMENT.—The Administrator may make the same ad-
25 justment for purposes of this paragraph as may be made under
26 section 215302(a)(3) of this title.

27 (8) ATTAINMENT DEMONSTRATION AND SPECIFIC ANNUAL EMISSION
28 REDUCTIONS.—

29 (A) IN GENERAL.—In the case of moderate areas with a design
30 value greater than 12.7 parts per million at the time of classifica-
31 tion, the State shall submit a provision to provide, and a dem-
32 onstration that the plan as revised will provide, for attainment of
33 the carbon monoxide NAAQSeS by the applicable attainment date
34 and provisions for such specific annual emission reductions as are
35 necessary to attain the standard by that date.

36 (B) ADJUSTMENT.—The Administrator may make the same ad-
37 justment for purposes of this paragraph as may be made under
38 section 215302(a)(3) of this title.

39 (9) SCHEDULE.—The Administrator may require States to submit a
40 schedule for submitting any of the provisions or other items required
41 under this subsection.

1 (10) MODERATE AREAS WITH A DESIGN VALUE OF 12.7 PARTS PER
2 MILLION OR LOWER.—In the case of a moderate area with a design
3 value of 12.7 parts per million or lower at the time of classification,
4 the requirements of this subsection shall apply in lieu of any require-
5 ment that the State submit a demonstration that the applicable imple-
6 mentation plan provides for attainment of the carbon monoxide stand-
7 ard by the applicable attainment date.

8 (b) SERIOUS AREAS.—

9 (1) IN GENERAL.—Each State in which all or part of a serious area
10 is located shall, with respect to the serious area—

11 (A) make the submissions (other than those required under sub-
12 section (a)(2)) applicable under subsection (a) to moderate areas
13 with a design value of 12.7 parts per million or greater at the time
14 of classification; and

15 (B) submit the provision and other items described under this
16 subsection.

17 (2) VEHICLE MILES TRAVELED.—

18 (A) IN GENERAL.—The State shall submit a provision that in-
19 cludes the transportation control measures as required in section
20 215203(d)(3) of this title, except that the provision shall be for
21 the purpose of reducing carbon monoxide emissions rather than
22 volatile organic compound emissions.

23 (B) CLEAN FUEL FLEET PROGRAM.—In the case of a severe
24 area (other than an area in New York State) that is a covered
25 area (as defined in section 225106(a)(1)(B) of this title) for pur-
26 poses of the clean fuel fleet program under chapter 225, if the
27 State fails to include a measure described in subparagraph (A),
28 the implementation plan shall contain—

29 (i) an explanation why such a measure was not adopted
30 and what emission reduction measure was adopted to provide
31 a comparable reduction in emissions; or

32 (ii) reasons why such a reduction is not necessary to attain
33 the primary NAAQS for carbon monoxide.

34 (3) OXYGENATED GASOLINE.—

35 (A) IN GENERAL.—The State shall submit a provision to require
36 that gasoline sold, supplied, offered for sale or supply, dispensed,
37 transported, or introduced into commerce in the larger of—

38 (i) the Consolidated Metropolitan Statistical Area (as de-
39 fined by the Office of Management and Budget) in which the
40 area is located; or

1 (ii) if the area is not located in a Consolidated Metropoli-
2 tan Statistical Area, the Metropolitan Statistical Area (as de-
3 fined by the Office of Management and Budget) in which the
4 area is located;

5 be blended, during the portion of the year in which the area is
6 prone to high ambient concentrations of carbon monoxide (as de-
7 termined by the Administrator), with fuels containing such a level
8 of oxygen as is necessary, in combination with other measures, to
9 provide for attainment of the carbon monoxide NAAQS by the ap-
10 plicable attainment date and maintenance of the NAAQS there-
11 after in the area. The provision shall include a program for imple-
12 mentation and enforcement of the requirement consistent with
13 guidance issued by the Administrator.

14 (B) PROVISION NOT NECESSARY.—Notwithstanding subpara-
15 graph (A), the provision described in this paragraph shall not be
16 required for an area if the State demonstrates to the satisfaction
17 of the Administrator that the provision is not necessary to provide
18 for attainment of the carbon monoxide NAAQS by the applicable
19 attainment date and maintenance of the NAAQS thereafter in the
20 area.

21 (c) AREAS WITH SIGNIFICANT STATIONARY SOURCE EMISSIONS OF CAR-
22 BON MONOXIDE.—

23 (1) SERIOUS AREAS.—In the case of serious areas in which station-
24 ary sources contribute significantly to carbon monoxide levels (as deter-
25 mined under regulations issued by the Administrator), the State shall
26 submit a plan provision that provides that the term “major stationary
27 source” includes (in addition to the sources described in section
28 201101 of this title) any stationary source that emits, or has the poten-
29 tial to emit, 50 tons per year or more of carbon monoxide.

30 (2) WAIVERS FOR CERTAIN AREAS.—The Administrator may, on a
31 case-by-case basis, waive any requirements that pertain to transpor-
32 tation controls, inspection and maintenance, or oxygenated fuels where
33 the Administrator determines by regulation that mobile sources of car-
34 bon monoxide do not contribute significantly to carbon monoxide levels
35 in the area.

36 (3) GUIDELINES.—The Administrator shall issue guidelines for and
37 regulations determining whether stationary sources contribute signifi-
38 cantly to carbon monoxide levels in an area.

39 (d) CARBON MONOXIDE MILESTONE.—

40 (1) DEFINITION OF MILESTONE.—In this subsection, the term “mile-
41 stone” means a reduction in emissions of carbon monoxide equivalent

1 to the total of the specific annual emission reductions required by De-
2 cember 31, 1995.

3 (2) MILESTONE DEMONSTRATION.—Each State in which all or part
4 of a serious area is located shall submit to the Administrator a dem-
5 onstration that the area has achieved the milestone.

6 (3) ADEQUACY OF DEMONSTRATION.—A demonstration under this
7 paragraph shall be submitted in such form and manner, and shall con-
8 tain such information and analysis, as the Administrator shall require.
9 The Administrator shall determine whether or not a State’s demonstra-
10 tion is adequate within 90 days after the Administrator’s receipt of a
11 demonstration that contains the information and analysis required by
12 the Administrator.

13 (4) FAILURE TO SUBMIT DEMONSTRATION OR TO MEET MILE-
14 STONE.—If a State fails to submit a demonstration under paragraph
15 (2) within the required period, or if the Administrator notifies the
16 State that the State has not met the milestone, the State shall, within
17 9 months after such a failure or notification, submit a plan revision
18 to implement an economic incentive and transportation control program
19 as described in section 215203(g)(4) of this title. The revision shall be
20 sufficient to achieve the specific annual reductions in carbon monoxide
21 emissions set forth in the plan by the attainment date.

22 (e) MULTI-STATE CARBON MONOXIDE NONATTAINMENT AREAS.—

23 (1) DEFINITION OF MULTI-STATE CARBON MONOXIDE NONATTAIN-
24 MENT AREA.—In this subsection, the term “multi-State carbon mon-
25 oxide nonattainment area” means a single carbon monoxide nonattain-
26 ment area that is located in more than 1 State.

27 (2) COORDINATION AMONG STATES.—

28 (A) IN GENERAL.—A State in which there is located a portion
29 of a multi-State carbon monoxide nonattainment area shall take
30 all reasonable steps to coordinate, substantively and procedurally,
31 the provisions and implementation of State implementation plans
32 applicable to the multi-State carbon monoxide nonattainment area.

33 (B) NO PLAN PROVISION APPROVAL ABSENT COMPLIANCE.—
34 The Administrator shall not approve any provision of a State im-
35 plementation plan submitted under this chapter for a State in
36 which part of a volatile organic compound located if the plan pro-
37 vision for that State fails to comply with the requirements of this
38 paragraph.

39 (3) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in
40 which there is located a portion of a multi-State carbon monoxide non-
41 attainment area fails to provide a demonstration of attainment of the

1 NAAQS for carbon monoxide in that portion within the period required
2 under this chapter, the State may petition the Administrator to make
3 a finding that the State would have been able to make such a dem-
4 onstration but for the failure of 1 or more other States in which other
5 portions of the multi-State carbon monoxide nonattainment area are lo-
6 cated to commit to the implementation of all measures required under
7 this section. If the Administrator makes such a finding, in the portion
8 of the multi-State carbon monoxide nonattainment area within the
9 State submitting the petition, no sanction shall be imposed under sec-
10 tion 215111 of this title or under any other provision of this division
11 by reason of the failure to make such a demonstration.

12 (f) RECLASSIFIED AREAS.—Each State containing a carbon monoxide
13 nonattainment area reclassified under section 215302(b)(2) of this title
14 shall meet the requirements of subsection (b), as may be applicable to the
15 area as reclassified, according to the schedules prescribed in connection with
16 those requirements, except that the Administrator may adjust any applica-
17 ble deadlines (other than the attainment date) where such deadlines are
18 shown to be infeasible.

19 (g) FAILURE OF SERIOUS AREA TO ATTAIN STANDARD.—If the Adminis-
20 trator determines under section 215302(b)(2) of this title that the primary
21 NAAQS for carbon monoxide has not been attained in a serious area by
22 the applicable attainment date, the State shall submit a plan revision for
23 the area within 9 months after the date of the determination. The plan revi-
24 sion shall provide that a program of incentives and requirements as de-
25 scribed in section 215203(g)(4) of this title shall be applicable in the area,
26 and the program, in combination with other elements of the revised plan,
27 shall be adequate to reduce the total tonnage of emissions of carbon mon-
28 oxide in the area by at least 5 percent per year in each year after approval
29 of the plan revision and before attainment of the primary NAAQS for car-
30 bon monoxide.

31 **Subchapter IV—Additional Provisions for** 32 **Particulate Matter Nonattainment Areas**

33 **§ 215401. Definitions**

34 In this subchapter:

35 (1) MODERATE AREA.—The term “moderate area” means an area
36 that is classified as a moderate PM-10 nonattainment area under sec-
37 tion 215402(a) of this title.

38 (2) SERIOUS AREA.—The term “serious area” means an area that
39 is reclassified as a serious PM-10 nonattainment area under section
40 215402(b) of this title.

1 **§ 215402. Classifications and attainment dates**

2 (a) INITIAL CLASSIFICATIONS.—

3 (1) IN GENERAL.—Every area designated nonattainment for PM–10
4 pursuant to section 211107(d) of this title shall be classified at the
5 time of such designation, by operation of law, as a moderate PM–10
6 nonattainment area at the time of the designation.

7 (2) NOTICE.—At the time of publication of the notice under section
8 211107(d)(4) of this title for each PM–10 nonattainment area, the Ad-
9 ministrator shall publish a notice announcing the classification of such
10 area. Section 215102(a)(1)(B) of this title shall apply with respect to
11 such a classification.

12 (b) RECLASSIFICATION AS A SERIOUS AREA.—

13 (1) RECLASSIFICATION BEFORE ATTAINMENT DATE.—The Adminis-
14 trator may reclassify as a serious PM–10 nonattainment area any area
15 that the Administrator determines cannot practicably attain the
16 NAAQS for PM–10 by the attainment date (as prescribed in subsection
17 (c)) for moderate areas.

18 (2) RECLASSIFICATION ON FAILURE TO ATTAIN.—Within 6 months
19 following the applicable attainment date for a PM–10 nonattainment
20 area, the Administrator shall determine whether the area attained the
21 standard by that date. If the Administrator finds that any moderate
22 area is not in attainment after the applicable attainment date—

23 (A) the area shall be reclassified by operation of law as a seri-
24 ous area; and

25 (B) the Administrator shall publish a notice in the Federal Reg-
26 ister not later than 6 months following the attainment date, identi-
27 fying the area as having failed to attain and identifying the reclas-
28 sification described under subparagraph (A).

29 (c) ATTAINMENT DATES.—Except as provided under subsection (d), the
30 attainment dates for PM–10 nonattainment areas shall be as follows:

31 (1) MODERATE AREAS.—For a moderate area, the attainment date
32 shall be as expeditiously as practicable but not later than the end of
33 the 6th calendar year after the area’s designation as nonattainment,
34 except that, for areas designated nonattainment for PM–10 under sec-
35 tion 211107(d)(4) of this title, the attainment date shall not extend be-
36 yond December 31, 1994.

37 (2) SERIOUS AREAS.—For a serious area, the attainment date shall
38 be as expeditiously as practicable but not later than the end of the 10th
39 calendar year beginning after the area’s designation as nonattainment,
40 except that, for areas designated nonattainment for PM–10 under sec-

1 tion 211107(d)(4) of this title, the date shall not extend beyond De-
2 cember 31, 2001.

3 (d) EXTENSION OF ATTAINMENT DATE FOR MODERATE AREAS.—

4 (1) IN GENERAL.—On application by any State, the Administrator
5 may extend for 1 additional year (referred to in this subsection as an
6 “extension year”) the date specified in subsection (c)(1) if—

7 (A) the State has complied with all requirements and commit-
8 ments pertaining to the area in the applicable implementation
9 plan; and

10 (B) not more than 1 exceedance of the 24-hour NAAQS level
11 for PM-10 has occurred in the area in the year preceding the ex-
12 tension year, and the annual mean concentration of PM-10 in the
13 area for the extension year is less than or equal to the standard
14 level.

15 (2) LIMITATION.—Not more than 2 one-year extensions may be is-
16 sued under this subsection for a single nonattainment area.

17 (e) EXTENSION OF ATTAINMENT DATE FOR SERIOUS AREAS.—

18 (1) IN GENERAL.—On application by any State, the Administrator
19 may extend the attainment date for a serious area beyond the date
20 specified under subsection (c) if—

21 (A) attainment by the date established under subsection (c)
22 would be impracticable;

23 (B) the State has complied with all requirements and commit-
24 ments pertaining to the serious area in the implementation plan;
25 and

26 (C) the State demonstrates to the satisfaction of the Adminis-
27 trator that the plan for the serious area includes the most strin-
28 gent measures that—

29 (i) are included in the implementation plan of any State or
30 are achieved in practice in any State; and

31 (ii) can feasibly be implemented in the serious area.

32 (2) PLAN PROVISION.—At the time of an application under para-
33 graph (1), the State shall submit an implementation plan provision that
34 includes a demonstration of attainment by the most expeditious alter-
35 native date practicable.

36 (3) CONSIDERATIONS.—In determining whether to grant an exten-
37 sion, and the appropriate length of time for any such extension, the
38 Administrator may consider—

39 (A) the nature and extent of nonattainment;

40 (B) the types and numbers of sources or other emitting activi-
41 ties in the serious area (including the influence of uncontrollable

1 natural sources and transboundary emissions from foreign coun-
2 tries);

3 (C) the population exposed to concentrations in excess of the
4 standard;

5 (D) the presence and concentration of potentially toxic sub-
6 stances in the mix of particulate emissions in the area; and

7 (E) the technological and economic feasibility of various control
8 measures.

9 (4) ATTAINMENT DEMONSTRATION.—The Administrator may not ap-
10 prove an extension until the State submits an attainment demonstra-
11 tion for the area.

12 (5) LIMITATION.—The Administrator may grant not more than 1 ex-
13 tension for a serious area, of not more than 5 years.

14 (f) WAIVERS FOR CERTAIN SERIOUS AREAS.—The Administrator may, on
15 a case-by-case basis, waive any requirement applicable to any serious area
16 under this subchapter where the Administrator determines that anthropo-
17 genic sources of PM-10 do not contribute significantly to the violation of
18 the PM-10 standard in the area. The Administrator may also waive a spe-
19 cific date for attainment of the standard where the Administrator deter-
20 mines that nonanthropogenic sources of PM-10 contribute significantly to
21 the violation of the PM-10 standard in the area.

22 **§ 215403. Plan provisions and schedules for plan submis-**
23 **sions**

24 (a) MODERATE AREAS.—Each State in which all or part of a moderate
25 area is located shall submit, 18 months after the designation as nonattain-
26 ment, an implementation plan that includes each of the following:

27 (1) For the purpose of meeting the requirements of section
28 215102(e)(5) of this title, a permit program providing that permits
29 meeting the requirements of section 215103 of this title are required
30 for the construction and operation of new and modified major station-
31 ary sources of PM-10.

32 (2)(A) A demonstration (including air quality modeling) that the
33 plan will provide for attainment by the applicable attainment date; or

34 (B) a demonstration that attainment by that date is impracticable.

35 (3) Provisions to ensure that reasonably available control measures
36 for the control of PM-10 shall be implemented not later than 4 years
37 after designation as a moderate area.

38 (b) SERIOUS AREAS.—

39 (1) PLAN PROVISIONS.—In addition to the provisions submitted to
40 meet the requirements of subsection (a), each State in which all or part

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1 of a serious area is located shall submit an implementation plan for
2 the serious area that includes each of the following:

3 (A)(i) A demonstration (including air quality modeling) that the
4 plan provides for attainment of the NAAQS for PM-10 by the ap-
5 plicable attainment date; or

6 (ii) for any area for which the State is seeking, pursuant to sec-
7 tion 215402(e) of this title, an extension of the attainment date
8 beyond the date set forth in section 215402(e) of this title, a dem-
9 onstration (including air quality modeling) that—

10 (I) attainment by that date would be impracticable; and

11 (II) the plan provides for attainment by the most expedi-
12 tious alternative date practicable.

13 (B) Provisions to ensure that the best available control meas-
14 ures for the control of PM-10 shall be implemented not later than
15 4 years after the date on which the area is classified (or reclassi-
16 fied) as a serious area.

17 (2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the
18 demonstration required for an area under paragraph (1)(A) not later
19 than 4 years after reclassification of the area as a serious area, except
20 that for areas reclassified under section 215402(b)(2) of this title, the
21 State shall submit the attainment demonstration within 18 months
22 after reclassification as a serious area. A State shall submit the provi-
23 sions described under paragraph (1)(B) not later than 18 months after
24 reclassification of the area as a serious area.

25 (3) MAJOR SOURCES.—For any serious area, the terms “major
26 source” and “major stationary source” include any stationary source
27 or group of stationary sources located within a contiguous area and
28 under common control that emits, or has the potential to emit, at least
29 70 tons per year of PM-10 or PM-10 precursors.

30 (c) MILESTONES.—

31 (1) IN GENERAL.—Plan provisions demonstrating attainment sub-
32 mitted to the Administrator for approval under this subchapter shall
33 contain quantitative milestones that are to be achieved every 3 years
34 until the serious area is redesignated attainment and that demonstrate
35 reasonable further progress (as defined in section 215101 of this title)
36 toward attainment by the applicable date.

37 (2) DEMONSTRATION.—Not later than 90 days after the date on
38 which a milestone applicable to the area occurs, each State in which
39 all or part of the serious area is located shall submit to the Adminis-
40 trator a demonstration that all measures in the plan approved under
41 this section have been implemented and that the milestone has been

1 met. A demonstration under this subsection shall be submitted in such
2 form and manner, and shall contain such information and analysis, as
3 the Administrator shall require. The Administrator shall determine
4 whether or not a State's demonstration under this subsection is ade-
5 quate within 90 days after the Administrator's receipt of a demonstra-
6 tion that contains the information and analysis required by the Admin-
7 istrator.

8 (3) FAILURE TO SUBMIT DEMONSTRATION OR TO MEET MILE-
9 STONE.—If a State fails to submit a demonstration under paragraph
10 (2) with respect to a milestone within the required period or if the Ad-
11 ministrator determines that the area has not met any milestone, the
12 Administrator shall require the State, within 9 months after the failure
13 or determination, to submit a plan provision that ensures that the
14 State will achieve the next milestone (or attain the NAAQS for PM-
15 10, if there is no next milestone) by the applicable date.

16 (d) FAILURE TO ATTAIN.—In the case of a serious area in which the
17 NAAQS for PM-10 is not attained by the applicable attainment date, the
18 State in which the serious area is located shall, after notice and opportunity
19 for public comment, submit within 12 months after the applicable attain-
20 ment date, plan provisions that provide for—

21 (1) attainment of the NAAQS for PM-10; and

22 (2) an annual reduction in PM-10 or PM-10 precursor emissions
23 within the area, from the date of the submission until attainment, of
24 not less than 5 percent of the amount of PM-10 or PM-10 precursor
25 emissions as reported in the most recent inventory prepared for the se-
26 rious area.

27 (e) PM-10 PRECURSORS.—

28 (1) IN GENERAL.—The control requirements applicable under plans
29 in effect under this chapter for major stationary sources of PM-10
30 shall apply to major stationary sources of PM-10 precursors, except
31 where the Administrator determines that major stationary sources of
32 PM-10 precursors do not contribute significantly to PM-10 levels that
33 exceed the NAAQS in the serious area.

34 (2) GUIDELINES.—The Administrator shall issue guidelines regard-
35 ing the application of paragraph (1).

36 **§ 215404. Issuance of RACM and BACM guidance**

37 (a) IN GENERAL.—The Administrator shall issue, in the same manner
38 and according to the same procedure as guidance is issued under section
39 211108(c) of this title, technical guidance on reasonably available control
40 measures and best available control measures for—

41 (1) urban fugitive dust; and

1 (2) emissions from residential wood combustion (including curtail-
2 ments and exemptions from curtailments) and prescribed silvicultural
3 and agricultural burning.

4 (b) OTHER CATEGORIES OF SOURCES CONTRIBUTING TO NONATTAIN-
5 MENT OF THE PM-10 STANDARD.—The Administrator shall—

6 (1) examine other categories of sources contributing to nonattain-
7 ment of the PM-10 standard;

8 (2) determine whether additional guidance on reasonably available
9 control measures and best available control measures is needed; and

10 (3) issue any such guidance.

11 (c) CONSIDERATIONS.—In issuing guidelines and making determinations
12 under this section, the Administrator (in consultation with the States) shall
13 take into account emission reductions achieved, or expected to be achieved,
14 under subdivision 5 and other provisions of this division.

15 **Subchapter V—Additional Provisions for** 16 **Areas Designated Nonattainment for Sul-** 17 **fur Dioxides, Nitrogen Oxide, or Lead**

18 **§ 215501. Plan submission deadlines**

19 (a) SUBMISSION.—Any State containing an area designated or redesi-
20 gnated under section 211107(d) of this title as nonattainment with respect
21 to the primary NAAQSeS for sulfur oxides, nitrogen dioxide, or lead subse-
22 quent to November 15, 1990, shall submit to the Administrator, within 18
23 months of the designation, an applicable implementation plan meeting the
24 requirements of this chapter.

25 (b) STATES LACKING FULLY APPROVED STATE IMPLEMENTATION
26 PLANS.—Any State containing an area designated nonattainment with re-
27 spect to primary NAAQSeS for sulfur oxides or nitrogen dioxide under sec-
28 tion 211107(d)(1)(C)(i) of this title, but lacking a fully approved implemen-
29 tation plan complying with the requirements of the Clean Air Act (42
30 U.S.C. 7401 et seq.) as in effect on November 14, 1990, shall submit to
31 the Administrator an implementation plan meeting the requirements of sub-
32 chapter I (except as otherwise prescribed by section 215502 of this title).

33 **§ 215502. Attainment dates**

34 (a) PLANS UNDER SECTION 215501(a).—Implementation plans required
35 under section 215501(a) of this title shall provide for attainment of the rel-
36 evant primary standard as expeditiously as practicable but not later than
37 5 years after the date of the nonattainment designation.

38 (b) PLANS UNDER SECTION 215501(b).—Implementation plans required
39 under section 215501(b) of this title shall provide for attainment of the rel-
40 evant primary NAAQS within 5 years after November 15, 1990.

1 (c) INADEQUATE PLANS.—Implementation plans for nonattainment areas
 2 for sulfur oxides or nitrogen dioxide with plans that were approved by the
 3 Administrator before November 15, 1990, but, subsequent to approval, were
 4 found by the Administrator to be substantially inadequate, shall provide for
 5 attainment of the relevant primary standard within 5 years after the date
 6 of the finding.

7 **Subchapter VI—Savings Provisions**

8 **§ 215601. General savings clause**

9 Each regulation, standard, notice, order, and guidance promulgated or is-
 10 sued by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.)
 11 (as in effect before November 15, 1990) shall remain in effect according to
 12 its terms, except to the extent otherwise provided under this division, incon-
 13 sistent with any provision of this division, or revised by the Administrator.
 14 No control requirement in effect, or required to be adopted by an order, set-
 15 tlement agreement, or plan in effect before November 15, 1990, in any area
 16 that is a nonattainment area for any air pollutant may be modified in any
 17 manner unless the modification ensures equivalent or greater emission re-
 18 ductions of that air pollutant.

19 **Subdivision 3—Emission Standards for** 20 **Moving Sources** 21 **Chapter 221—Motor Vehicle Emission And** 22 **Fuel Standards**

Sec.

221101. Definitions.

221102. Emission standards for new motor vehicles or new motor vehicle engines.

221103. Prohibited acts.

221104. Injunction proceedings.

221105. Civil penalties.

221106. Motor vehicle and motor vehicle engine compliance testing and certification.

221107. Compliance by vehicles and engines in actual use.

221108. Information collection.

221109. State standards.

221110. State grants.

221111. Regulation of fuels.

221112. Renewable fuel.

221113. Nonroad engines and nonroad vehicles.

221114. High altitude performance adjustments.

221115. Motor vehicle compliance program fees.

221116. Prohibition of production of engines requiring leaded gasoline.

221117. Urban bus standards.

23 **§ 221101. Definitions**

24 In this chapter:

25 (1) COMMERCE.—The term “commerce” means—

26 (A) commerce between any place in any State and any place
 27 outside the State; and

28 (B) commerce wholly within the District of Columbia.

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1 (2) DEALER.—The term “dealer” means any person engaged in the
2 sale or distribution of new motor vehicles or new motor vehicle engines
3 to an ultimate purchaser.

4 (3) GROSS VEHICLE WEIGHT RATING.—The term “gross vehicle
5 weight rating” has the meaning given the term in regulations promul-
6 gated by the Administrator and in effect as of November 15, 1990.

7 (4) GVWR.—The term “GVWR” means gross vehicle weight rating.

8 (5) HEAVY-DUTY VEHICLE.—

9 (A) IN GENERAL.—The term “heavy-duty vehicle” means a
10 truck, bus, or other vehicle manufactured primarily for use on the
11 public streets, roads, and highways (not including any vehicle op-
12 erated exclusively on a rail or rails) that has a gross vehicle weight
13 rating (as determined under regulations promulgated by the Ad-
14 ministrator) in excess of 6,000 pounds.

15 (B) INCLUSIONS.—The term “heavy-duty vehicle” includes any
16 vehicle described in subparagraph (A) that has special features en-
17 abling off-street or off-highway operation and use.

18 (6) LDT.—The term “LDT” means light-duty truck.

19 (7) LIGHT-DUTY TRUCK.—The term “light-duty truck” has the
20 meaning given the term in regulations promulgated by the Adminis-
21 trator and in effect as of November 15, 1990.

22 (8) LIGHT-DUTY VEHICLE.—The term “light-duty vehicle” has the
23 meaning given the term in regulations promulgated by the Adminis-
24 trator and in effect as of November 15, 1990.

25 (9) LOADED VEHICLE WEIGHT.—The term “loaded vehicle weight”
26 has the meaning given the term in regulations promulgated by the Ad-
27 ministrator and in effect as of November 15, 1990.

28 (10) LVW.—The term “LVW” means loaded vehicle weight.

29 (11) MANUFACTURER.—

30 (A) IN GENERAL.—The term “manufacturer”, as used in sec-
31 tions 221102, 221103, 221106, 221107, and 221108 of this title,
32 means—

33 (i) any person that is engaged in manufacturing, assem-
34 bling, or importing for resale new motor vehicles, new motor
35 vehicle engines, new nonroad vehicles, or new nonroad en-
36 gines; or

37 (ii) any person that acts for and is under the control of a
38 person described in clause (i) in connection with the distribu-
39 tion of new motor vehicles, new motor vehicle engines, new
40 nonroad vehicles, or new nonroad engines.

1 (B) EXCLUSIONS.—The term “manufacturer”, as used in sec-
2 tions 221102, 221103, 221106, 221107, and 221108 of this title,
3 does not include any dealer with respect to new motor vehicles,
4 new motor vehicle engines, new nonroad vehicles, or new nonroad
5 engines received by the dealer in commerce.

6 (C) MOTOR VEHICLE PARTS AND MOTOR VEHICLE ENGINE
7 PARTS.—The term “manufacturer”, as used in sections 221107
8 and 221108 of this title with reference to a manufacturer of a
9 motor vehicle part or motor vehicle engine part, means any person
10 engaged in the manufacturing, assembling or rebuilding of any de-
11 vice, system, part, component, or element of design that is in-
12 stalled in or on a motor vehicle or motor vehicle engine.

13 (12) MODEL YEAR.—

14 (A) IN GENERAL.—Subject to subparagraph (B), the term
15 “model year”, with reference to any specific calendar year,
16 means—

17 (i) a manufacturer’s annual production period (as deter-
18 mined by the Administrator) that includes January 1 of that
19 calendar year; or

20 (ii) with respect to a manufacturer that has no annual pro-
21 duction period, the calendar year.

22 (B) DEFINITION BY THE ADMINISTRATOR.—For the purpose of
23 ensuring that vehicles and engines manufactured before the begin-
24 ning of a model year are not manufactured for purposes of cir-
25 cumventing the effective date of a standard required to be pre-
26 scribed by section 221102(b) of this title, the Administrator may
27 prescribe regulations defining the term “model year” otherwise
28 than as provided in subparagraph (A).

29 (13) MOTOR VEHICLE.—The term “motor vehicle” means any self-
30 propelled vehicle designed for transporting persons or property on a
31 street or highway.

32 (14) NEW MOTOR VEHICLE.—

33 (A) IN GENERAL.—Except with respect to vehicles imported or
34 offered for importation, the term “new motor vehicle” means a
35 motor vehicle the equitable or legal title to which has never been
36 transferred to an ultimate purchaser.

37 (B) VEHICLES IMPORTED OR OFFERED FOR IMPORTATION.—
38 With respect to a vehicle imported or offered for importation, the
39 term “new motor vehicle” means a motor vehicle manufactured
40 after the effective date of a regulation issued under section
41 221102 of this title that is applicable to the vehicle (or that would

1 be applicable to the vehicle had it been manufactured for importa-
2 tion into the United States).

3 (15) NEW MOTOR VEHICLE ENGINE.—

4 (A) IN GENERAL.—Except with respect to an engine imported
5 or offered for importation, the term “new motor vehicle engine”
6 means—

7 (i) an engine in a new motor vehicle; or

8 (ii) a motor vehicle engine the equitable or legal title to
9 which has never been transferred to an ultimate purchaser.

10 (B) ENGINES IMPORTED OR OFFERED FOR IMPORTATION.—

11 With respect to an engine imported or offered for importation, the
12 term “new motor vehicle engine” means an engine manufactured
13 after the effective date of a regulation issued under section
14 221102 of this title that is applicable to the engine (or that would
15 be applicable to the engine had it been manufactured for importa-
16 tion into the United States).

17 (16) NMHC.—The term “NMHC” means nonmethane hydrocarbon.

18 (17) NONROAD ENGINE.—The term “nonroad engine” means an in-
19 ternal combustion engine (including the fuel system) that—

20 (A) is not used in a motor vehicle or a vehicle used solely for
21 competition; or

22 (B) is not subject to standards promulgated under section
23 211111 or 221102 of this title.

24 (18) NONROAD VEHICLE.—The term “nonroad vehicle” means a ve-
25 hicle that—

26 (A) is powered by a nonroad engine; and

27 (B) is not a motor vehicle or a vehicle used solely for competi-
28 tion.

29 (19) TEST WEIGHT.—The term “test weight”, with reference to the
30 test weight of a vehicle, means—

31 (A)(i) the vehicle curb weight of the vehicle; plus

32 (ii) the gross vehicle weight rating of the vehicle; divided by

33 (B) 2.

34 (20) TW.—The term “TW” means test weight.

35 (21) ULTIMATE PURCHASER.—The term “ultimate purchaser”
36 means, with respect to any new motor vehicle or new motor vehicle en-
37 gine, the 1st person that in good faith purchases the new motor vehicle
38 or new engine for purposes other than resale.

39 (22) VEHICLE CURB WEIGHT.—The term “vehicle curb weight” has
40 the meaning given the term in regulations promulgated by the Adminis-
41 trator and in effect as of November 15, 1990.

1 **§ 221102. Emission standards for new motor vehicles or new**
2 **motor vehicle engines**

3 (a) IN GENERAL.—

4 (1) REGULATIONS.—

5 (A) IN GENERAL.—The Administrator shall by regulation pre-
6 scribe (and from time to time revise) standards applicable to the
7 emission of any air pollutant from any class or classes of new
8 motor vehicles or new motor vehicle engines that, in the Adminis-
9 trator's judgment, cause or contribute to air pollution that may
10 reasonably be anticipated to endanger public health or welfare.

11 (B) APPLICABILITY FOR USEFUL LIFE.—The standards shall be
12 applicable to such vehicles and engines for their useful life, wheth-
13 er the vehicles and engines are designed as complete systems or
14 incorporate devices to prevent or control air pollution.

15 (C) REGULATIONS.—The Administrator shall prescribe regula-
16 tions under which the useful life of vehicles and engines shall be
17 determined for purposes of this paragraph and section 221107 of
18 this title. The regulations shall provide that except where a dif-
19 ferent useful life period is specified in this subdivision—

20 (i) in the case of light-duty vehicles and light-duty vehicle
21 engines and light-duty trucks up to 3,750 pounds loaded vehi-
22 cle weight and up to 6,000 pounds gross vehicle weight rat-
23 ing, useful life shall be a period of use of 5 years or 50,000
24 miles (or the equivalent), whichever first occurs, except that
25 in the case of any requirement of this section where the use-
26 ful life period is not otherwise specified for light-duty vehicles
27 and light-duty vehicle engines, the period shall be 10 years or
28 100,000 miles (or the equivalent), whichever first occurs, with
29 testing for purposes of in-use compliance under section
30 221107 of this title up to (but not beyond) 7 years or 75,000
31 miles (or the equivalent), whichever first occurs;

32 (ii) in the case of any other motor vehicle or motor vehicle
33 engine (other than motorcycles or motorcycle engines), useful
34 life shall be a period of use set forth in clause (i) unless the
35 Administrator determines that a period of use of greater du-
36 ration or mileage is appropriate; and

37 (iii) in the case of any motorcycle or motorcycle engine,
38 useful life shall be a period of use determined by the Adminis-
39 trator.

40 (2) EFFECTIVE DATE.—Any regulation prescribed under paragraph
41 (1) (and any revision thereof) shall take effect after such period as the

1 Administrator finds necessary to permit the development and applica-
2 tion of the requisite technology, giving appropriate consideration to the
3 cost of compliance within that period.

4 (3) HEAVY-DUTY VEHICLES AND ENGINES.—

5 (A) IN GENERAL.—

6 (i) GREATEST DEGREE OF EMISSION REDUCTION.—Unless
7 the standard is changed as provided in subparagraph (B),
8 regulations under paragraph (1) applicable to emissions of
9 hydrocarbons, carbon monoxide, nitrogen oxides, and particu-
10 late matter from classes or categories of heavy-duty vehicles
11 or engines shall contain standards that reflect the greatest
12 degree of emission reduction achievable through the applica-
13 tion of technology that the Administrator determines will be
14 available for the model year to which the standards apply,
15 giving appropriate consideration to cost, energy, and safety
16 factors associated with the application of the technology.

17 (ii) CLASSES AND CATEGORIES.—In establishing classes or
18 categories of vehicles or engines for purposes of regulations
19 under this paragraph, the Administrator may base the classes
20 or categories on gross vehicle weight, horsepower, type of fuel
21 used, or other appropriate factors.

22 (B) REVISED STANDARDS FOR HEAVY-DUTY VEHICLES.—

23 (i) IN GENERAL.—On the basis of information available to
24 the Administrator concerning the effects of air pollutants
25 emitted from heavy-duty vehicles or engines and from other
26 sources of mobile source-related pollutants on the public
27 health and welfare, and taking costs into account, the Admin-
28 istrator may promulgate regulations under paragraph (1) re-
29 vising any standard promulgated under, or before the date of
30 enactment of, Public Law 101-549 (104 Stat. 2399) (com-
31 monly known as the Clean Air Act Amendments of 1990) (or
32 previously revised under this subparagraph) and applicable to
33 classes or categories of heavy-duty vehicles or engines.

34 (ii) NITROGEN OXIDES.—The regulations under paragraph
35 (1) applicable to emissions of nitrogen oxides from gasoline-
36 fueled heavy-duty vehicles and diesel-fueled heavy-duty vehi-
37 cles shall contain standards that provide that such emissions
38 may not exceed 4.0 grams per brake horsepower hour.

39 (C) LEAD TIME AND STABILITY.—Any standard promulgated or
40 revised under this paragraph and applicable to classes or cat-
41 egories of heavy-duty vehicles or engines shall apply for a period

1 of not less than 3 model years beginning not earlier than the
2 model year commencing 4 years after the revised standard is pro-
3 mulgated.

4 (D) REBUILDING PRACTICES.—

5 (i) IN GENERAL.—The Administrator shall study the prac-
6 tice of rebuilding heavy-duty engines and the impact rebuild-
7 ing has on engine emissions. On the basis of that study and
8 other information available to the Administrator, the Admin-
9 istrator may prescribe requirements to control rebuilding
10 practices, including standards applicable to emissions from
11 any rebuilt heavy-duty engines (whether or not the engine is
12 past its statutory useful life), that in the Administrator's
13 judgment, cause or contribute to air pollution that may rea-
14 sonably be anticipated to endanger public health or welfare,
15 taking costs into account.

16 (ii) EFFECTIVE DATE.—Any regulation shall take effect
17 after a period that the Administrator finds necessary to per-
18 mit the development and application of the requisite control
19 measures, giving appropriate consideration to the cost of com-
20 pliance within the period and energy and safety factors.

21 (E) MOTORCYCLES.—For purposes of this paragraph, motor-
22 cycles and motorcycle engines shall be treated in the same manner
23 as heavy-duty vehicles and engines (except as otherwise permitted
24 under section 221106(f) of this title) unless the Administrator
25 promulgates a regulation reclassifying motorcycles as light-duty
26 vehicles within the meaning of this section or unless the Adminis-
27 trator promulgates regulations under this subsection applying
28 standards applicable to the emission of air pollutants from motor-
29 cycles as a separate class or category. In any case in which such
30 standards are promulgated for such emissions from motorcycles as
31 a separate class or category, the Administrator, in promulgating
32 the standards, shall consider the need to achieve equivalency of
33 emission reductions between motorcycles and other motor vehicles
34 to the maximum extent practicable.

35 (4) NO CAUSATION OF CONTRIBUTION TO UNREASONABLE RISK TO
36 PUBLIC HEALTH OR SAFETY.—

37 (A) IN GENERAL.—No emission control device, system, or ele-
38 ment of design shall be used in a new motor vehicle or new motor
39 vehicle engine for purposes of complying with requirements pre-
40 scribed under this subdivision if the device, system, or element of

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1 design will cause or contribute to an unreasonable risk to public
2 health, welfare, or safety in its operation or function.

3 (B) CONSIDERATIONS.—In determining whether an unreason-
4 able risk exists under subparagraph (A), the Administrator shall
5 consider, among other factors—

6 (i) whether and to what extent the use of any device, sys-
7 tem, or element of design causes, increases, reduces, or elimi-
8 nates emissions of any unregulated pollutants;

9 (ii) available methods for reducing or eliminating any risk
10 to public health, welfare, or safety that may be associated
11 with the use of the device, system, or element of design;

12 (iii) the availability of other devices, systems, or elements
13 of design that may be used to conform to requirements pre-
14 scribed under this subdivision without causing or contributing
15 to the unreasonable risk; and

16 (iv) all relevant information developed pursuant to section
17 214 of the Clean Air Act (42 U.S.C. 7548) (as in effect be-
18 fore the repeal of that section).

19 (5) FILL PIPE STANDARDS.—

20 (A) DEFINITION OF FILL PIPE.—In this paragraph, the term
21 “fill pipe” includes a fuel tank fill pipe, fill neck, fill inlet, and
22 closure.

23 (B) IN GENERAL.—If the Administrator promulgates final regu-
24 lations that define the degree of control required and the test pro-
25 cedures by which compliance could be determined for gasoline
26 vapor recovery of uncontrolled emissions from the fueling of motor
27 vehicles, the Administrator shall, after consultation with the Sec-
28 retary of Transportation with respect to motor vehicle safety, pre-
29 scribe, by regulation, fill pipe standards for new motor vehicles to
30 ensure effective connection between the fill pipe and any vapor re-
31 covery system that the Administrator determines may be required
32 to comply with the vapor recovery regulations.

33 (C) CONSIDERATIONS.—In promulgating standards under sub-
34 paragraph (B), the Administrator shall take into consideration—

35 (i) limits on fill pipe diameter;

36 (ii) minimum design criteria for nozzle retainer lips;

37 (iii) limits on the location of the unleaded fuel restrictors;

38 (iv) a minimum access zone surrounding a fill pipe;

39 (v) a minimum pipe or nozzle insertion angle; and

40 (vi) such other factors as the Administrator considers perti-
41 nent.

1 (D) EFFECTIVE DATE.—Regulations prescribing standards
 2 under subparagraph (B) shall not become effective until the intro-
 3 duction of the model year for which it would be feasible to imple-
 4 ment the standards, taking into consideration the restraints of an
 5 adequate leadtime for design and production.

6 (E) EFFECT OF PARAGRAPH.—Nothing in this paragraph
 7 shall—

8 (i) prevent the Administrator from specifying different noz-
 9 zle and fill neck sizes for gasoline with additives and gasoline
 10 without additives; or

11 (ii) permit the Administrator to require a specific location,
 12 configuration, modeling, or styling of a motor vehicle body
 13 with respect to the fuel tank fill neck or fill nozzle clearance
 14 envelope.

15 (6) ONBOARD VAPOR RECOVERY.—

16 (A) IN GENERAL.—After consultation with the Secretary of
 17 Transportation regarding the safety of vehicle-based (“onboard”)
 18 systems for the control of vehicle refueling emissions, the Adminis-
 19 trator shall promulgate standards under this section requiring that
 20 new light-duty vehicles manufactured beginning in the 4th model
 21 year after the model year in which the standards are promulgated
 22 and thereafter shall be equipped with onboard vapor recovery sys-
 23 tems.

24 (B) IMPLEMENTATION SCHEDULE.—Beginning with the 4th
 25 model year after the model year in which the standards are pro-
 26 mulgated, the standards required under this paragraph shall apply
 27 to the following percentages of each manufacturer’s fleet of new
 28 light-duty vehicles:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
4th	40
5th	80
After 5th	100

*Percentages in the table refer to a percentage of the manufacturer’s sales volume.

29 (C) MINIMUM EVAPORATIVE EMISSION CAPTURE EFFICIENCY.—
 30 The standards required under this paragraph shall require that
 31 onboard vapor recovery systems provide a minimum evaporative
 32 emission capture efficiency of 95 percent.

33 (D) OTHER REQUIREMENTS.—The requirements of section
 34 215203(b)(4) of this title for areas classified under section
 35 215202 of this title as a moderate area for ozone shall not apply
 36 after promulgation of standards under this paragraph, and the

1 Administrator may, by regulation, revise or waive the application
2 of the requirements of section 215203(b)(4) of this title for areas
3 classified under section 215202 of this title as a serious area, se-
4 vere area, or extreme area for ozone, as appropriate, after such
5 time as the Administrator determines that onboard emission con-
6 trol systems required under this paragraph are in widespread use
7 throughout the motor vehicle fleet.

8 (b) CARBON MONOXIDE, HYDROCARBONS, AND NITROGEN OXIDES.—

9 (1) IN GENERAL.—

10 (A) CARBON MONOXIDE AND HYDROCARBONS.—

11 (i) HYDROCARBONS.—The regulations under subsection (a)
12 applicable to emissions of hydrocarbons from light-duty vehi-
13 cles and engines shall contain standards that require a reduc-
14 tion of at least 90 percent from emissions of hydrocarbons al-
15 lowable under the standards under this section applicable to
16 light-duty vehicles and engines manufactured in model year
17 1970.

18 (ii) CARBON MONOXIDE.—Unless waived as provided in
19 paragraph (2), the regulations under subsection (a) applicable
20 to emissions of carbon monoxide from light-duty vehicles and
21 engines shall contain standards that require a reduction of at
22 least 90 percent from emissions of carbon monoxide allowable
23 under the standards under this section applicable to light-
24 duty vehicles and engines manufactured in model year 1970.

25 (B) NITROGEN OXIDES.—The regulations under subsection (a)
26 applicable to emissions of nitrogen oxides from light-duty vehicles
27 and engines shall contain standards that provide that such emis-
28 sions from such vehicles and engines may not exceed 1.0 gram per
29 vehicle mile.

30 (C) REVISION OF STANDARDS.—The Administrator may pro-
31 mulgate regulations under subsection (a)(1) revising any standard
32 prescribed or previously revised under this subsection, as needed
33 to protect public health or welfare, taking costs, energy, and safety
34 into account. Any revised standard shall require a reduction of
35 emissions from the standard that was previously applicable. Any
36 such revision under this subdivision may provide for a phase-in of
37 the standard.

38 (2) MEASUREMENT TECHNIQUES.—With any emission standard pro-
39 mulgated under paragraph (1), the Administrator shall promulgate
40 measurement techniques on which the emission standard is based.

41 (3) WAIVER.—

1 (A) IN GENERAL.—On the petition of any manufacturer, the
2 Administrator, after notice and opportunity for public hearing,
3 may waive the standard required under paragraph (1)(B) to not
4 exceed 1.5 grams of nitrogen oxides per vehicle mile for any class
5 or category of light-duty vehicles or engines manufactured by the
6 manufacturer during any period of up to 4 model years if the
7 manufacturer demonstrates that—

8 (i) the waiver is necessary to permit the use of an innova-
9 tive power train technology, or innovative emission control de-
10 vice or system, in that class or category of vehicles or engines;
11 and

12 (ii) that technology or system was not utilized by more
13 than 1 percent of the light-duty vehicles sold in the United
14 States in the 1975 model year.

15 (B) DETERMINATIONS.—A waiver under subparagraph (A) may
16 be granted only if the Administrator determines that—

17 (i) the waiver would not endanger public health;

18 (ii) there is a substantial likelihood that the vehicles or en-
19 gines will be able to comply with the applicable standard
20 under this section on expiration of the waiver; and

21 (iii) the technology or system has a potential for long-term
22 air quality benefit and has the potential to meet or exceed the
23 average fuel economy standard applicable under the Energy
24 Policy and Conservation Act (42 U.S.C. 6201 et seq.) on the
25 expiration of the waiver.

26 (C) LIMITATION.—No waiver under this paragraph granted to
27 any manufacturer shall apply to more than the greater of—

28 (i) 5 percent of the manufacturer's production; or

29 (ii) 50,000 vehicles or engines.

30 (c) NEW POWER SOURCES OR PROPULSION SYSTEMS.—If a new power
31 source or propulsion system for new motor vehicles or new motor vehicle en-
32 gines is submitted for certification pursuant to section 221106(a) of this
33 title, the Administrator may postpone certification until the Administrator
34 has prescribed standards for any air pollutants emitted by the vehicle or en-
35 gine that in the Administrator's judgment cause or contribute to air pollu-
36 tion that may reasonably be anticipated to endanger the public health or
37 welfare but for which standards have not been prescribed under subsection
38 (a).

39 (d) HIGH ALTITUDE REGULATIONS.—

40 (1) IN GENERAL.—Any high altitude regulation with respect to
41 motor vehicles or engines shall not require a percentage of reduction

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1 in emissions that is greater than the required percentage of reduction
2 in emissions from motor vehicles and engines set forth in subsection
3 (b). The percentage reduction shall be determined by comparing any
4 proposed high altitude emission standards to high altitude emissions
5 from vehicles and engines manufactured during model year 1970.

6 (2) DOCKET.—Section 203102(d) of this title shall apply to any high
7 altitude regulation under paragraph (1).

8 (3) CONSIDERATIONS.—Before promulgating any regulation under
9 paragraph (1), the Administrator shall consider and make a finding
10 with respect to—

11 (A) the economic impact on consumers, individual high altitude
12 dealers, and the automobile industry of any such regulation, in-
13 cluding the economic impact that was experienced as a result of
14 the regulation imposed during model year 1977 with respect to
15 high altitude certification requirements;

16 (B) the present and future availability of emission control tech-
17 nology capable of meeting the applicable vehicle and engine emis-
18 sion requirements without reducing model availability; and

19 (C) the likelihood that the adoption of such a high altitude reg-
20 ulation will result in any significant improvement in air quality in
21 any area to which the regulation will apply.

22 (4) INAPPLICABILITY OF EARLIER REGULATION.—The high altitude
23 regulation in effect with respect to model year 1977 motor vehicles
24 shall not apply to the manufacture, distribution, or sale of later model
25 year motor vehicles.

26 (e) BUSES.—The regulations under subsection (a) applicable to buses
27 other than those subject to standards under section 221117 of this title
28 shall contain a standard that provides that emissions of particulate matter
29 from such buses may not exceed 0.10 grams per brake horsepower hour.

30 (f) LIGHT-DUTY TRUCKS UP TO 6,000 POUNDS GROSS VEHICLE
31 WEIGHT RATING AND LIGHT-DUTY VEHICLES; STANDARDS.—

32 (1) NONMETHANE HYDROCARBONS, CARBON MONOXIDE, AND NITRO-
33 GEN OXIDE.—The regulations under subsection (a) applicable to emis-
34 sions of nonmethane hydrocarbons, carbon monoxide, and nitrogen ox-
35 ides from light-duty trucks of up to 6,000 pounds gross vehicle weight
36 rating and light-duty vehicles shall contain standards that provide that
37 emissions from 100 percent of each manufacturer's sales volume of
38 light-duty trucks of up to 6,000 pounds gross vehicle weight rating and
39 light-duty vehicles shall comply with the levels specified in table G.

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND NO_x FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A			Column B		
	(5 yrs/50,000 mi)			(10 yrs/100,000 mi)		
	NMHC	CO	NO _x	NMHC	CO	NO _x
LDTs (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751–5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).
 For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.
 For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.
 *In the case of diesel-fueled LDTs (0–3,750 LVW) and light-duty vehicles, before model year 2004, in lieu of the 0.4 and 0.6 gpm standards for nitrogen oxides, the applicable standards for nitrogen oxides shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.
 **This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

1 (2) PM STANDARD.—The regulations under subsection (a) applicable
 2 to emissions of particulate matter from light-duty vehicles and light-
 3 duty trucks of up to 6,000 pounds gross vehicle weight rating shall
 4 contain standards that provide that such emissions from 100 percent
 5 of each manufacturer’s sales volume of light-duty vehicles and light-
 6 duty trucks of up to 6,000 pounds gross vehicle weight rating shall not
 7 exceed the levels specified in the table below.

PM STANDARD FOR LDTs OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 221106 of this title and for purposes of in-use compliance under section 221107 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.
 The applicable useful life, for purposes of certification under section 221106 of this title and for purposes of in-use compliance under section 221107 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

8 (g) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 Pounds Gross Vehicle
 9 Weight Rating.—The regulations under subsection (a) applicable to emis-
 10 sions of nonmethane hydrocarbons, carbon monoxide, nitrogen oxides, and
 11 particulate matter from light-duty trucks of more than 6,000 pounds gross
 12 vehicle weight rating shall contain standards that provide that emissions
 13 from 100 percent of each manufacturer’s sales volume of light-duty trucks
 14 of more than 6,000 pounds gross vehicle weight rating shall comply with
 15 the levels specified in table H.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE-FUELED AND DIESEL-FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A			Column B			
	(5 yrs/50,000 mi)			(11 yrs/120,000 mi)			
	NMHC	CO	NO _x	NMHC	CO	NO _x	PM
3,751–5,750 lbs. TW	0.32	4.4	0.7*	0.46	6.4	0.98	0.10
Over 5,750 lbs. TW	0.39	5.0	1.1*	0.56	7.3	1.53	0.12

Standards are expressed in grams per mile (GPM).
 For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.
 For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.
 *Not applicable to diesel-fueled LDTs.

1 (h) PHASE II STUDY FOR CERTAIN LIGHT-DUTY VEHICLES AND LIGHT-
2 DUTY TRUCKS.—

3 (1) IN GENERAL.—The Administrator shall study whether or not
4 further reductions in emissions from light-duty vehicles and light-duty
5 trucks should be required pursuant to this subdivision. The study shall
6 consider whether to establish the standards and useful life period for
7 gasoline-fueled and diesel-fueled light-duty vehicles and light-duty
8 trucks with a loaded vehicle weight of 3,750 pounds or less specified
9 in the following table:

TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE-FUELED AND DIESEL-FUELED
LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level*
NMHC	0.125 gpm
NO _x	0.2 gpm
CO	1.7 gpm

*Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (a) and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

10 (2) OTHER STANDARDS AND USEFUL LIFE PERIODS.—The study
11 under paragraph (1) shall also consider other standards and useful life
12 periods that are more stringent or less stringent than those set forth
13 in table 3 (but more stringent than those described in subsections (f)
14 and (g)).

15 (3) EXAMINATION OF NEED FOR FURTHER REDUCTIONS.—

16 (A) IN GENERAL.—As part of the study under paragraph (1),
17 the Administrator shall examine the need for further reductions in
18 emissions in order to attain or maintain the NAAQSeS, taking into
19 consideration the waiver provisions of section 221109 of this title.
20 As part of the study, the Administrator shall examine—

21 (i) the availability of technology (including the costs there-
22 of), in the case of light-duty vehicles and light-duty trucks
23 with a loaded vehicle weight of 3,750 pounds or less, for
24 meeting more stringent emission standards than those pro-
25 vided in subsections (f) and (g) for model years commencing
26 not earlier than after January 1, 2003, and not later than
27 model year 2006, including the lead time and safety and en-
28 ergy impacts of meeting more stringent emission standards;
29 and

30 (ii) the need for, and cost effectiveness of, obtaining fur-
31 ther reductions in emissions from light-duty vehicles and
32 light-duty trucks with a loaded vehicle weight of 3,750
33 pounds or less, taking into consideration alternative means of
34 attaining or maintaining the primary NAAQSeS pursuant to

1 State implementation plans and other requirements of this di-
2 vision, including their feasibility and cost effectiveness.

3 (B) REPORT.—The Administrator shall submit a report to Con-
4 gress containing the results of the study under this subsection, in-
5 cluding the results of the examination conducted under subpara-
6 graph (A). Before submittal of the report the Administrator shall
7 provide a reasonable opportunity for public comment and shall in-
8 clude a summary of public comments in the report to Congress.

9 (4) DETERMINATION.—

10 (A) IN GENERAL.—Based on the study under paragraph (1),
11 the Administrator shall determine, by regulation, whether—

12 (i) there is a need for further reductions in emissions as
13 provided in paragraph (3)(A);

14 (ii) the technology for meeting more stringent emission
15 standards will be available, as provided in paragraph
16 (3)(A)(i), in the case of light-duty vehicles and light-duty
17 trucks with a loaded vehicle weight of 3,750 pounds or less,
18 for model years commencing not earlier than January 1,
19 2003, and not later than model year 2006, considering the
20 factors listed in paragraph (3)(A)(i); and

21 (iii) obtaining further reductions in emissions from such ve-
22 hicles will be needed and cost effective, taking into consider-
23 ation alternatives as provided in paragraph (3)(A)(ii).

24 (B) NO MORE STRINGENT STANDARDS.—

25 (i) IN GENERAL.—If the Administrator determines under
26 subparagraph (A) that—

27 (I) there is no need for further reductions in emissions
28 as provided in paragraph (3)(A);

29 (II) the technology for meeting more stringent emis-
30 sion standards will not be available as provided in para-
31 graph (3)(A)(i), in the case of light-duty vehicles and
32 light-duty trucks with a loaded vehicle weight of 3,750
33 pounds or less, for model years commencing not earlier
34 than January 1, 2003, and not later than model year
35 2006, considering the factors listed in paragraph
36 (3)(A)(i); or

37 (III) obtaining further reductions in emissions from
38 such vehicles will not be needed or cost effective, taking
39 into consideration alternatives as provided in paragraph
40 (3)(A)(ii);

1 the Administrator shall not promulgate more stringent stand-
2 ards than those in effect pursuant to subsections (f) and (g).

3 (ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subpara-
4 graph shall prohibit the Administrator from exercising the
5 Administrator’s authority under subsection (a) to promulgate
6 more stringent standards for light-duty vehicles and light-
7 duty trucks with a loaded vehicle weight of 3,750 pounds or
8 less at any other time thereafter in accordance with sub-
9 section (a).

10 (C) MORE STRINGENT STANDARDS.—If the Administrator de-
11 termines under subparagraph (A) that—

12 (i) there is a need for further reductions in emissions as
13 provided in paragraph (3)(A);

14 (ii) the technology for meeting more stringent emission
15 standards will be available, as provided in paragraph
16 (3)(A)(i), in the case of light-duty vehicles and light-duty
17 trucks with a loaded vehicle weight of 3,750 pounds or less,
18 for model years commencing not earlier than January 1,
19 2003, and not later than model year 2006, considering the
20 factors listed in paragraph (3)(A)(i); and

21 (iii) obtaining further reductions in emissions from such ve-
22 hicles will be needed and cost effective, taking into consider-
23 ation alternatives as provided in paragraph (3)(A)(ii);

24 the Administrator shall promulgate the standards (and useful life
25 periods) set forth in table 3 in paragraph (1) or promulgate alter-
26 native standards (and useful life periods) that are more stringent
27 than those described in subsections (f) and (g).

28 (D) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall
29 be construed by the Administrator or by a court as a presumption
30 that any standards (or useful life period) set forth in table 3 shall
31 be promulgated in the rulemaking required under this paragraph.

32 (E) NONDISCRETIONARY DUTY.—The action required of the Ad-
33 ministrator in accordance with this paragraph shall be treated as
34 a nondiscretionary duty for purposes of section 203104(b)(2) of
35 this title.

36 (F) APPLICABILITY OF EMISSION STANDARDS IN TABLE 3.—The
37 regulations under subsection (a) applicable to emissions of non-
38 methane hydrocarbons, nitrogen oxides, and carbon monoxide from
39 motor vehicles and motor vehicle engines in the classes specified
40 in table 3 in paragraph (1) shall contain standards that provide

1 that emissions may not exceed the pending emission levels speci-
2 fied in table 3 in paragraph (1) unless—

3 (i) the Administrator determines not to promulgate more
4 stringent standards as provided in subparagraph (B);

5 (ii) the Administrator determines to postpone the effective
6 date of standards described in table 3 in paragraph (1); or

7 (iii) the Administrator determines to establish alternative
8 standards as provided in subparagraph (C).

9 (i) COLD CARBON MONOXIDE STANDARD.—

10 (1) IN GENERAL.—

11 (A) REGULATIONS.—The Administrator shall promulgate regu-
12 lations under subsection (a) applicable to emissions of carbon
13 monoxide from light-duty vehicles and light-duty trucks when op-
14 erated at 20 degrees Fahrenheit.

15 (B) STANDARDS.—The regulations shall contain standards that
16 provide that emissions of carbon monoxide from 100 percent of
17 each manufacturer's vehicles when operated at 20 degrees Fahr-
18 enheit may not exceed—

19 (i) in the case of light-duty vehicles, 10.0 grams per mile;
20 and

21 (ii) in the case of light-duty trucks, a level comparable in
22 stringency to the standard applicable to light-duty vehicles.

23 (2) USEFUL LIFE STANDARDS.—In the case of the standards under
24 paragraph (1), for purposes of certification under section 221106 of
25 this title and in-use compliance under section 221107 of this title, the
26 applicable useful life period shall be 5 years or 50,000 miles, whichever
27 first occurs, except that the Administrator may extend the useful life
28 period (for purposes of section 221106 or 221107 of this title, or both)
29 if the Administrator determines that it is feasible for vehicles and en-
30 gines subject to the standards to meet the standards for a longer useful
31 life. If the Administrator extends the useful life period, the Adminis-
32 trator may make an appropriate adjustment of applicable standards for
33 the extended useful life. No such extended useful life shall extend be-
34 yond the useful life period provided in regulations under subsection
35 (a)(1)(C).

36 (3) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may
37 promulgate regulations under subsection (a)(1) applicable to emissions
38 of carbon monoxide from heavy-duty vehicles and engines when oper-
39 ated at cold temperatures.

40 (j) CONTROL OF EVAPORATIVE EMISSIONS.—

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1 (1) IN GENERAL.—The Administrator shall promulgate (and from
2 time to time revise) regulations applicable to evaporative emissions of
3 hydrocarbons from all gasoline-fueled motor vehicles—

4 (A) during operation; and

5 (B) over 2 or more days of nonuse;

6 under ozone-prone summertime conditions (as determined by regula-
7 tions of the Administrator).

8 (2) EFFECTIVE DATE; EMISSION REDUCTION.—The regulations—

9 (A) shall take effect as expeditiously as possible; and

10 (B) shall require the greatest degree of emission reduction
11 achievable by means reasonably expected to be available for pro-
12 duction during any model year to which the regulations apply, giv-
13 ing appropriate consideration to fuel volatility and to cost, energy,
14 and safety factors associated with the application of the appro-
15 priate technology.

16 (k) MOBILE SOURCE-RELATED AIR TOXICS.—

17 (1) STUDY.—The Administrator shall complete a study of the need
18 for, and feasibility of, controlling emissions of toxic air pollutants that
19 are unregulated under this division and associated with motor vehicles
20 and motor vehicle fuels, and the need for, and feasibility of, controlling
21 such emissions and the means and measures for such controls. The
22 study shall focus on the categories of emissions that pose the greatest
23 risk to human health or about which significant uncertainties remain,
24 including emissions of benzene, formaldehyde, and 1,3 butadiene. The
25 proposed report shall be available for public review and comment and
26 shall include a summary of all comments.

27 (2) STANDARDS.—

28 (A) IN GENERAL.—Based on the study under paragraph (1),
29 the Administrator shall promulgate (and from time to time revise)
30 regulations under subsection (a)(1) or section 221111(d)(1) of this
31 title containing reasonable requirements to control hazardous air
32 pollutants from motor vehicles and motor vehicle fuels.

33 (B) CONTENTS.—The regulations shall contain standards for
34 fuels, vehicles, or both, that the Administrator determines reflect
35 the greatest degree of emission reduction achievable through the
36 application of technology that will be available, taking into consid-
37 eration—

38 (i) the standards established under subsection (a);

39 (ii) the availability and costs of the technology;

40 (iii) noise, energy, and safety factors; and

41 (iv) lead time.

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1 (C) NO INCONSISTENCY.—The regulations shall not be incon-
2 sistent with standards under subsection (a).

3 (D) BENZENE AND FORMALDEHYDE.—The regulations shall, at
4 a minimum, apply to emissions of benzene and formaldehyde.

5 (l) EMISSION CONTROL DIAGNOSTICS.—

6 (1) REGULATIONS.—The Administrator shall promulgate regulations
7 under subsection (a) requiring manufacturers to install on all new
8 light-duty vehicles and light-duty trucks diagnostics systems capable
9 of—

10 (A) accurately identifying, for the vehicle's useful life, as estab-
11 lished under this section, emission-related systems deterioration or
12 malfunction (including, at a minimum, the catalytic converter and
13 oxygen sensor) that could cause or result in failure of a vehicle
14 to comply with emission standards established under this section;

15 (B) alerting the vehicle's owner or operator to the likely need
16 for emission-related components or systems maintenance or repair;

17 (C) storing and retrieving fault codes specified by the Adminis-
18 trator; and

19 (D) providing access to stored information in a manner specified
20 by the Administrator.

21 (2) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may
22 promulgate regulations requiring manufacturers to install onboard di-
23 agnostic systems described in paragraph (1) on heavy-duty vehicles and
24 engines.

25 (3) STATE INSPECTION.—

26 (A) IN GENERAL.—The Administrator shall by regulation re-
27 quire States that have implementation plans containing motor ve-
28 hicle inspection and maintenance programs to provide in the plans
29 for—

30 (i) inspection of onboard diagnostics systems (as prescribed
31 by regulations under paragraph (1)); and

32 (ii) maintenance or repair of malfunctions or system dete-
33 rioration identified by or affecting such diagnostics systems.

34 (B) NO INCONSISTENCY.—The regulations shall not be incon-
35 sistent with the provisions for warranties promulgated under sub-
36 sections (b) and (c) of section 221107 of this title.

37 (4) SPECIFIC REQUIREMENTS.—In promulgating regulations under
38 this subsection, the Administrator shall require—

39 (A) that any connectors through which the emission control
40 diagnostics system is accessed for inspection, diagnosis, service, or

1 repair shall be standard and uniform on all motor vehicles and
2 motor vehicle engines;

3 (B) that access to the emission control diagnostics system
4 through such connectors shall be unrestricted and shall not require
5 any access code or any device that is available only from a vehicle
6 manufacturer; and

7 (C) that the output of the data from the emission control diag-
8 nostics system through such connectors shall be usable without the
9 need for any unique decoding information or device.

10 (5) INFORMATION AVAILABILITY.—

11 (A) IN GENERAL.—The Administrator, by regulation, shall re-
12 quire (subject to the provisions of section 221108(c) of this title
13 regarding the protection of methods or processes entitled to pro-
14 tection as trade secrets) manufacturers to provide promptly to any
15 person engaged in the repairing or servicing of motor vehicles or
16 motor vehicle engines, and the Administrator for use by any such
17 persons—

18 (i) all information needed to make use of the emission con-
19 trol diagnostics system prescribed under this subsection; and

20 (ii) other information including instructions for making
21 emission related diagnosis and repairs.

22 (B) NO WITHHOLDING OF INFORMATION.—No information de-
23 scribed in subparagraph (A) may be withheld under section
24 221108(c) of this title if the information is provided (directly or
25 indirectly) by the manufacturer to franchised dealers or other per-
26 sons engaged in the repair, diagnosing, or servicing of motor vehi-
27 cles or motor vehicle engines.

28 (C) AVAILABILITY TO THE ADMINISTRATOR.—The information
29 shall be available to the Administrator, subject to section
30 221108(c) of this title, in carrying out the Administrator's respon-
31 sibilities under this section.

32 **§ 221103. Prohibited acts**

33 (a) ENUMERATED PROHIBITIONS.—

34 (1) IN GENERAL.—The following acts and the causing thereof are
35 prohibited:

36 (A)(i) In the case of a manufacturer of new motor vehicles or
37 new motor vehicle engines for distribution in commerce, the sale,
38 offering for sale, introduction or delivery for introduction into
39 commerce; or

40 (ii) in the case of any person, except as provided by regulation
41 of the Administrator, the importation into the United States;

1 of any new motor vehicle or new motor vehicle engine, manufac-
2 tured after the effective date of regulations under this chapter
3 that are applicable to the motor vehicle or engine, unless the vehi-
4 cle or engine is covered by a certificate of conformity issued (and
5 in effect) under regulations prescribed under this chapter or chap-
6 ter 225 in the case of clean-fuel vehicles (except as provided in
7 subsection (b)).

8 (B)(i) For any person to fail or refuse to permit access to or
9 copying of records or to fail to make reports or provide informa-
10 tion required under section 221108 of this title.

11 (ii) For any person to fail or refuse to permit entry, testing, or
12 inspection authorized under section 221106(c) or 221108 of this
13 title.

14 (iii) For any person to fail or refuse to perform tests, or have
15 tests performed, as required under section 221108 of this title.

16 (iv) For any manufacturer to fail to make information available
17 as provided by regulation under section 221102(l)(5) of this title.

18 (C)(i) For any person to remove or render inoperative any de-
19 vice or element of design installed on or in a motor vehicle or
20 motor vehicle engine in compliance with regulations under this
21 subdivision prior to its sale and delivery to the ultimate purchaser,
22 or for any person knowingly to remove or render inoperative any
23 such device or element of design after such sale and delivery to
24 the ultimate purchaser.

25 (ii) For any person to manufacture or sell, offer to sell, or in-
26 stall any part or component intended for use with, or as part of,
27 any motor vehicle or motor vehicle engine, where a principal effect
28 of the part or component is to bypass, defeat, or render inoper-
29 ative any device or element of design installed on or in a motor
30 vehicle or motor vehicle engine in compliance with regulations
31 under this subdivision, and where the person knows or should
32 know that the part or component is being offered for sale or in-
33 stalled for such use or put to such use.

34 (D) For any manufacturer of a new motor vehicle or new motor
35 vehicle engine subject to standards prescribed under section
36 221102 of this title or chapter 225—

37 (i) to sell or lease any such vehicle or engine unless the
38 manufacturer has complied with—

39 (I) the requirements of subsections (b) and (c) of sec-
40 tion 221107 of this title with respect to the vehicle or
41 engine, and unless a label or tag is affixed to the vehicle

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1 or engine in accordance with section 221107(d)(4)(C) of
2 this title; or

3 (II) the corresponding requirements of chapter 225 in
4 the case of clean fuel vehicles unless the manufacturer
5 has complied with the corresponding requirements of
6 chapter 225;

7 (ii) to fail or refuse to comply with the requirements of
8 subsection (d) or (f) of section 221107 of this title, or the
9 corresponding requirements of chapter 225 in the case of
10 clean fuel vehicles;

11 (iii) except as provided in section 221107(d)(4) of this title
12 and the corresponding requirements of chapter 225 in the
13 case of clean fuel vehicles, to provide directly or indirectly in
14 any communication to an ultimate purchaser or any subse-
15 quent purchaser that the coverage of any warranty under this
16 division is conditioned on use of any part, component, or sys-
17 tem manufactured by the manufacturer or any person acting
18 for the manufacturer or under the manufacturer's control, or
19 conditioned on service performed by any such person; or

20 (iv) to fail or refuse to comply with the terms and condi-
21 tions of the warranty under subsection (b) or (c) of section
22 221107 of this title or the corresponding requirements of
23 chapter 225 in the case of clean fuel vehicles with respect to
24 any vehicle.

25 (E) For any person to violate section 221116 or 221117 of this
26 title or chapter 225 (including any regulation under section
27 221116 or 221117 of this title or chapter 225).

28 (2) HIGH ALTITUDE PERFORMANCE ADJUSTMENTS.—

29 (A) DEFINITION OF MANUFACTURER PART.—In this paragraph,
30 the term “manufacturer part” means, with respect to a motor ve-
31 hicle engine, a part produced or sold by the manufacturer of the
32 motor vehicle or motor vehicle engine.

33 (B) ACTION WITH RESPECT TO ELEMENT OF DESIGN.—No ac-
34 tion with respect to any element of design described in paragraph
35 (1)(C) (including any adjustment or alteration of any such ele-
36 ment) shall be treated as a prohibited act under paragraph (1)(C)
37 if the action is in accordance with section 221114 of this title.

38 (C) EFFECT OF PARAGRAPH (1)(C).—Nothing in paragraph
39 (1)(C) shall be construed to require the use of manufacturer parts
40 in maintaining or repairing any motor vehicle or motor vehicle en-
41 gine.

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1 (D) ACTION WITH RESPECT TO DEVICE OR ELEMENT OF DE-
2 SIGN.—No action with respect to any device or element of design
3 described in paragraph (1)(C) shall be treated as a prohibited act
4 under paragraph (1)(C) if—

5 (i) the action is for the purpose of repair or replacement
6 of the device or element, or is a necessary and temporary pro-
7 cedure to repair or replace any other item and the device or
8 element is replaced on completion of the procedure; and

9 (ii) the action thereafter results in the proper functioning
10 of the device or element.

11 (E) CONVERSION FOR USE OF CLEAN ALTERNATIVE FUEL.—No
12 action with respect to any device or element of design described
13 in paragraph (1)(C) shall be treated as a prohibited act under
14 paragraph (1)(C) if—

15 (i) the action is for the purpose of a conversion of a motor
16 vehicle for use of a clean alternative fuel (as defined in sec-
17 tion 225101 of this title);

18 (ii) the vehicle complies with the applicable standard under
19 section 221102 of this title when operating on such fuel; and

20 (iii) in the case of a clean alternative fuel vehicle (as de-
21 fined by regulation by the Administrator)—

22 (I) the device or element is replaced on completion of
23 the conversion procedure; and

24 (II) that action results in proper functioning of the de-
25 vice or element when the motor vehicle operates on con-
26 ventional fuel.

27 (b) EXEMPTIONS; REFUSAL TO ADMIT VEHICLE OR ENGINE INTO
28 UNITED STATES; VEHICLES OR ENGINES INTENDED FOR EXPORT.—

29 (1) EXEMPTIONS.—The Administrator may exempt any new motor
30 vehicle or new motor vehicle engine from subsection (a) on such terms
31 and conditions as the Administrator may find necessary—

32 (A) for the purpose of research, investigations, studies, dem-
33 onstrations, or training; or

34 (B) for reasons of national security.

35 (2) REFUSAL TO ADMIT VEHICLE OR ENGINE INTO UNITED
36 STATES.—A new motor vehicle or new motor vehicle engine offered for
37 importation or imported by any person in violation of subsection (a)
38 shall be refused admission into the United States, but the Secretary
39 of the Treasury and the Administrator may, by joint regulation, pro-
40 vide for deferring final determination as to admission and authorizing
41 the delivery of such a motor vehicle or engine offered for import to the

1 owner or consignee thereof on such terms and conditions (including the
2 furnishing of a bond) as may appear to them appropriate to ensure
3 that any such motor vehicle or engine will be brought into conformity
4 with the standards, requirements, and limitations applicable to it under
5 this chapter. The Secretary of the Treasury shall, if a motor vehicle
6 or engine is finally refused admission under this paragraph, cause dis-
7 position of the motor vehicle or engine in accordance with the customs
8 laws unless the motor vehicle or engine is exported, under regulations
9 prescribed by the Secretary, within 90 days after the date of notice of
10 that refusal or such additional time as may be permitted pursuant to
11 the regulations, except that disposition in accordance with the customs
12 laws may not be made in such manner as may result, directly or indi-
13 rectly, in the sale to an ultimate consumer of a new motor vehicle or
14 new motor vehicle engine that fails to comply with applicable standards
15 of the Administrator under this chapter.

16 (3) VEHICLES OR ENGINES INTENDED FOR EXPORT.—A new motor
17 vehicle or new motor vehicle engine intended solely for export, and so
18 labeled or tagged on the outside of the container and on the vehicle
19 or engine itself, shall be subject to subsection (a), except that if the
20 country that is to receive the vehicle or engine has emission standards
21 that differ from the standards prescribed under section 221102 of this
22 title, the vehicle or engine shall comply with the standards of that
23 country.

24 **§ 221104. Injunction proceedings**

25 (a) JURISDICTION.—The United States district courts shall have jurisdic-
26 tion to restrain violations of section 221103(a) of this title.

27 (b) ACTIONS BROUGHT BY OR IN NAME OF UNITED STATES.—An action
28 to restrain a violation of section 221103(a) of this title shall be brought by
29 and in the name of the United States.

30 (c) SUBPOENAS.—In an action under subsection (b), a subpoena for a
31 witness who is required to attend a United States district court in any judi-
32 cial district may run into any other judicial district.

33 **§ 221105. Civil penalties**

34 (a) VIOLATIONS.—

35 (1) SUBPARAGRAPH (A), (D), OR (E) OF SECTION 221103(a)(1).—Any
36 person that violates subparagraph (A), (D), or (E) of section
37 221103(a)(1) of this title shall be subject to a civil penalty of not more
38 than \$25,000.

39 (2) SECTION 221103(a)(1)(B).—Any person that violates section
40 221103(a)(1)(B) of this title shall be subject to a civil penalty of not
41 more than \$25,000 per day of violation.

1 (3) SECTION 221103(a)(1)(C).—

2 (A) CLAUSE (i).—

3 (i) MANUFACTURER OR DEALER.—Any manufacturer or
4 dealer that violates section 221103(a)(1)(C)(i) of this title
5 shall be subject to a civil penalty of not more than \$25,000.

6 (ii) PERSON OTHER THAN MANUFACTURER OR DEALER.—
7 Any person other than a manufacturer or dealer that violates
8 section 221103(a)(1)(C)(i) of this title shall be subject to a
9 civil penalty of not more than \$2,500.

10 (B) CLAUSE (ii).—Any person that violates section
11 221103(a)(1)(C)(ii) of this title shall be subject to a civil penalty
12 of not more than \$2,500.

13 (4) SEPARATE OFFENSES.—

14 (A) MOTOR VEHICLES AND MOTOR VEHICLE ENGINES.—Any
15 such violation of subparagraph (A), (C)(i), or (D) of section
16 221103(a)(1) of this title shall constitute a separate offense with
17 respect to each motor vehicle or motor vehicle engine.

18 (B) PARTS AND COMPONENTS.—Any such violation of section
19 221103(a)(1)(C)(ii) of this title shall constitute a separate offense
20 with respect to each part or component.

21 (b) CIVIL ACTIONS.—

22 (1) IN GENERAL.—The Administrator may commence a civil action
23 to assess and recover any civil penalty under subsection (a) or section
24 221111(s) or 221113(e) of this title.

25 (2) PLACE FOR ACTION.—Any action under this subsection may be
26 brought in the United States district court for the district in which the
27 violation is alleged to have occurred or in which the defendant resides
28 or has its principal place of business, and the court shall have jurisdic-
29 tion to assess a civil penalty.

30 (3) CONSIDERATIONS.—In determining the amount of any civil pen-
31 alty to be assessed under this subsection, the court shall take into ac-
32 count—

33 (A) the gravity of the violation;

34 (B) the economic benefit or savings (if any) resulting from the
35 violation;

36 (C) the size of the violator's business;

37 (D) the violator's history of compliance with this subdivision;

38 (E) action taken to remedy the violation;

39 (F) the effect of the penalty on the violator's ability to continue
40 in business; and

41 (G) such other matters as justice may require.

1 (4) SUBPOENAS.—In any action under this subsection, a subpoena
2 for a witness who is required to attend a district court in any judicial
3 district may run into any other judicial district.

4 (e) ADMINISTRATIVE ASSESSMENT OF CERTAIN PENALTIES.—

5 (1) ADMINISTRATIVE PENALTY AUTHORITY.—

6 (A) IN GENERAL.—In lieu of commencing a civil action under
7 subsection (b), the Administrator may assess any civil penalty pre-
8 scribed in subsection (a) or section 221111(s) or 221113(e) of this
9 title, except that the maximum amount of penalty sought against
10 each violator in a penalty assessment proceeding shall not exceed
11 \$200,000, unless the Administrator and the Attorney General
12 jointly determine that a matter involving a larger penalty amount
13 is appropriate for administrative penalty assessment. Any such de-
14 termination by the Administrator and the Attorney General shall
15 not be subject to judicial review.

16 (B) PROCEDURE.—Assessment of a civil penalty under this sub-
17 section shall be by an order made on the record after opportunity
18 for a hearing in accordance with sections 554 and 556 of title 5.
19 The Administrator shall issue reasonable rules for discovery and
20 other procedures for hearings under this paragraph. Before issu-
21 ing such an order, the Administrator shall give written notice to
22 the person to be assessed an administrative penalty of the Admin-
23 istrator's proposal to issue the order and provide the person an
24 opportunity to request a hearing on the order, within 30 days of
25 the date the notice is received by the person.

26 (C) COMPROMISE OR REMISSION.—The Administrator may com-
27 promise, or remit, with or without conditions, any administrative
28 penalty that may be imposed under this section.

29 (2) CONSIDERATIONS.—In determining the amount of any civil pen-
30 alty assessed under this subsection, the Administrator shall take into
31 account the factors listed in subsection (b)(3).

32 (3) EFFECT OF ADMINISTRATOR'S ACTION.—

33 (A) ENFORCEMENT AUTHORITY.—Action by the Administrator
34 under this subsection shall not affect or limit the Administrator's
35 authority to enforce any provision of this division, except that any
36 violation—

37 (i) with respect to which the Administrator has commenced
38 and is diligently prosecuting an action under this subsection;
39 or

1 (ii) for which the Administrator has issued a final order
2 not subject to further judicial review and the violator has paid
3 a penalty assessment under this subsection;
4 shall not be the subject of civil penalty action under subsection
5 (b).

6 (B) OBLIGATION TO COMPLY.—No action by the Administrator
7 under this subsection shall affect any person's obligation to comply
8 with any section of this division.

9 (4) FINALITY OF ORDER.—An order issued under this subsection
10 shall become final 30 days after its issuance unless a petition for judi-
11 cial review is filed under paragraph (5).

12 (5) JUDICIAL REVIEW.—

13 (A) IN GENERAL.—Any person against which a civil penalty is
14 assessed in accordance with this subsection may seek review of the
15 assessment in the United States District Court for the District of
16 Columbia, or for the district in which the violation is alleged to
17 have occurred, in which the person resides, or where such person's
18 principal place of business is located, within the 30-day period be-
19 ginning on the date on which a civil penalty order is issued. The
20 person shall simultaneously send a copy of the filing by certified
21 mail to the Administrator and the Attorney General.

22 (B) RECORD.—The Administrator shall file in the court a cer-
23 tified copy, or certified index, as appropriate, of the record on
24 which the order was issued within 30 days.

25 (C) SCOPE OF REVIEW.—The court shall not set aside or re-
26 mand any order issued in accordance with the requirements of this
27 subsection unless there is not substantial evidence in the record,
28 taken as a whole, to support the finding of a violation or unless
29 the Administrator's assessment of the penalty constitutes an abuse
30 of discretion, and the court shall not impose additional civil pen-
31 alties unless the Administrator's assessment of the penalty con-
32 stitutes an abuse of discretion.

33 (D) CIVIL PENALTIES.—In any proceedings, the United States
34 may seek to recover civil penalties assessed under this section.

35 (6) COLLECTION.—

36 (A) IN GENERAL.—If any person fails to pay an assessment of
37 a civil penalty imposed by the Administrator as provided in this
38 subsection—

39 (i) after the order making the assessment has become final;
40 or

1 (ii) after a court in an action brought under paragraph (5)
2 has entered a final judgment in favor of the Administrator;
3 the Administrator shall request the Attorney General to bring a
4 civil action in an appropriate district court to recover the amount
5 assessed (plus interest at rates established pursuant to section
6 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C.
7 6621(a)(2)) from the date of the final order or the date of the
8 final judgment, as the case may be).

9 (B) SCOPE OF REVIEW.—In such an action, the validity,
10 amount, and appropriateness of the penalty shall not be subject
11 to review.

12 (C) ENFORCEMENT EXPENSES; NONPAYMENT PENALTY.—

13 (i) IN GENERAL.—Any person that fails to pay on a timely
14 basis the amount of an assessment of a civil penalty as de-
15 scribed in subparagraph (A) shall be required to pay, in addi-
16 tion to that amount and interest—

17 (I) the enforcement expenses of the United States, in-
18 cluding attorney's fees and costs for collection proceed-
19 ings; and

20 (II) a quarterly nonpayment penalty for each quarter
21 during which the failure to pay persists.

22 (ii) AMOUNT.—The nonpayment penalty for a quarter shall
23 be in an amount equal to 10 percent of the aggregate amount
24 of the person's penalties and nonpayment penalties that are
25 unpaid as of the beginning of the quarter.

26 **§ 221106. Motor vehicle and motor vehicle engine compli-**
27 **ance testing and certification**

28 (a) TESTING AND ISSUANCE OF CERTIFICATE OF CONFORMITY.—

29 (1) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES SUB-
30 MITTED BY A MANUFACTURER.—

31 (A) IN GENERAL.—The Administrator shall test, or require to
32 be tested in such manner as the Administrator considers appro-
33 priate, any new motor vehicle or new motor vehicle engine submit-
34 ted by a manufacturer to determine whether the vehicle or engine
35 conforms with the regulations prescribed under section 221102 of
36 this title. If the vehicle or engine conforms to the regulations, the
37 Administrator shall issue a certificate of conformity on such terms,
38 and for such period (not in excess of 1 year), as the Administrator
39 may prescribe.

40 (B) PROJECTED SALES NOT EXCEEDING 300.—In the case of
41 any original equipment manufacturer (as defined by the Adminis-

1 trator in regulations promulgated before November 15, 1990) of
2 vehicles or vehicle engines whose projected sales in the United
3 States for any model year (as determined by the Administrator)
4 will not exceed 300, the Administrator shall not require, for pur-
5 poses of determining compliance with regulations under section
6 221102 of this title for the useful life of the vehicle or engine, op-
7 eration of any vehicle or engine manufactured during that model
8 year for more than 5,000 miles or 160 hours, respectively, unless
9 the Administrator, by regulation, prescribes otherwise. The Ad-
10 ministrator shall apply any adjustment factors that the Adminis-
11 trator considers appropriate to ensure that each vehicle or engine
12 will comply during its useful life (as determined under section
13 221102(a)(1)(C) of this title) with the regulations prescribed
14 under section 221102 of this title.

15 (2) EMISSION CONTROL SYSTEMS SUBMITTED BY ANY PERSON.—The
16 Administrator shall test any emission control system incorporated in a
17 motor vehicle or motor vehicle engine submitted to the Administrator
18 by any person to determine whether the system enables the vehicle or
19 engine to conform to the standards required to be prescribed under sec-
20 tion 221102(b) of this title. If the Administrator finds on the basis of
21 such tests that the vehicle or engine conforms to the standards, the Ad-
22 ministrator shall issue a verification of compliance with emission stand-
23 ards for the system when incorporated in vehicles of a class of which
24 the tested vehicle is representative. The Administrator shall inform
25 manufacturers and the National Academy of Sciences, and make avail-
26 able to the public, the results of the tests. Tests under this paragraph
27 shall be conducted under such terms and conditions (including require-
28 ments for preliminary testing by qualified independent laboratories) as
29 the Administrator may prescribe by regulation.

30 (3) CONFORMITY TO REQUIREMENTS.—

31 (A) IN GENERAL.—A certificate of conformity may be issued
32 under this section only if the Administrator determines that the
33 manufacturer (or in the case of a vehicle or engine for import, any
34 person) has established to the satisfaction of the Administrator
35 that any emission control device, system, or element of design in-
36 stalled on, or incorporated in, a vehicle or engine conforms to ap-
37 plicable requirements of section 221102(a)(4) of this title.

38 (B) TESTS.—The Administrator may conduct such tests and
39 may require the manufacturer (or any such person) to conduct
40 such tests and provide such information as are necessary to carry
41 out subparagraph (A). Such requirements shall include a require-

1 ment for prompt reporting of the emission of any unregulated pol-
2 lutant from a system, device, or element of design if the pollutant
3 was not emitted, or was emitted in significantly lesser amounts,
4 from the vehicle or engine without use of the system, device, or
5 element of design.

6 (4) LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS.—The regula-
7 tions promulgated under this subsection shall include test procedures
8 capable of determining whether light-duty vehicles and light-duty
9 trucks, when properly maintained and used, will pass the inspection
10 methods and procedures established under section 221107(e) of this
11 title under conditions reasonably likely to be encountered in the con-
12 duct of inspection and maintenance programs, but which those pro-
13 grams cannot reasonably influence or control. The conditions shall in-
14 clude fuel characteristics, ambient temperature, and short (30 minutes
15 or less) waiting periods before tests are conducted. The Administrator
16 shall not grant a certificate of conformity under this subsection for any
17 vehicle or engine that the Administrator concludes cannot pass the test
18 procedures established under this paragraph.

19 (b) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES BEING
20 MANUFACTURED.—

21 (1) IN GENERAL.—To determine whether new motor vehicles or new
22 motor vehicle engines conform to the regulations with respect to which
23 a certificate of conformity is issued, the Administrator may test the
24 new motor vehicles and new motor vehicle engines. The tests may be
25 conducted by the Administrator directly or, in accordance with condi-
26 tions specified by the Administrator, by the manufacturer of the new
27 motor vehicles or new motor vehicle engines.

28 (2) NONCONFORMITY.—

29 (A) IN GENERAL.—

30 (i) DETERMINATION ON TEST OF SAMPLE OF NEW MOTOR
31 VEHICLES OR NEW MOTOR VEHICLE ENGINES.—If, based on
32 tests conducted under paragraph (1) on a sample of new
33 motor vehicles or new motor vehicle engines covered by a cer-
34 tificate of conformity, the Administrator determines that all
35 or part of the new motor vehicles or new motor vehicle en-
36 gines do not conform with the regulations with respect to
37 which the certificate of conformity was issued and with the
38 requirements of section 221102(a)(4) of this title, the Admin-
39 istrator may suspend or revoke the certificate in whole or in
40 part, and shall so notify the manufacturer. The suspension or
41 revocation shall apply in the case of any new motor vehicles

1 or new motor vehicle engines manufactured after the date of
2 such notification (or manufactured before that date if still in
3 the possession of the manufacturer), and shall apply until
4 such time as the Administrator finds that new motor vehicles
5 and new motor vehicle engines manufactured by the manufac-
6 turer conform to the regulations and requirements. If, during
7 any period of suspension or revocation, the Administrator
8 finds that a new motor vehicle or new motor vehicle engine
9 conforms to the regulations and requirements, the Adminis-
10 trator shall issue a certificate of conformity applicable to the
11 new motor vehicle or new motor vehicle engine.

12 (ii) DETERMINATION ON TEST OF ANY NEW MOTOR VEHI-
13 CLE OR NEW MOTOR VEHICLE ENGINE.—If, based on tests
14 conducted under paragraph (1) on any new vehicle or engine,
15 the Administrator determines that the vehicle or engine does
16 not conform with the regulations with respect to which the
17 certificate of conformity was issued and with the require-
18 ments of section 221102(a)(4) of this title, the Administrator
19 may suspend or revoke the certificate insofar as it applies to
20 the vehicle or engine until such time as the Administrator
21 finds that the vehicle or engine actually conforms with those
22 regulations and requirements, and the Administrator shall so
23 notify the manufacturer.

24 (B) HEARING.—At the request of any manufacturer the Admin-
25 istrator shall grant the manufacturer a hearing as to whether the
26 tests have been properly conducted or any sampling methods have
27 been properly applied, and make a determination on the record
28 with respect to any suspension or revocation under subparagraph
29 (A); but suspension or revocation under subparagraph (A) shall
30 not be stayed by reason of such a hearing.

31 (C) JUDICIAL REVIEW.—

32 (i) IN GENERAL.—In any case of actual controversy as to
33 the validity of any determination under subparagraph (B),
34 the manufacturer may at any time prior to the 60th day after
35 the determination is made file a petition with the United
36 States court of appeals for the circuit in which the manufac-
37 turer resides or has its principal place of business for a judi-
38 cial review of the determination. A copy of the petition shall
39 be forthwith transmitted by the clerk of the court to the Ad-
40 ministrator or other officer designated by the Administrator
41 for that purpose. The Administrator thereupon shall file in

1 the court the record of the proceedings on which the Adminis-
2 trator based the Administrator's determination, as provided
3 in section 2112 of title 28.

4 (ii) ADDITIONAL EVIDENCE.—If the petitioner applies to
5 the court for leave to adduce additional evidence, and shows
6 to the satisfaction of the court that the additional evidence
7 is material and that there were reasonable grounds for the
8 failure to adduce the evidence in the proceeding before the
9 Administrator, the court may order the additional evidence
10 (and evidence in rebuttal thereof) to be taken before the Ad-
11 ministrator, in such manner and on such terms and condi-
12 tions as the court considers proper. The Administrator may
13 modify the Administrator's findings as to the facts, or make
14 new findings, by reason of the additional evidence so taken,
15 and the Administrator shall file the modified or new findings,
16 and the Administrator's recommendation, if any, for the
17 modification or setting aside of the Administrator's original
18 determination, with the return of the additional evidence.

19 (iii) JURISDICTION; RELIEF.—On the filing of the petition
20 under clause (i), the court shall have jurisdiction to review
21 the order in accordance with chapter 7 of title 5 and to grant
22 appropriate relief as provided in that chapter.

23 (e) INSPECTION.—

24 (1) IN GENERAL.—For purposes of enforcement of this section, offi-
25 cers or employees duly designated by the Administrator, on presenting
26 appropriate credentials to the manufacturer or person in charge, may—

27 (A) enter, at reasonable times, any plant or other establishment
28 of a manufacturer, for the purpose of conducting tests of vehicles
29 or engines in the possession of the manufacturer; or

30 (B) inspect, at reasonable times, records, processes, controls,
31 and facilities used by a manufacturer in conducting tests under
32 regulations of the Administrator.

33 (2) PROMPTNESS.—An inspection under paragraph (1) shall be com-
34 menced and completed with reasonable promptness.

35 (d) METHODS AND PROCEDURES FOR MAKING TESTS.—The Adminis-
36 trator shall by regulation establish methods and procedures for making tests
37 under this section.

38 (e) PUBLICATION OF TEST RESULTS.—At the beginning of each model
39 year, the Administrator shall make available to the public the results of the
40 Administrator's tests of any motor vehicle or motor vehicle engine submitted
41 by a manufacturer under subsection (a). The results shall be described in

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1 such a nontechnical manner as will reasonably disclose to prospective ulti-
2 mate purchasers of new motor vehicles and new motor vehicle engines the
3 comparative performance of the vehicles and engines tested in meeting the
4 standards prescribed under section 221101 of this title.

5 (f) HIGH ALTITUDE REGULATIONS.—All light-duty vehicles and engines
6 and all light-duty trucks shall comply with the requirements of section
7 221102 of this title regardless of the altitude at which they are sold.

8 (g) NONCONFORMANCE PENALTY.—

9 (1) IN GENERAL.—In the case of any class or category of heavy-duty
10 vehicles or engines or motorcycles to which a standard promulgated
11 under section 221102(a) of this title applies, except as provided in
12 paragraph (2), a certificate of conformity shall be issued under sub-
13 section (a) and shall not be suspended or revoked under subsection
14 (b)(2) for such vehicles or engines or motorcycles manufactured by a
15 manufacturer notwithstanding the failure of the vehicles or engines or
16 motorcycles to meet that standard if the manufacturer pays a non-
17 conformance penalty as provided under regulations promulgated by the
18 Administrator after notice and opportunity for public hearing.

19 (2) EXCESSIVE DEGREE OF FAILURE.—No certificate of conformity
20 may be issued under paragraph (1) with respect to any class or cat-
21 egory of vehicle or engine if the degree by which the manufacturer fails
22 to meet any standard promulgated under section 221102(a) of this title
23 with respect to that class or category exceeds the percentage deter-
24 mined under regulations promulgated by the Administrator to be prac-
25 ticable. The regulations shall require such testing of vehicles or engines
26 being produced as may be necessary to determine the percentage of the
27 classes or categories of vehicles or engines that are not in compliance
28 with the regulations with respect to which a certificate of conformity
29 is issued.

30 (3) AMOUNT OF NONCONFORMANCE PENALTY.—The regulations pro-
31 mulgated under paragraph (1) shall provide for nonconformance pen-
32 alties in amounts determined under a formula established by the Ad-
33 ministrator. The penalties under the formula—

34 (A) may vary from pollutant to pollutant;

35 (B) may vary by class or category or vehicle or engine;

36 (C) shall take into account the extent to which actual emissions
37 of any air pollutant exceed allowable emissions under the stand-
38 ards promulgated under section 221102 of this title;

39 (D) shall be increased periodically to create incentives for the
40 development of production vehicles or engines that achieve the re-
41 quired degree of emission reduction; and

1 (E) shall remove any competitive disadvantage to manufacturers
2 whose engines or vehicles achieve the required degree of emission
3 reduction (including any such disadvantage arising from the appli-
4 cation of paragraph (4)).

5 (4) WARRANTY; ACTIONS.—In any case in which a certificate of con-
6 formity has been issued under this subsection, any warranty required
7 under section 221107(e)(2)(B) of this title and any action under sec-
8 tion 221107(d) of this title shall be required to be effective only for
9 the emission levels for which the Administrator determines that the cer-
10 tificate was issued and not for the emission levels required under the
11 applicable standard.

12 (5) AUTHORITIES.—The authorities of section 221108(a) of this title
13 shall apply, subject to the conditions of section 221108(b) of this title,
14 for purposes of this subsection.

15 (h) TESTING UNDER CIRCUMSTANCES THAT REFLECT ACTUAL CUR-
16 RENT DRIVING CONDITIONS.—The regulations under subsections (a) and
17 (b) regarding the testing of motor vehicles and motor vehicle engines shall
18 ensure that vehicles are tested under circumstances that reflect the actual
19 current driving conditions under which motor vehicles are used, including
20 conditions relating to fuel, temperature, acceleration, and altitude.

21 **§ 221107. Compliance by vehicles and engines in actual use**

22 (a) DEFINITIONS.—In this section:

23 (1) ONBOARD EMISSION DIAGNOSTIC DEVICE.—

24 (A) IN GENERAL.—The term “onboard emission diagnostic de-
25 vice” means any device installed for the purpose of storing or
26 processing emission-related diagnostic information.

27 (B) EXCLUSIONS.—The term “onboard emission diagnostic de-
28 vice” does not include any part or other system that a device de-
29 scribed in subparagraph (A) monitors except for a specified major
30 emission control component.

31 (2) SPECIFIED MAJOR EMISSION CONTROL COMPONENT.—

32 (A) IN GENERAL.—The term “specified major emission control
33 component” means a catalytic converter, an electronic emission
34 control unit, and an onboard emissions diagnostic device.

35 (B) OTHER DEVICES.—The Administrator may designate any
36 other pollution control device or component as a specified major
37 emission control component if—

38 (i) the device or component was not in general use on vehi-
39 cles and engines manufactured prior to model year 1990; and

40 (ii) the Administrator determines that the retail cost (ex-
41 clusive of installation costs) of the device or component ex-

1 ceeds \$200 (in 1989 dollars), adjusted for inflation or defla-
2 tion as calculated by the Administrator at the time of the de-
3 termination.

4 (3) WARRANTY PERIOD.—

5 (A) NEW LIGHT-DUTY TRUCKS AND NEW LIGHT-DUTY VEHI-
6 CLES AND ENGINES MANUFACTURED IN MODEL YEAR 1995 AND
7 THEREAFTER.—

8 (i) IN GENERAL.—The term “warranty period”, with re-
9 spect to a new light-duty truck or new light-duty vehicle or
10 engine manufactured in model year 1995 or thereafter, means
11 the 1st 2 years or 24,000 miles of use (whichever first oc-
12 curs), except as provided in subparagraph (B).

13 (ii) OTHER VEHICLES AND ENGINES.—The term “warranty
14 period”, with respect to a vehicle or engine other than a vehi-
15 cle or engine described in clause (i), means a period estab-
16 lished by the Administrator by regulation.

17 (B) SPECIFIED MAJOR EMISSION CONTROL COMPONENTS.—The
18 term “warranty period”, with respect to a specified major emission
19 control component of a new light-duty truck or new light-duty ve-
20 hicle or engine manufactured in model year 1995 or thereafter,
21 means the 1st 8 years or 80,000 miles of use (whichever first oc-
22 curs).

23 (b) IN GENERAL.—

24 (1) NEW MOTOR VEHICLE AND NEW MOTOR VEHICLE ENGINE WAR-
25 RANTY.—The manufacturer of each new motor vehicle and new motor
26 vehicle engine shall warrant to the ultimate purchaser and each subse-
27 quent purchaser that the vehicle or engine is—

28 (A) designed, built, and equipped so as to conform at the time
29 of sale with applicable regulations under section 221102 of this
30 title; and

31 (B) free from defects in materials and workmanship that cause
32 such a vehicle or engine to fail to conform with applicable regula-
33 tions for its useful life (as determined under section
34 221102(a)(1)(C) of this title).

35 (2) MOTOR VEHICLE PART OR MOTOR VEHICLE ENGINE PART CER-
36 TIFICATION.—In the case of a motor vehicle part or motor vehicle en-
37 gine part, the manufacturer or rebuilder of the part may certify that
38 use of the part will not result in a failure of the vehicle or engine to
39 comply with emission standards promulgated under section 221102 of
40 this title. Such a certification shall be made only under such regula-
41 tions as the Administrator may promulgate to carry out subsection (c).

1 (3) PAYMENT OF REPLACEMENT COSTS OF PARTS, DEVICES, OR
2 COMPONENTS DESIGNED FOR EMISSION CONTROL.—

3 (A) DEFINITION OF PART, DEVICE, OR COMPONENT OF A
4 LIGHT-DUTY VEHICLE THAT IS DESIGNED FOR EMISSION CON-
5 TROL.—In this paragraph:

6 (i) IN GENERAL.—The term “part, device, or component of
7 a light-duty vehicle that is designed for emission control”
8 means a catalytic converter, thermal reactor, or other compo-
9 nent installed on or in a vehicle for the sole or primary pur-
10 pose of reducing vehicle emissions.

11 (ii) EXCLUSIONS.—The term “part, device, or component
12 of a light-duty vehicle that is designed for emission control”
13 does not include a vehicle component that was in general use
14 prior to model year 1968 and the primary function of which
15 is not related to emission control.

16 (B) PAYMENT BY MANUFACTURER.—The cost of any part, de-
17 vice, or component of a light-duty vehicle that is designed for
18 emission control and that, under the instructions issued pursuant
19 to subsection (d)(4), is scheduled for replacement during the use-
20 ful life of a vehicle to maintain compliance with regulations under
21 section 221102 of this title, the failure of which shall not interfere
22 with the normal performance of the vehicle, and the expected retail
23 price of which, including installation costs, is greater than 2 per-
24 cent of the suggested retail price of the vehicle, shall be borne or
25 reimbursed at the time of replacement by the vehicle manufac-
26 turer, and the replacement shall be provided without cost to an ul-
27 timate purchaser, subsequent purchaser, or dealer.

28 (c) TESTING METHODS AND PROCEDURES.—

29 (1) DETERMINATION.—The Administrator shall take the actions de-
30 scribed in paragraph (2) if the Administrator determines that—

31 (A) there are available testing methods and procedures to ascer-
32 tain whether, when in actual use throughout the warranty period,
33 each vehicle and engine to which regulations under section 221102
34 of this title apply complies with the emission standards of those
35 regulations;

36 (B) those methods and procedures are in accordance with good
37 engineering practices; and

38 (C) those methods and procedures are reasonably capable of
39 being correlated with tests conducted under section 221106(a)(1)
40 of this title.

1 (2) ACTIONS.—If the Administrator makes the determination de-
2 scribed in paragraph (1)—

3 (A) the Administrator shall establish the methods and proce-
4 dures described in paragraph (1) by regulation; and

5 (B) at such time as the Administrator determines that inspec-
6 tion facilities or equipment are available for purposes of carrying
7 out testing methods and procedures established under paragraph
8 (1)(A), the Administrator shall prescribe regulations that require
9 manufacturers to warrant the emission control device or system of
10 each new motor vehicle or new motor vehicle engine to which a
11 regulation under section 221102 of this title applies and that is
12 manufactured in a model year beginning after the Administrator
13 first prescribes warranty regulations under this subparagraph.

14 (3) WARRANTY.—A warranty under the regulations prescribed under
15 paragraph (2)(B)—

16 (A) shall run to the ultimate purchaser and each subsequent
17 purchaser; and

18 (B) shall provide that if—

19 (i) the vehicle or engine is maintained and operated in ac-
20 cordance with instructions under subsection (d)(4);

21 (ii) the vehicle or engine fails to conform at any time dur-
22 ing the warranty period to the regulations prescribed under
23 section 221102 of this title; and

24 (iii) the nonconformity results in the ultimate purchaser (or
25 any subsequent purchaser) of the vehicle or engine having to
26 bear any penalty or other sanction (including the denial of
27 the right to use the vehicle or engine) under Federal or State
28 law;

29 the manufacturer shall remedy the nonconformity under the war-
30 ranty, with the cost to be borne by the manufacturer.

31 (4) NO BASIS FOR INVALIDITY.—A warranty under the regulations
32 prescribed under paragraph (2)(B) shall not be invalid on the basis of
33 any part used in the maintenance or repair of a vehicle or engine if
34 the part was certified as provided under subsection (b)(2).

35 (5) INSTRUCTIONS.—Clause (i) of paragraph (3)(B) shall apply only
36 where the Administrator has made a determination that the instruc-
37 tions concerned conform to the requirements of subsection (d)(4).

38 (d) NONCONFORMING VEHICLES; PLAN FOR REMEDYING NONCONFORM-
39 ITY; INSTRUCTIONS FOR MAINTENANCE AND USE; LABEL OR TAG.—

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1 (1) APPLICABILITY.—This subsection is effective with respect to ve-
2 hicles and engines manufactured during model years beginning more
3 than 60 days after December 31, 1970.

4 (2) NOTICE TO MANUFACTURER; PLAN REQUIREMENT.—

5 (A) IN GENERAL.—If the Administrator determines that a sub-
6 stantial number of any class or category of vehicles or engines, al-
7 though properly maintained and used, do not conform to the regu-
8 lations prescribed under section 221102 of this title, when in ac-
9 tual use throughout their useful life (as determined under section
10 221102(a)(1)(C) of this title), the Administrator shall—

11 (i) immediately notify the manufacturer of the vehicles or
12 engines of the nonconformity; and

13 (ii) require the manufacturer to submit a plan for remedy-
14 ing the nonconformity of the vehicles or engines with respect
15 to which such notification is given.

16 (B) PLAN PROVISIONS.—The plan shall provide that the non-
17 conformity of any such vehicles or engines that are properly used
18 and maintained will be remedied at the expense of the manufac-
19 turer.

20 (C) HEARING.—If the manufacturer disagrees with a deter-
21 mination of nonconformity and so advises the Administrator, the
22 Administrator shall afford the manufacturer and other interested
23 persons an opportunity to present their views and evidence in sup-
24 port thereof at a public hearing.

25 (D) ORDER.—Unless, as a result of a hearing, the Adminis-
26 trator withdraws the determination of nonconformity, the Adminis-
27 trator shall, within 60 days after the completion of the hearing,
28 order the manufacturer to provide prompt notification of the non-
29 conformity in accordance with paragraph (3).

30 (3) NOTIFICATION OF DEALERS, ULTIMATE PURCHASERS, AND SUB-
31 SEQUENT PURCHASERS.—Any notification required by paragraph (2)
32 with respect to any class or category of vehicles or engines shall be
33 given to dealers, ultimate purchasers, and subsequent purchasers (if
34 known) in such manner and containing such information as the Admin-
35 istrator may by regulation require.

36 (4) INSTRUCTIONS.—

37 (A) IN GENERAL.—A manufacturer shall furnish with each new
38 motor vehicle or motor vehicle engine written instructions for the
39 proper maintenance and use of the vehicle or engine by the ulti-
40 mate purchaser, and the instructions shall correspond to regula-
41 tions that the Administrator shall promulgate. The manufacturer

1 shall provide in boldface type on the 1st page of the written main-
2 tenance instructions notice that maintenance, replacement, or re-
3 pair of the emission control devices and systems may be performed
4 by any automotive repair establishment or individual using any
5 automotive part that has been certified as provided in subsection
6 (b)(2).

7 (B) NO CONDITIONS.—

8 (i) IN GENERAL.—The instruction under subparagraph (A)
9 shall not include—

10 (I) any condition on the ultimate purchaser's using, in
11 connection with the vehicle or engine, any component or
12 service (other than a component or service provided with-
13 out charge under the terms of the purchase agreement)
14 that is identified by brand, trade, or corporate name; or

15 (II) any condition directly or indirectly distinguishing
16 between—

17 (aa) service performed by the franchised dealers
18 of the manufacturer or any other service establish-
19 ments with which the manufacturer has a commer-
20 cial relationship; and

21 (bb) service performed by independent automotive
22 repair facilities with which the manufacturer has no
23 commercial relationship.

24 (ii) WAIVER.—The prohibition of this subparagraph may be
25 waived by the Administrator if—

26 (I) the manufacturer satisfies the Administrator that
27 the vehicle or engine will function properly only if the
28 component or service identified by brand, trade, or cor-
29 porate name is used in connection with the vehicle or en-
30 gine; and

31 (II) the Administrator finds that such a waiver is in
32 the public interest.

33 (C) LABEL OR TAG.—The manufacturer shall indicate by means
34 of a label or tag permanently affixed to the vehicle or engine that
35 the vehicle or engine is covered by a certificate of conformity is-
36 sued for the purpose of ensuring achievement of emission stand-
37 ards prescribed under section 221102 of this title. The label or tag
38 shall contain such other information relating to control of motor
39 vehicle emissions as the Administrator shall prescribe by regula-
40 tion.

41 (5) IN-USE STANDARDS.—

1 (A) LIGHT-DUTY TRUCKS OF UP TO 6,000 POUNDS.—For pur-
2 poses of applying this subsection, in the case of 100 percent of
3 each manufacturer's sales volume of light-duty trucks of up to
4 6,000 pounds gross vehicle weight rating and light-duty vehicles,
5 the standards for nonmethane hydrocarbons, carbon monoxide,
6 and nitrogen oxides shall be as provided in table G in section
7 221102(f)(1) of this title, except that in applying the standards
8 set forth in table G for purposes of determining compliance with
9 this subsection, the applicable useful life shall be—

10 (i) 5 years or 50,000 miles (or the equivalent), whichever
11 first occurs, in the case of standards applicable for purposes
12 of certification at 50,000 miles; and

13 (ii) 10 years or 100,000 miles (or the equivalent), which-
14 ever first occurs, in the case of standards applicable for pur-
15 poses of certification at 100,000 miles;

16 except that no testing shall be done beyond 7 years or 75,000
17 miles (or the equivalent), whichever first occurs.

18 (B) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—For
19 purposes of applying this subsection, in the case of 100 percent
20 of each manufacturer's sales volume of light-duty trucks of more
21 than 6,000 pounds gross vehicle weight rating, the standards for
22 nonmethane hydrocarbons, carbon monoxide, and nitrogen oxides
23 shall be as provided in table H in section 221102(g) of this title,
24 except that in applying the standards set forth in table H for pur-
25 poses of determining compliance with this subsection, the applica-
26 ble useful life shall be—

27 (i) 5 years or 50,000 miles (or the equivalent), whichever
28 first occurs, in the case of standards applicable for purposes
29 of certification at 50,000 miles; and

30 (ii) 11 years or 120,000 miles (or the equivalent), which-
31 ever first occurs, in the case of standards applicable for pur-
32 poses of certification at 120,000 miles;

33 except that no testing shall be done beyond 7 years or 90,000
34 miles (or the equivalent), whichever first occurs.

35 (6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—

36 (A) DIESEL-FUELED LIGHT-DUTY TRUCKS OF UP TO 6,000
37 POUNDS.—In the case of diesel-fueled light-duty trucks up to
38 6,000 pounds gross vehicle weight rating and light-duty vehicles,
39 the useful life for purposes of determining in-use compliance with
40 the standards under section 221102(f) of this title for nitrogen ox-
41 ides shall be a period of 10 years or 100,000 miles (or the equiva-

1 lent), whichever first occurs, in the case of standards applicable
2 for purposes of certification at 100,000 miles, except that testing
3 shall not be done for a period beyond 7 years or 75,000 miles (or
4 the equivalent), whichever first occurs.

5 (B) DIESEL-FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000
6 POUNDS.—In the case of diesel-fueled light-duty trucks of 6,000
7 pounds gross vehicle weight rating or more, the useful life for pur-
8 poses of determining in-use compliance with the standards under
9 section 221102(g) of this title for nitrogen oxides shall be a period
10 of 11 years or 120,000 miles (or the equivalent), whichever first
11 occurs, in the case of standards applicable for purposes of certifi-
12 cation at 120,000 miles, except that testing shall not be done for
13 a period beyond 7 years or 90,000 miles (or the equivalent) which-
14 ever first occurs.

15 (e) DEALER COSTS BORNE BY MANUFACTURER.—Any cost obligation of
16 any dealer incurred as a result of any requirement imposed by subsection
17 (b), (c), or (d) shall be borne by the manufacturer. The transfer of any such
18 cost obligation from a manufacturer to any dealer through franchise or
19 other agreement is prohibited.

20 (f) COST STATEMENT.—If a manufacturer includes in any advertisement
21 a statement respecting the cost or value of emission control devices or sys-
22 tems, the manufacturer shall set forth in the statement the cost or value
23 attributed to those devices or systems by the Secretary of Labor (through
24 the Bureau of Labor Statistics). The Secretary of Labor, and the Sec-
25 retary's representatives, shall have the same access for this purpose to the
26 records of a manufacturer as the Comptroller General has to those of a re-
27 cipient of assistance for purposes of section 209105 of this title.

28 (g) INSPECTION AFTER SALE TO ULTIMATE PURCHASER.—Any inspec-
29 tion of a motor vehicle or a motor vehicle engine for purposes of subsection
30 (d)(2), after its sale to an ultimate purchaser, shall be made only if the
31 owner of the vehicle or engine voluntarily permits such an inspection to be
32 made, except as may be provided by any State or local inspection program.

33 (h) REPLACEMENT AND MAINTENANCE COSTS BORNE BY OWNER.—For
34 the purposes of this section, the owner of any motor vehicle or motor vehicle
35 engine warranted under this section is responsible in the proper mainte-
36 nance of the vehicle or engine to replace and to maintain, at the owner's
37 expense at any service establishment or facility of the owner's choosing,
38 such items as spark plugs, points, condensers, and any other part, item, or
39 device related to emission control (but not designed for emission control
40 under the terms of subsection (b)(3)(A)), unless the part, item, or device
41 is covered by any warranty not mandated by this division.

1 (i) REMEDIATION OF NONCONFORMITY; TESTING.—

2 (1) REMEDIATION OF NONCONFORMITY.—If at any time during the
3 period for which the warranty applies under subsection (c), a motor ve-
4 hicle fails to conform to the applicable regulations under section
5 221102 of this title as determined under subsection (c), the non-
6 conformity shall be remedied by the manufacturer at the cost of the
7 manufacturer pursuant to the warranty as provided in subparagraph
8 (B) of subsection (c)(3) (without regard to clause (iii) of that subpara-
9 graph).

10 (2) TESTING.—Nothing in section 221109(a) of this title shall be
11 construed to prohibit a State from testing, or requiring testing of, a
12 motor vehicle after the date of sale of the vehicle to an ultimate pur-
13 chaser (except that no new motor vehicle manufacturer or dealer may
14 be required to conduct testing under this paragraph).

15 (j) EFFECT OF DIVISION.—Nothing in this division shall be construed to
16 provide that any part other than a part described in subsection (a)(1) shall
17 be required to be warranted under this division for the period of 8 years
18 or 80,000 miles described in subsection (a)(3)(B).

19 **§ 221108. Information collection**

20 (a) MANUFACTURER'S RESPONSIBILITY.—Every manufacturer of new
21 motor vehicles or new motor vehicle engines, every manufacturer of new
22 motor vehicle or engine parts or components, and every other person subject
23 to the requirements of this chapter or chapter 225 shall—

24 (1) establish and maintain records, perform tests where such testing
25 is not otherwise reasonably available under this chapter and chapter
26 225 (including fees for testing), make reports, and provide information
27 that the Administrator may reasonably require to determine whether
28 the manufacturer or other person has acted or is acting in compliance
29 with this chapter and chapter 225 (including regulations thereunder,
30 or to otherwise carry out this chapter and chapter 225; and

31 (2) on request of an officer or employee duly designated by the Ad-
32 ministrator, permit the officer or employee at reasonable times to have
33 access to and copy such records.

34 (b) ENFORCEMENT AUTHORITY.—For the purposes of enforcement of
35 this section, officers or employees duly designated by the Administrator on
36 presenting appropriate credentials may—

37 (1) enter, at reasonable times, any establishment of a manufacturer,
38 or of any person that a manufacturer engages to perform any activity
39 required by subsection (a), for the purposes of inspecting or observing
40 any activity conducted pursuant to subsection (a); and

1 (2) inspect records, processes, controls, and facilities used in per-
2 forming any activity required by subsection (a), by the manufacturer
3 or by any person that the manufacturer engages to perform any such
4 activity.

5 (c) AVAILABILITY TO PUBLIC; TRADE SECRETS.—Any records, reports,
6 or information obtained under this chapter or chapter 225 shall be available
7 to the public, except that on a showing satisfactory to the Administrator
8 by any person that records, reports, or information, or a particular portion
9 thereof (other than emission data), to which the Administrator has access
10 under this section, if made public, would divulge methods or processes enti-
11 tled to protection as trade secrets of that person, the Administrator shall
12 consider the record, report, or information or particular portion thereof con-
13 fidential in accordance with section 1905 of title 18. Any authorized rep-
14 resentative of the Administrator shall be considered an employee of the
15 United States for purposes of section 1905 of title 18.

16 (d) EFFECT OF SECTION.—Nothing in this section prohibits the Adminis-
17 trator or authorized representative of the Administrator from disclosing
18 records, reports, or information to other officers, employees, or authorized
19 representatives of the United States concerned with carrying out this divi-
20 sion or when relevant in any proceeding under this division. Nothing in this
21 section authorizes the withholding of information by the Administrator or
22 any officer or employee under the Administrator's control from the duly au-
23 thorized committees of Congress.

24 **§ 221109. State standards**

25 (a) PROHIBITIONS.—

26 (1) STANDARDS.—No State or any political subdivision thereof shall
27 adopt or attempt to enforce any standard relating to the control of
28 emissions from new motor vehicles or new motor vehicle engines subject
29 to this chapter.

30 (2) APPROVAL.—No State shall require certification, inspection, or
31 any other approval relating to the control of emissions from any new
32 motor vehicle or new motor vehicle engine as a condition precedent to
33 the initial retail sale, titling (if any), or registration of the motor vehi-
34 cle, motor vehicle engine, or equipment.

35 (b) WAIVER.—

36 (1) IN GENERAL.—The Administrator shall, after notice and oppor-
37 tunity for public hearing, waive application of this section to any State
38 that adopted standards (other than crankcase emission standards) for
39 the control of emissions from new motor vehicles or new motor vehicle
40 engines prior to March 30, 1966, if the State determines that the State

1 standards will be, in the aggregate, at least as protective of public
2 health and welfare as applicable Federal standards.

3 (2) LIMITATION.—No such waiver shall be granted if the Adminis-
4 trator finds that—

5 (A) the determination of the State is arbitrary and capricious;

6 (B) the State does not need such State standards to meet com-
7 pelling and extraordinary conditions; or

8 (C) the State standards and accompanying enforcement proce-
9 dures are not consistent with section 221102(a) of this title.

10 (3) PROTECTIVENESS.—If each State standard is at least as strin-
11 gent as the comparable applicable Federal standard, the State standard
12 shall be deemed to be at least as protective of health and welfare as
13 the Federal standards for purposes of paragraphs (1) and (2).

14 (4) TREATMENT AS COMPLIANCE WITH FEDERAL STANDARDS.—In
15 the case of any new motor vehicle or new motor vehicle engine to which
16 State standards apply pursuant to a waiver granted under paragraph
17 (1), compliance with the State standards shall be treated as compliance
18 with applicable Federal standards for purposes of this subdivision.

19 (e) CERTIFICATION OF VEHICLE PARTS OR ENGINE PARTS.—

20 (1) IN GENERAL.—Whenever a regulation with respect to any motor
21 vehicle part or motor vehicle engine part is in effect under section
22 221107(b)(2) of this title, no State or political subdivision thereof shall
23 adopt or attempt to enforce any standard or any requirement of certifi-
24 cation, inspection, or approval that relates to motor vehicle emissions
25 and is applicable to the same aspect of that part.

26 (2) APPLICABILITY.—Paragraph (1) shall not apply in the case of
27 a State with respect to which a waiver is in effect under subsection (b).

28 (d) CONTROL, REGULATION, OR RESTRICTIONS ON REGISTERED OR LI-
29 CENSED MOTOR VEHICLES.—Nothing in this chapter precludes or denies to
30 any State or political subdivision thereof the right otherwise to control, reg-
31 ulate, or restrict the use, operation, or movement of registered or licensed
32 motor vehicles.

33 (e) NONROAD ENGINES OR VEHICLES.—

34 (1) PROHIBITION OF CERTAIN STATE STANDARDS.—

35 (A) IN GENERAL.—No State or any political subdivision thereof
36 shall adopt or attempt to enforce any standard or other require-
37 ment relating to the control of emissions from either of the follow-
38 ing new nonroad engines or nonroad vehicles subject to regulation
39 under this division:

40 (i) New engines that—

1 (I) are used in construction equipment or vehicles or
2 used in farm equipment or vehicles; and

3 (II) are smaller than 175 horsepower.

4 (ii) New locomotives or new engines used in locomotives.

5 (B) NO WAIVER.—Subsection (b) shall not apply for purposes
6 of this paragraph.

7 (2) OTHER NONROAD ENGINES OR VEHICLES.—

8 (A) CALIFORNIA.—In the case of any nonroad vehicles or en-
9 gines other than those described to in clause (i) or (ii) of para-
10 graph (1)(A), the Administrator shall, after notice and opportunity
11 for public hearing, authorize California to adopt and enforce
12 standards and other requirements relating to the control of emis-
13 sions from such vehicles or engines if California determines that
14 California standards will be, in the aggregate, at least as protec-
15 tive of public health and welfare as applicable Federal standards.
16 No such authorization shall be granted if the Administrator finds
17 that—

18 (i) the determination of California is arbitrary and capri-
19 cious;

20 (ii) California does not need such California standards to
21 meet compelling and extraordinary conditions; or

22 (iii) California standards and accompanying enforcement
23 procedures are not consistent with this section.

24 (B) OTHER STATES.—Any State other than California that has
25 plan provisions approved under chapter 215 may adopt and en-
26 force, after notice to the Administrator, for any period, standards
27 relating to control of emissions from nonroad vehicles or engines
28 (other than those described in clause (i) or (ii) of paragraph
29 (1)(A)) and take such other actions as are described in subpara-
30 graph (A) of this paragraph respecting such vehicles or engines
31 if—

32 (i) the standards and implementation and enforcement are
33 identical, for the period concerned, to the California stand-
34 ards authorized by the Administrator under subparagraph
35 (A); and

36 (ii) California and that State adopt the standards at least
37 2 years before commencement of the period for which the
38 standards take effect.

39 (3) REGULATIONS.—The Administrator shall issue regulations to im-
40 plement this subsection.

1 **§ 221110. State grants**

2 (a) IN GENERAL.—The Administrator may make grants to appropriate
3 State agencies in an amount up to $\frac{2}{3}$ of the cost of developing and main-
4 taining effective vehicle emission devices and systems inspection and emis-
5 sion testing and control programs.

6 (b) LIMITATIONS.—No grant under subsection (a) shall be made—

7 (1) for any part of any State vehicle inspection program that does
8 not directly relate to the cost of the air pollution control aspects of
9 such a program;

10 (2) unless the Secretary of Transportation has certified to the Ad-
11 ministrator that the program is consistent with any highway safety pro-
12 gram developed pursuant to section 402 of title 23; and

13 (3) unless the program includes provisions designed to ensure that
14 emission control devices and systems on vehicles in actual use have not
15 been discontinued or rendered inoperative.

16 (c) REIMBURSEMENT.—Grants may be made under this section by way
17 of reimbursement in any case in which amounts have been expended by the
18 State before the date on which any such grant was made.

19 **§ 221111. Regulation of fuels**

20 (a) DEFINITIONS.—In this section:

21 (1) MANUFACTURE.—The term “manufacture” includes importation.

22 (2) MANUFACTURER.—The term “manufacturer” includes an im-
23 porter.

24 (b) AUTHORITY OF ADMINISTRATOR TO REGULATE.—The Administrator
25 may by regulation designate any fuel or fuel additive (including any fuel or
26 fuel additive used exclusively in nonroad engines or nonroad vehicles) and,
27 after such date or dates as the Administrator may prescribe, no manufac-
28 turer or processor of any such fuel or additive may sell, offer for sale, or
29 introduce into commerce that fuel or additive unless the Administrator has
30 registered the fuel or additive in accordance with subsection (c).

31 (c) REGISTRATION REQUIREMENT.—

32 (1) NOTIFICATION TO THE ADMINISTRATOR.—For the purpose of
33 registration of fuels and fuel additives, the Administrator shall—

34 (A) require the manufacturer of any fuel to notify the Adminis-
35 trator of—

36 (i) the commercial identifying name and manufacturer of
37 any additive contained in the fuel;

38 (ii) the range of concentration of any additive in the fuel;
39 and

40 (iii) the purpose-in-use of any such additive; and

1 (B) require the manufacturer of any additive to notify the Ad-
2 ministrator as to the chemical composition of the additive.

3 (2) TESTS; FURNISHING OF INFORMATION.—

4 (A) IN GENERAL.—For the purpose of registration of fuels and
5 fuel additives, the Administrator shall, on a regular basis, require
6 the manufacturer of any fuel or fuel additive—

7 (i) to conduct tests to determine potential public health and
8 environmental effects of the fuel or additive (including car-
9 cinogenic, teratogenic, or mutagenic effects); and

10 (ii) to furnish—

11 (I) the description of any analytical technique that can
12 be used to detect and measure any additive in the fuel;

13 (II) the recommended range of concentration of the
14 additive;

15 (III) the recommended purpose-in-use of the additive;
16 and

17 (IV) such other information as is reasonable and nec-
18 essary to determine—

19 (aa) the emissions resulting from the use of the
20 fuel or additive contained in the fuel;

21 (bb) the effect of the fuel or additive on the emis-
22 sion control performance of any vehicle, vehicle en-
23 gine, nonroad engine, or nonroad vehicle; or

24 (cc) the extent to which such emissions affect the
25 public health or welfare.

26 (B) TEST PROCEDURES AND PROTOCOLS; NO CONFIDENTIAL-
27 ITY.—Tests under subparagraph (A)(i) shall be conducted in con-
28 formity with test procedures and protocols established by the Ad-
29 ministrator. The result of such tests shall not be considered con-
30 fidential.

31 (3) REGISTRATION.—On compliance with this subsection, including
32 assurances that the Administrator will receive changes in the informa-
33 tion required, the Administrator shall register the fuel or fuel additive.

34 (d) CONTROL OR PROHIBITION OF FUELS AND FUEL ADDITIVES.—

35 (1) IN GENERAL.—The Administrator may, from time to time on the
36 basis of information obtained under subsection (c) or other information
37 available to the Administrator, by regulation, control or prohibit the
38 manufacture, introduction into commerce, offering for sale, or sale of
39 any fuel or fuel additive for use in a motor vehicle, motor vehicle en-
40 gine, or nonroad engine or nonroad vehicle if—

1 (A) in the judgment of the Administrator, any fuel or fuel addi-
2 tive or any emission product of the fuel or fuel additive causes,
3 or contributes to, air pollution or water pollution (including any
4 degradation in the quality of groundwater) that may reasonably be
5 anticipated to endanger the public health or welfare; or

6 (B) emission products of the fuel or fuel additive will impair to
7 a significant degree the performance of any emission control device
8 or system that is in general use, or that the Administrator finds
9 has been developed to a point where in a reasonable time it would
10 be in general use were such a regulation to be promulgated.

11 (2) REQUIREMENTS FOR CONTROL OR PROHIBITION.—

12 (A) CAUSATION OF OR CONTRIBUTION TO AIR POLLUTION.—No
13 fuel, class of fuels, or fuel additive may be controlled or prohibited
14 by the Administrator under paragraph (1)(A) except after consid-
15 eration of all relevant medical and scientific evidence available to
16 the Administrator, including consideration of other technologically
17 or economically feasible means of achieving emission standards
18 under section 221102 of this title.

19 (B) IMPAIRMENT OF PERFORMANCE OF EMISSION CONTROL DE-
20 VICE OR SYSTEM.—

21 (i) IN GENERAL.—No fuel or fuel additive may be con-
22 trolled or prohibited by the Administrator under paragraph
23 (1)(B) except after consideration of available scientific and
24 economic data, including a cost benefit analysis comparing—

25 (I) emission control devices or systems that are or will
26 be in general use and require the proposed control or
27 prohibition; with

28 (II) emission control devices or systems that are or
29 will be in general use and do not require the proposed
30 control or prohibition.

31 (ii) HEARING; FINDINGS.—On request of a manufacturer of
32 motor vehicles, motor vehicle engines, fuels, or fuel additives
33 that is submitted within 10 days of notice of proposed rule-
34 making, the Administrator shall hold a public hearing and
35 publish findings with respect to any matter that the Adminis-
36 trator is required to consider under this subparagraph. Such
37 findings shall be published at the time of promulgation of
38 final regulations.

39 (C) OTHER FUELS AND FUEL ADDITIVES.—No fuel or fuel addi-
40 tive may be prohibited by the Administrator under paragraph (1)
41 unless the Administrator finds, and publishes the finding, that in

1 the Administrator's judgment, such a prohibition will not cause
2 the use of any other fuel or fuel additive that will produce emis-
3 sions that will endanger the public health or welfare to the same
4 degree as or a greater degree than the use of the fuel or fuel addi-
5 tive proposed to be prohibited.

6 (3) EVIDENCE AND DATA.—

7 (A) IN GENERAL.—For the purpose of obtaining evidence and
8 data to carry out paragraph (2), the Administrator may require
9 the manufacturer of any motor vehicle or motor vehicle engine to
10 furnish any information that has been developed concerning the
11 emissions from motor vehicles resulting from the use of any fuel
12 or fuel additive, or the effect of such use on the performance of
13 any emission control device or system.

14 (B) SUBPOENAS.—In obtaining information under subpara-
15 graph (A), section 203102(a) of this title shall be applicable.

16 (4) LIMITATION ON STATE CONTROL OR PROHIBITION.—

17 (A) IN GENERAL.—Except as otherwise provided in subpara-
18 graph (B) or (C), no State (or political subdivision thereof) may
19 prescribe or attempt to enforce, for purposes of motor vehicle
20 emission control, any control or prohibition respecting any char-
21 acteristic or component of a fuel or fuel additive in a motor vehicle
22 or motor vehicle engine—

23 (i) if the Administrator has found that no control or prohi-
24 bition of the characteristic or component of a fuel or fuel ad-
25 ditive under paragraph (1) is necessary and has published the
26 finding in the Federal Register; or

27 (ii) if the Administrator has prescribed under paragraph
28 (1) a control or prohibition applicable to the characteristic or
29 component of a fuel or fuel additive, unless State prohibition
30 or control is identical to the prohibition or control prescribed
31 by the Administrator.

32 (B) STATES WITH WAIVERS.—Any State for which application
33 of section 221109(a) of this title has at any time been waived
34 under section 221109 of this title may at any time prescribe and
35 enforce, for the purpose of motor vehicle emission control, a con-
36 trol or prohibition respecting any fuel or fuel additive.

37 (C) IMPLEMENTATION PLANS.—

38 (i) IN GENERAL.—A State may prescribe and enforce, for
39 purposes of motor vehicle emission control, a control or prohi-
40 bition respecting the use of a fuel or fuel additive in a motor
41 vehicle or motor vehicle engine if an applicable implementa-

1 tion plan for the State under section 211110 of this title so
2 provides. The Administrator may approve such a provision in
3 an implementation plan, or promulgate an implementation
4 plan containing such a provision, only if the Administrator
5 finds that the State control or prohibition is necessary to
6 achieve the primary or secondary NAAQS that the plan im-
7 plements. The Administrator may find that a State control or
8 prohibition is necessary to achieve that standard if no other
9 measures that would bring about timely attainment exist, or
10 if other measures exist and are technically possible to imple-
11 ment, but are unreasonable or impracticable. The Adminis-
12 trator may make a finding of necessity under this subpara-
13 graph even if the plan for the area does not contain an ap-
14 proved demonstration of timely attainment.

15 (ii) TEMPORARY WAIVER.—The Administrator may tempo-
16 rarily waive a control or prohibition respecting the use of a
17 fuel or fuel additive required or regulated by the Adminis-
18 trator pursuant to this subsection or subsection (h), (i), (m),
19 or (n) or prescribed in an applicable implementation plan
20 under section 211110 of this title approved by the Adminis-
21 trator under clause (i) if, after consultation with, and concu-
22 rence by, the Secretary of Energy, the Administrator deter-
23 mines that—

24 (I) extreme and unusual fuel or fuel additive supply
25 circumstances exist in a State or region of the Nation
26 that prevent the distribution of an adequate supply of
27 the fuel or fuel additive to consumers;

28 (II) the extreme and unusual fuel and fuel additive
29 supply circumstances are the result of a natural disaster,
30 an Act of God, a pipeline or refinery equipment failure,
31 or another event that could not reasonably have been
32 foreseen or prevented and not the lack of prudent plan-
33 ning on the part of the suppliers of the fuel or fuel addi-
34 tive to the State or region; and

35 (III) it is in the public interest to grant the waiver,
36 such as when a waiver is necessary to meet projected
37 temporary shortfalls in the supply of the fuel or fuel ad-
38 ditive in a State or region of the Nation that cannot
39 otherwise be compensated for.

40 (iii) ADDITIONAL REQUIREMENTS.—If the Administrator
41 makes the determinations described in clause (ii), a tem-

1 porary extreme and unusual fuel and fuel additive supply cir-
2 cumstances waiver shall be permitted only if—

3 (I) the waiver applies to the smallest geographic area
4 necessary to address the extreme and unusual fuel and
5 fuel additive supply circumstances;

6 (II) the waiver is effective for a period of 20 calendar
7 days or, if the Administrator determines that a shorter
8 waiver period is adequate, for the shortest practicable
9 time period necessary to permit the correction of the ex-
10 tremes and unusual fuel and fuel additive supply circum-
11 stances and to mitigate impact on air quality;

12 (III) the waiver permits a transitional period, the
13 exact duration of which shall be determined by the Ad-
14 ministrator (but which shall be for the shortest prac-
15 ticable period), after the termination of the temporary
16 waiver to permit wholesalers and retailers to blend down
17 their wholesale and retail inventory;

18 (IV) the waiver applies to all persons in the motor fuel
19 distribution system (as defined by the Administrator
20 through rulemaking); and

21 (V) the Administrator has given public notice to all
22 parties in the motor fuel distribution system, and local
23 and State regulators, in the State or region to be covered
24 by the waiver.

25 (iv) REGULATIONS.—The Administrator shall promulgate
26 regulations to implement clauses (ii) and (iii).

27 (v) EFFECT OF SUBPARAGRAPH.—Nothing in this subpara-
28 graph shall—

29 (I) limit or otherwise affect the application of any
30 other waiver authority of the Administrator pursuant to
31 this section (including a regulation promulgated pursu-
32 ant to this section); or

33 (II) subject any State or person to an enforcement ac-
34 tion, penalties, or liability solely arising from actions
35 taken pursuant to the issuance of a waiver under this
36 subparagraph.

37 (vi) LIMITATION.—

38 (I) IN GENERAL.—The Administrator shall have no
39 authority, when considering a State implementation plan
40 or a State implementation plan revision, to approve
41 under this paragraph any fuel included in the plan or re-

1 vision if the effect of the approval would be to increase
2 the total number of fuels approved under this paragraph
3 as of September 1, 2004, in all State implementation
4 plans.

5 (II) LIST OF APPROVED FUELS.—The Administrator,
6 in consultation with the Secretary of Energy, shall deter-
7 mine the total number of fuels approved under this para-
8 graph as of September 1, 2004, in all State implementa-
9 tion plans and shall publish a list of such fuels, including
10 the States and Petroleum Administration for Defense
11 Districts in which the fuels are used, in the Federal Reg-
12 ister for public review and comment.

13 (III) REMOVAL FROM LIST.—The Administrator shall
14 remove a fuel from the list published under subclause
15 (II) if a fuel ceases to be included in a State implemen-
16 tation plan or if a fuel in a State implementation plan
17 is identical to a Federal fuel formulation implemented by
18 the Administrator, but the Administrator shall not re-
19 duce the total number of fuels authorized under the list
20 published under subclause (II).

21 (IV) NEW FUELS.—

22 (aa) IN GENERAL.—Subclause (I) shall not limit
23 the Administrator's authority to approve a control
24 or prohibition respecting any new fuel under this
25 paragraph in a State implementation plan or revi-
26 sion to a State implementation plan if the new
27 fuel—

28 (AA) completely replaces a fuel on the list
29 published under subclause (II); or

30 (BB) does not increase the total number of
31 fuels on the list published under subclause (II)
32 as of September 1, 2004.

33 (bb) LOWER NUMBER OF FUELS ON LIST.—If the
34 total number of fuels on the list published under
35 subclause (II) at the time of the Administrator's
36 consideration of a control or prohibition respecting
37 a new fuel is lower than the total number of fuels
38 on such list as of September 1, 2004, the Adminis-
39 trator may approve a control or prohibition respect-
40 ing a new fuel under this subclause if the Adminis-
41 trator, after consultation with the Secretary of En-

1 ergy, publishes in the Federal Register after notice
2 and comment a finding that, in the Administrator's
3 judgment, the control or prohibition respecting a
4 new fuel will not cause fuel supply or distribution
5 interruptions or have a significant adverse impact
6 on fuel producibility in the affected area or contig-
7 uous areas.

8 (V) FURTHER LIMITATION.—The Administrator shall
9 have no authority under this paragraph, when consider-
10 ing any particular State's implementation plan or a revi-
11 sion to that State's implementation plan, to approve any
12 fuel unless that fuel was, as of the date of such consider-
13 ation, approved in at least 1 State implementation plan
14 in the applicable Petroleum Administration for Defense
15 District. However, the Administrator may approve as
16 part of a State implementation plan or State implemen-
17 tation plan revision a fuel with a summertime Reid vapor
18 pressure of 7.0 per square inch. In no event shall such
19 approval by the Administrator cause an increase in the
20 total number of fuels on the list published under sub-
21 clause (II).

22 (VI) EFFECT OF CLAUSE.—Nothing in this clause
23 shall be construed to have any effect regarding any avail-
24 able authority of States to require the use of any fuel ad-
25 ditive registered in accordance with subsection (c).

26 (e) TESTING OF FUELS AND FUEL ADDITIVES.—

27 (1) REGULATIONS.—After notice and opportunity for a public hear-
28 ing, the Administrator shall promulgate regulations that implement the
29 authority under clauses (i) and (ii) of subsection (c)(2)(A) with respect
30 to each fuel or fuel additive that is registered on the date of promulga-
31 tion of the regulations and with respect to each fuel or fuel additive
32 for which an application for registration is filed thereafter.

33 (2) PROVISION OF INFORMATION.—Regulations under subsection (c)
34 to carry out this subsection shall require that the requisite information
35 be provided to the Administrator by each manufacturer—

36 (A) prior to registration, in the case of any fuel or fuel additive
37 that is not registered on the date of promulgation of such regula-
38 tions; or

39 (B) not later than 3 years after the date of promulgation of
40 such regulations, in the case of any fuel or fuel additive that is
41 registered on that date.

1 (3) EXEMPTIONS; COST SHARING.—In promulgating the regulations,
2 the Administrator may—

3 (A) exempt any small business (as defined in the regulations)
4 from, or defer or modify the requirements of, the regulations with
5 respect to any small business;

6 (B) provide for cost sharing with respect to the testing of any
7 fuel or fuel additive that is manufactured or processed by 2 or
8 more persons or otherwise provide for shared responsibility to
9 meet the requirements of this section without duplication; or

10 (C) exempt any person from the regulations with respect to a
11 particular fuel or fuel additive on a finding that any additional
12 testing of that fuel or fuel additive would be duplicative of ade-
13 quate existing testing.

14 (f) NEW FUELS AND FUEL ADDITIVES.—

15 (1) FUELS AND FUEL ADDITIVES.—

16 (A) FUELS AND FUEL ADDITIVES FOR GENERAL USE IN LIGHT-
17 DUTY MOTOR VEHICLES MANUFACTURED AFTER MODEL YEAR
18 1974.—It shall be unlawful for any manufacturer of any fuel or
19 fuel additive to first introduce into commerce, or to increase the
20 concentration in use of, any fuel or fuel additive for general use
21 in light-duty motor vehicles manufactured after model year 1974
22 that is not substantially similar to any fuel or fuel additive utilized
23 in the certification of any model year 1975, or subsequent model
24 year, vehicle or engine under section 221106 of this title.

25 (B) FUELS AND FUEL ADDITIVES FOR USE BY ANY PERSON IN
26 MOTOR VEHICLES MANUFACTURED AFTER MODEL YEAR 1974.—It
27 shall be unlawful for any manufacturer of any fuel or fuel additive
28 to first introduce into commerce, or to increase the concentration
29 in use of, any fuel or fuel additive for use by any person in motor
30 vehicles manufactured after model year 1974 that is not substan-
31 tially similar to any fuel or fuel additive utilized in the certifi-
32 cation of any model year 1975, or subsequent model year, vehicle
33 or engine under section 221106 of this title.

34 (2) GASOLINE CONTAINING MANGANESE.—It shall be unlawful for
35 any manufacturer of any fuel to introduce into commerce any gasoline
36 that contains a concentration of manganese in excess of .0625 grams
37 per gallon of fuel, except as otherwise provided pursuant to a waiver
38 under paragraph (3).

39 (3) WAIVER.—The Administrator, on application of any manufac-
40 turer of any fuel or fuel additive, may waive the prohibitions estab-
41 lished under paragraph (1) or the limitation specified in paragraph (2)

1 if the Administrator determines that the applicant has established that
2 the fuel or fuel additive or a specified concentration thereof, and the
3 emission products of the fuel or additive or specified concentration
4 thereof, will not cause or contribute to a failure of any emission control
5 device or system (over the useful life of any motor vehicle, motor vehi-
6 cle engine, nonroad vehicle, or nonroad engine in which the device or
7 system is used) to achieve compliance by the motor vehicle, motor vehi-
8 cle engine, nonroad vehicle, or nonroad engine with the emission stand-
9 ards with respect to which it has been certified pursuant to sections
10 221106 and 221113(a) of this title. The Administrator shall take final
11 action to grant or deny an application under this paragraph, after pub-
12 lic notice and comment, within 270 days after receipt of the applica-
13 tion.

14 (4) NO STAY.—No action of the Administrator under this section
15 may be stayed by any court pending judicial review of the action.

16 (g) MISFUELING.—

17 (1) LEADED GASOLINE.—No person shall introduce, or cause or
18 allow the introduction of, leaded gasoline into any motor vehicle—

19 (A) that is labeled “unleaded gasoline only”;

20 (B) that is equipped with a gasoline tank filler inlet designed
21 for the introduction of unleaded gasoline;

22 (C) that is a 1990 or later model year motor vehicle; or

23 (D) that the person knows or should know is a vehicle designed
24 solely for the use of unleaded gasoline.

25 (2) DIESEL FUEL CONTAINING SULFUR.—No person shall introduce
26 or cause or allow the introduction into any motor vehicle of diesel fuel
27 that the person knows or should know contains a concentration of sul-
28 fur in excess of 0.05 percent (by weight) or that fails to meet a cetane
29 index minimum of 40 or such equivalent alternative aromatic level as
30 the Administrator may prescribe under subsection (i)(2).

31 (h) REID VAPOR PRESSURE REQUIREMENTS.—

32 (1) PROHIBITION.—The Administrator shall promulgate regulations
33 making it unlawful for any person during the high ozone season (as
34 defined by the Administrator) to sell, offer for sale, dispense, supply,
35 offer for supply, transport, or introduce into commerce gasoline with
36 a Reid vapor pressure in excess of 9.0 pounds per square inch. The
37 regulations shall establish more stringent Reid vapor pressure stand-
38 ards in a nonattainment area as the Administrator finds necessary to
39 generally achieve comparable evaporative emissions (on a per-vehicle
40 basis) in nonattainment areas, taking into consideration the enforce-

1 ability of the standards, the need of an area for emission control, and
2 economic factors.

3 (2) ATTAINMENT AREAS.—

4 (A) IN GENERAL.—The regulations under this subsection shall
5 not make it unlawful for any person to sell, offer for supply, trans-
6 port, or introduce into commerce gasoline with a Reid vapor pres-
7 sure of 9.0 pounds per square inch or lower in any area designated
8 under section 211107 of this title as an attainment area.

9 (B) FORMER OZONE NONATTAINMENT AREAS REDESIGNATED
10 AS AN ATTAINMENT AREA.—Notwithstanding subparagraph (A),
11 the Administrator may impose a Reid vapor pressure requirement
12 lower than 9.0 pounds per square inch in any area, formerly an
13 ozone nonattainment area, that has been redesignated as an at-
14 tainment area.

15 (3) ENFORCEMENT.—The regulations under this subsection shall in-
16 clude such provisions as the Administrator determines are necessary to
17 implement and enforce the requirements of this subsection.

18 (4) ETHANOL WAIVER.—

19 (A) IN GENERAL.—Subject to subparagraph (B), for fuel blends
20 containing gasoline and 10 percent denatured anhydrous ethanol,
21 the Reid vapor pressure limitation under this subsection shall be
22 1 pound per square inch greater than the applicable Reid vapor
23 pressure limitations established under paragraph (1).

24 (B) DISTRIBUTORS, BLENDERS, MARKETERS, RESELLERS, CAR-
25 RIERS, RETAILERS, AND WHOLESALE PURCHASER-CONSUMERS
26 DEEMED TO BE IN FULL COMPLIANCE.—A distributor, blender,
27 marketer, reseller, carrier, retailer, or wholesale purchaser-con-
28 sumer shall be deemed to be in full compliance with this sub-
29 section (including the regulations promulgated thereunder) if it
30 can demonstrate (by showing receipt of a certification or other evi-
31 dence acceptable to the Administrator) that—

32 (i) the gasoline portion of the blend complies with the Reid
33 vapor pressure limitations promulgated pursuant to this sub-
34 section;

35 (ii) the ethanol portion of the blend does not exceed its
36 waiver condition under subsection (f)(5); and

37 (iii) no additional alcohol or other additive has been added
38 to increase the Reid vapor pressure of the ethanol portion of
39 the blend.

40 (5) EXCLUSION FROM ETHANOL WAIVER.—

1 (A) PROMULGATION OF REGULATIONS.—On notification, accom-
2 panied by supporting documentation, from the Governor of a State
3 that the Reid vapor pressure limitation established by paragraph
4 (4) will increase emissions that contribute to air pollution in any
5 area in the State, the Administrator shall, by regulation, apply, in
6 lieu of the Reid vapor pressure limitation established by paragraph
7 (4), the Reid vapor pressure limitation established by paragraph
8 (1) to all fuel blends containing gasoline and 10 percent denatured
9 anhydrous ethanol that are sold, offered for sale, dispensed, sup-
10 plied, offered for supply, transported, or introduced into commerce
11 in the area during the high ozone season.

12 (B) DEADLINE FOR PROMULGATION.—The Administrator shall
13 promulgate regulations under subparagraph (A) not later than 90
14 days after the date of receipt of a notification from a Governor
15 under that subparagraph.

16 (C) EFFECTIVE DATE.—

17 (i) IN GENERAL.—With respect to an area in a State for
18 which the Governor submits a notification under subpara-
19 graph (A), the regulations under that subparagraph shall
20 take effect on the later of—

21 (I) the 1st day of the 1st high ozone season for the
22 area that begins after the date of receipt of the notifica-
23 tion; or

24 (II) 1 year after the date of receipt of the notification.

25 (ii) EXTENSION OF EFFECTIVE DATE BASED ON DETER-
26 MINATION OF INSUFFICIENT SUPPLY.—

27 (I) IN GENERAL.—If, after receipt of a notification
28 with respect to an area from a Governor of a State
29 under subparagraph (A), the Administrator determines,
30 on the Administrator's own motion or on petition of any
31 person and after consultation with the Secretary of En-
32 ergy, that the promulgation of regulations described in
33 subparagraph (A) would result in an insufficient supply
34 of gasoline in the State, the Administrator, by regula-
35 tion—

36 (aa) shall extend the effective date of the regula-
37 tions under clause (i) with respect to the area for
38 not more than 1 year; and

39 (bb) may renew the extension under item (aa) for
40 2 additional periods, neither of which shall exceed 1
41 year.

1 (II) DEADLINE FOR ACTION ON PETITIONS.—The Ad-
2 ministrators shall act on any petition submitted under
3 subclause (I) not later than 180 days after the date of
4 receipt of the petition.

5 (6) AREAS COVERED.—This subsection shall apply only to the 48
6 contiguous States and the District of Columbia.

7 (i) SULFUR CONTENT REQUIREMENTS FOR DIESEL FUEL.—

8 (1) PROHIBITION.—No person shall manufacture, sell, supply, offer
9 for sale or supply, dispense, transport, or introduce into commerce
10 motor vehicle diesel fuel that contains a concentration of sulfur in ex-
11 cess of 0.05 percent (by weight) or that fails to meet a cetane index
12 minimum of 40.

13 (2) REGULATIONS.—The Administrator shall promulgate regulations
14 to implement and enforce the requirements of paragraph (1). The Ad-
15 ministrators may require manufacturers and importers of diesel fuel not
16 intended for use in motor vehicles to dye the diesel fuel in a particular
17 manner to distinguish the non-motor vehicle diesel fuel from motor ve-
18 hicle diesel fuel. The Administrator may establish an equivalent alter-
19 native aromatic level to the cetane index specification in paragraph (1).

20 (3) SULFUR CONTENT AND CETANE INDEX MINIMUM.—The sulfur
21 content and cetane index minimum of fuel required to be used in the
22 certification of heavy-duty diesel vehicles and engines shall comply with
23 the regulations promulgated under paragraph (2).

24 (4) EXEMPTION.—Alaska and Hawaii may be exempted from the re-
25 quirements of this subsection in the same manner as is provided in sec-
26 tion 209115 of this title. The Administrator shall take final action on
27 any petition filed under section 209115 of this title or this paragraph
28 for an exemption from the requirements of this subsection within 12
29 months after the date of the petition.

30 (j) LEAD SUBSTITUTE GASOLINE ADDITIVES.—

31 (1) REGISTRATION.—Any person proposing to register any gasoline
32 additive under subsection (b) or to use any previously registered addi-
33 tive as a lead substitute may also elect to register the additive as a
34 lead substitute gasoline additive for reducing valve seat wear by provid-
35 ing the Administrator with such relevant information regarding product
36 identity and composition as the Administrator considers necessary for
37 carrying out the responsibilities of paragraph (2) (in addition to other
38 information that may be required under subsection (c)).

39 (2) TESTING.—

40 (A) TEST PROCEDURE.—In addition to the other testing which
41 may be required under subsection (c), in the case of the lead sub-

1 stitute gasoline additives described in paragraph (1), the Adminis-
 2 trator shall develop and publish a test procedure to determine an
 3 additive’s effectiveness in reducing valve seat wear and an addi-
 4 tive’s tendencies to produce engine deposits and other adverse side
 5 effects. The test procedure shall be developed in cooperation with
 6 the Secretary of Agriculture and with the input of additive manu-
 7 facturers, engine and engine components manufacturers, and other
 8 interested persons.

9 (B) TESTING.—The Administrator shall enter into arrange-
 10 ments with an independent laboratory to conduct tests of each ad-
 11 ditive using the test procedures developed and published pursuant
 12 to subparagraph (A). The Administrator shall publish the results
 13 of the tests by company and additive name in the Federal Register
 14 with, for comparison purposes, the results of applying the same
 15 test procedures to gasoline containing 0.1 gram of lead per gallon
 16 in lieu of the lead substitute gasoline additive. The Administrator
 17 shall not rank or otherwise rate the lead substitute additives. Ad-
 18 ditives shall be tested within 6 months after the lead substitute
 19 additives are identified to the Administrator.

20 (3) USER FEE.—The Administrator may impose a user fee to recover
 21 the costs of testing of any fuel additive under this subsection. The fee
 22 shall be paid by the person proposing to register the fuel additive. The
 23 fee shall not exceed \$20,000 for a single fuel additive.

24 (4) SPECIAL FUND FOR LICENSING AND OTHER SERVICES.—Any fees
 25 collected under this subsection shall be deposited in the Treasury in a
 26 special fund for licensing and other services, which thereafter shall be
 27 available for appropriation, to remain available until expended, to carry
 28 out EPA’s activities for which the fees were collected.

29 (k) REFORMULATED GASOLINE FOR CONVENTIONAL VEHICLES.—

30 (1) DEFINITIONS.—In this subsection:

31 (A) BASELINE GASOLINE.—

32 (i) SUMMERTIME.—The term “baseline gasoline”, with re-
 33 spect to gasoline sold during the high ozone period (as de-
 34 fined by the Administrator), means a gasoline that meets the
 35 following specifications:

BASELINE GASOLINE FUEL PROPERTIES

API Gravity	57.4
Sulfur, ppm	339 ??
Benzene, %	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91 ??
10%, F	128 ??
50%, F	218 ??
90%, F	330 ??

BASELINE GASOLINE FUEL PROPERTIES

End Point, F	415 ??
Aromatics, %	32.0
Olefins, %	9.2
Saturates, %	58.8

1 (ii) WINTERTIME.—The Administrator shall establish the
2 specifications of baseline gasoline for gasoline sold at times
3 other than the high ozone period (as defined by the Adminis-
4 trator). Those specifications shall be the specifications of
5 1990 industry average gasoline sold during that period.

6 (B) BASELINE VEHICLES.—The term “baseline vehicles” means
7 representative model year 1990 vehicles.

8 (C) CONVENTIONAL GASOLINE.—The term “conventional gaso-
9 line” means any gasoline that does not meet specifications set by
10 a certification under this subsection.

11 (D) COVERED AREA.—The term “covered area” means—

12 (i) 1 of the 9 ozone nonattainment areas having a 1980
13 population in excess of 250,000 and having the highest ozone
14 design value during the period 1987 to 1989; and

15 (ii) effective 1 year after the reclassification of any ozone
16 nonattainment area as a severe ozone nonattainment area
17 under section 215202(b) of this title, the severe area.

18 (E) REFORMULATED GASOLINE.—The term “reformulated gaso-
19 line” means any gasoline that is certified by the Administrator
20 under this section as complying with this subsection.

21 (F) TOXIC AIR POLLUTANTS.—The term “toxic air pollutants”
22 means the aggregate emissions of the following:

23 Benzene.

24 1,3 Butadiene.

25 Polycyclic organic matter (POM).

26 Acetaldehyde.

27 Formaldehyde.

28 (2) EPA REGULATIONS.—

29 (A) IN GENERAL.—The Administrator shall promulgate regula-
30 tions establishing requirements for reformulated gasoline to be
31 used in gasoline-fueled vehicles in specified nonattainment areas.
32 The regulations shall require the greatest reduction in emissions
33 of ozone-forming volatile organic compounds (during the high
34 ozone season) and emissions of toxic air pollutants (during the en-
35 tire year) achievable through the reformulation of conventional
36 gasoline, taking into consideration—

37 (i) the cost of achieving the emission reductions; and

1 (ii) any air-quality related and non-air-quality related
2 health and environmental impacts and energy requirements.

3 (B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS RE-
4 Ductions FROM REFORMULATED GASOLINE.—The Administrator
5 shall promulgate regulations to control hazardous air pollutants
6 from motor vehicles and motor vehicle fuels, as provided for in sec-
7 tion 80.1045 of title 40, Code of Federal Regulations (as in effect
8 on August 8, 2005), and as authorized under section 221102(k)
9 of this title.

10 (3) GENERAL REQUIREMENTS.—

11 (A) IN GENERAL.—The regulations under paragraph (2) shall
12 require that reformulated gasoline comply with paragraph (4) and
13 with each of the requirements stated in this paragraph (subject to
14 paragraph (8)).

15 (B) NITROGEN OXIDE EMISSIONS.—

16 (i) IN GENERAL.—The emissions of nitrogen oxides from
17 baseline vehicles when using the reformulated gasoline shall
18 be not greater than the level of such emissions from such ve-
19 hicles when using baseline gasoline.

20 (ii) TECHNICAL INFEASIBILITY.—If the Administrator de-
21 termines that compliance with the limitation on emissions of
22 nitrogen oxides under clause (i) is technically infeasible, con-
23 sidering the other requirements applicable under this sub-
24 section to reformulated gasoline, the Administrator may, as
25 appropriate to ensure compliance with this subparagraph, ad-
26 just (or waive entirely), any other requirements of this para-
27 graph or any requirements applicable under paragraph
28 (4)(B).

29 (C) BENZENE CONTENT.—The benzene content of the reformu-
30 lated gasoline shall not exceed 1.0 percent by volume.

31 (D) HEAVY METALS.—

32 (i) IN GENERAL.—The reformulated gasoline shall have no
33 heavy metals, including lead or manganese.

34 (ii) WAIVER.—The Administrator may waive the prohibi-
35 tion contained in clause (i) for a heavy metal (other than
36 lead) if the Administrator determines that addition of the
37 heavy metal to the reformulated gasoline will not increase, on
38 an aggregate mass or cancer-risk basis, toxic air pollutant
39 emissions from motor vehicles.

40 (4) MORE STRINGENT OF FORMULA OR PERFORMANCE STAND-
41 ARDS.—

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1 (A) IN GENERAL.—The regulations under paragraph (2) shall
2 require compliance with the more stringent of the requirements set
3 forth in subparagraph (B) or the requirements of subparagraph
4 (C). For purposes of determining the more stringent provision,
5 subclauses (I) and (II) of subparagraph (C)(i) shall be considered
6 independently.

7 (B) FORMULA.—

8 (i) BENZENE.—The benzene content of the reformulated
9 gasoline shall not exceed 1.0 percent by volume.

10 (ii) AROMATICS.—The aromatic hydrocarbon content of the
11 reformulated gasoline shall not exceed 25 percent by volume.

12 (iii) LEAD.—The reformulated gasoline shall have no lead
13 content.

14 (iv) DETERGENTS.—The reformulated gasoline shall con-
15 tain additives to prevent the accumulation of deposits in en-
16 gines or vehicle fuel supply systems.

17 (C) PERFORMANCE STANDARD.—

18 (i) IN GENERAL.—

19 (I) VOLATILE ORGANIC COMPOUND EMISSIONS.—

20 (aa) IN GENERAL.—During the high ozone season
21 (as defined by the Administrator), the aggregate
22 emissions of ozone-forming volatile organic com-
23 pounds from baseline vehicles when using the refor-
24 mulated gasoline shall be 25 percent below the ag-
25 gregate emissions of ozone-forming volatile organic
26 compounds from baseline vehicles when using base-
27 line gasoline.

28 (bb) ADJUSTMENT.—The Administrator may ad-
29 just the 25 percent requirement under item (aa) to
30 provide for a lesser or greater reduction based on
31 technological feasibility, considering the cost of
32 achieving the reductions in emissions of volatile or-
33 ganic compounds. No such adjustment shall provide
34 for less than a 20 percent reduction below the ag-
35 gregate emissions of volatile organic compounds
36 from baseline vehicles when using baseline gasoline.

37 (cc) MASS BASIS.—The reductions required under
38 this subclause shall be on a mass basis.

39 (II) TOXIC AIR POLLUTANTS.—

40 (aa) IN GENERAL.—During the entire year, the
41 aggregate emissions of toxic air pollutants from

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1 baseline vehicles when using the reformulated gaso-
2 line shall be 25 percent below the aggregate emis-
3 sions of toxic air pollutants from baseline vehicles
4 when using baseline gasoline.

5 (bb) ADJUSTMENT.—The Administrator may ad-
6 just the 25 percent requirement under item (aa) to
7 provide for a lesser or greater reduction based on
8 technological feasibility, considering the cost of
9 achieving the reductions in toxic air pollutants. No
10 such adjustment shall provide for less than a 20
11 percent reduction below the aggregate emissions of
12 toxic air pollutants from baseline vehicles when
13 using baseline gasoline.

14 (cc) MASS BASIS.—The reductions required under
15 this subclause shall be on a mass basis.

16 (ii) TREATMENT OF REDUCTION GREATER THAN A SPE-
17 CIFIC PERCENTAGE REDUCTION.—Any reduction greater than
18 a specific percentage reduction required under this subpara-
19 graph shall be treated as satisfying that percentage reduction
20 requirement.

21 (5) CERTIFICATION PROCEDURES.—

22 (A) REGULATIONS.—The regulations under this subsection shall
23 include procedures under which the Administrator shall certify re-
24 formulated gasoline as complying with the requirements estab-
25 lished pursuant to this subsection. Under the regulations, the Ad-
26 ministrator shall establish procedures for any person to petition
27 the Administrator to certify a fuel formulation or slate of fuel for-
28 mulations. The procedures shall require that the Administrator
29 shall approve or deny a petition within 180 days after receipt. If
30 the Administrator fails to act within the 180-day period, the fuel
31 shall be deemed to be certified until the Administrator completes
32 action on the petition.

33 (B) CERTIFICATION; EQUIVALENCY.—The Administrator shall
34 certify a fuel formulation or slate of fuel formulations as comply-
35 ing with this subsection if the fuel or fuels—

36 (i) comply with the requirements of paragraph (3); and

37 (ii) achieve equivalent or greater reductions in emissions of
38 ozone-forming volatile organic compounds and emissions of
39 toxic air pollutants than are achieved by a reformulated gaso-
40 line meeting the applicable requirements of paragraph (4).

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1 (C) DETERMINATION OF EMISSIONS LEVEL.—The Adminis-
2 trator shall determine the level of emissions of ozone-forming vola-
3 tile organic compounds and emissions of toxic air pollutants emit-
4 ted by baseline vehicles when operating on baseline gasoline. For
5 purposes of this subsection, the Administrator shall, by regulation,
6 determine appropriate measures of, and methodology for, ascer-
7 taining the emissions of air pollutants (including calculations,
8 equipment, and testing tolerances).

9 (6) PROHIBITIONS.—

10 (A) SALE OR DISPENSING.—Each of the following shall be a vio-
11 lation of this subsection:

12 (i) The sale or dispensing by any person of conventional
13 gasoline to ultimate consumers in any covered area.

14 (ii) The sale or dispensing by any refiner, blender, im-
15 porter, or marketer of conventional gasoline for resale in any
16 covered area without—

17 (I) segregating the conventional gasoline from refor-
18 mulated gasoline; and

19 (II) clearly marking the conventional gasoline as “con-
20 ventional gasoline, not for sale to ultimate consumer in
21 a covered area”.

22 (B) LABELING, REPRESENTING, OR WHOLESALING CONVEN-
23 TIONAL GASOLINE AS REFORMULATED GASOLINE.—Any refiner,
24 blender, importer or marketer that purchases properly segregated
25 and marked conventional gasoline, and thereafter labels, rep-
26 represents, or wholesales conventional gasoline as reformulated gaso-
27 line shall be in violation of this subsection.

28 (C) SAMPLING, TESTING, AND RECORDKEEPING REQUIRE-
29 MENTS.—The Administrator may impose sampling, testing, and
30 recordkeeping requirements on any refiner, blender, importer, or
31 marketer to prevent violations of this section.

32 (7) OPT-IN AREAS.—

33 (A) CLASSIFIED AREAS.—

34 (i) IN GENERAL.—On the application of the Governor of a
35 State, the Administrator shall apply the prohibitions set forth
36 in paragraph (6) in any area in the State classified under
37 subchapter II of chapter 215 as a marginal area, moderate
38 area, serious area, or severe area (without regard to whether
39 or not the 1980 population of the area exceeds 250,000). In
40 any such case, the Administrator shall establish an effective
41 date for the prohibitions as the Administrator considers ap-

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1 appropriate not later than 1 year after the application is re-
2 ceived. The Administrator shall publish the application in the
3 Federal Register on receipt.

4 (ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO
5 PRODUCE REFORMULATED GASOLINE.—

6 (I) IN GENERAL.—If the Administrator determines, on
7 the Administrator's own motion or on petition of any
8 person, after consultation with the Secretary of Energy,
9 that there is insufficient domestic capacity to produce
10 gasoline certified under this subsection, the Adminis-
11 trator, by regulation—

12 (aa) shall extend the effective date of the prohibi-
13 tions in marginal areas, moderate areas, serious
14 areas, or severe areas described in clause (i) for 1
15 additional year, and

16 (bb) may renew such an extension for 2 addi-
17 tional one-year periods.

18 (II) PRIORITY.— The Administrator shall issue exten-
19 sions under subclause (I) for areas with a lower ozone
20 classification before issuing any such extension for areas
21 with a higher classification.

22 (iii) ACTION ON PETITION.—The Administrator shall act on
23 any petition submitted under this subparagraph within 6
24 months after receipt of the petition.

25 (B) OZONE TRANSPORT REGION.—

26 (i) APPLICATION OF PROHIBITION.—

27 (I) IN GENERAL.—On application of the Governor of
28 a State in the ozone transport region established by sec-
29 tion 215205(a) of this title, the Administrator, not later
30 than 180 days after the date of receipt of the applica-
31 tion, shall apply the prohibitions specified in paragraph
32 (6) to any area in the State (other than an area classi-
33 fied as a marginal ozone nonattainment area, moderate
34 ozone nonattainment area, serious ozone nonattainment
35 area, or severe ozone nonattainment area under sub-
36 chapter II of chapter 215) unless the Administrator de-
37 termines under clause (iii) that there is insufficient ca-
38 pacity to supply reformulated gasoline.

39 (II) PUBLICATION OF APPLICATION.—As soon as prac-
40 ticable after the date of receipt of an application under

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1 subclause (I), the Administrator shall publish the appli-
2 cation in the Federal Register.

3 (ii) PERIOD OF APPLICABILITY.—Under clause (i), the pro-
4 hibitions specified in paragraph (6) shall apply in a State—

5 (I) commencing as soon as practicable but not later
6 than 2 years after the date of approval by the Adminis-
7 trator of the application of the Governor of the State;
8 and

9 (II) ending not earlier than 4 years after the com-
10 mencement date determined under subclause (I).

11 (iii) EXTENSION OF COMMENCEMENT DATE BASED ON IN-
12 SUFFICIENT CAPACITY.—

13 (I) IN GENERAL.—If, after receipt of an application
14 from a Governor of a State under clause (i), the Admin-
15 istrator determines, on the Administrator's own motion
16 or on petition of any person, after consultation with the
17 Secretary of Energy, that there is insufficient capacity to
18 supply reformulated gasoline, the Administrator, by reg-
19 ulation—

20 (aa) shall extend the commencement date with re-
21 spect to the State under clause (ii)(I) for not more
22 than 1 year; and

23 (bb) may renew the extension under item (aa) for
24 2 additional periods, each of which shall not exceed
25 1 year.

26 (II) DEADLINE FOR ACTION ON PETITIONS.—The Ad-
27 ministrator shall act on any petition submitted under
28 subclause (I) not later than 180 days after the date of
29 receipt of the petition.

30 (8) CREDITS.—

31 (A) IN GENERAL.—The regulations promulgated under this sub-
32 section shall provide for the granting of an appropriate amount of
33 credits to a person that refines, blends, or imports and certifies
34 a gasoline or slate of gasoline that—

35 (i) has an aromatic hydrocarbon content (by volume) that
36 is less than the maximum aromatic hydrocarbon content re-
37 quired to comply with paragraph (4); or

38 (ii) has a benzene content (by volume) that is less than the
39 maximum benzene content specified in paragraph (3).

40 (B) USE.—The regulations described in subparagraph (A) shall
41 provide that a person that is granted credits may use the credits,

1 or transfer all or a portion of the credits to another person for
2 use within the same nonattainment area, for the purpose of com-
3 plying with this subsection.

4 (C) ENFORCEMENT.—The regulations promulgated under sub-
5 paragraphs (A) and (B) shall ensure the enforcement of the re-
6 quirements for the issuance, application, and transfer of credits.
7 The regulations shall prohibit the granting or transfer of credits
8 for use with respect to any gasoline in a nonattainment area, to
9 the extent that the use of the credits would result in—

10 (i) an average gasoline aromatic hydrocarbon content (by
11 volume) for the nonattainment area (taking into account all
12 gasoline sold for use in conventional gasoline-fueled vehicles
13 in the nonattainment area) higher than the average fuel aro-
14 matic hydrocarbon content (by volume) that would occur in
15 the absence of using any such credits; or

16 (ii) an average benzene content (by volume) for the non-
17 attainment area (taking into account all gasoline sold for use
18 in conventional gasoline-fueled vehicles in the nonattainment
19 area) higher than the average benzene content (by volume)
20 that would occur in the absence of using any such credits.

21 (9) ANTIDUMPING REGULATIONS.—

22 (A) IN GENERAL.—The Administrator shall promulgate regula-
23 tions applicable to each refiner, blender, or importer of gasoline
24 ensuring that gasoline sold or introduced into commerce by the re-
25 finer, blender, or importer (other than reformulated gasoline sub-
26 ject to the requirements of paragraph (2)) does not result in aver-
27 age per gallon emissions (measured on a mass basis) of—

28 (i) volatile organic compounds;

29 (ii) nitrogen oxides;

30 (iii) carbon monoxide; and

31 (iv) toxic air pollutants;

32 in excess of emissions of those pollutants attributable to gasoline
33 sold or introduced into commerce in calendar year 1990 by that
34 refiner, blender, or importer.

35 (B) ADJUSTMENTS.—In evaluating compliance with the require-
36 ments of subparagraph (A), the Administrator shall make appro-
37 priate adjustments to ensure that no credit is provided for im-
38 provement in motor vehicle emission control in motor vehicles sold
39 after calendar year 1990.

40 (C) COMPLIANCE DETERMINED FOR EACH POLLUTANT INDE-
41 PENDENTLY.—In determining whether there is an increase in

1 emissions in violation of the prohibition contained in subparagraph
2 (A), the Administrator shall consider an increase in each air pol-
3 lutant described in clauses (i) through (iv) of subparagraph (A)
4 as a separate violation of the prohibition, except that the Adminis-
5 trator shall promulgate regulations to provide that any increase in
6 emissions of nitrogen oxides resulting from adding oxygenates to
7 gasoline may be offset by an equivalent or greater reduction (on
8 a mass basis) in emissions of volatile organic compounds, carbon
9 monoxide, or toxic air pollutants, or any combination of the fore-
10 going.

11 (D) COMPLIANCE PERIOD.—The Administrator shall promulgate
12 an appropriate compliance period or appropriate compliance peri-
13 ods to be used for assessing compliance with the prohibition con-
14 tained in subparagraph (A).

15 (E) BASELINE FOR DETERMINING COMPLIANCE.—If the Admin-
16 istrator determines that no adequate and reliable data exist re-
17 garding the composition of gasoline sold or introduced into com-
18 merce by a refiner, blender, or importer in calendar year 1990, for
19 that refiner, blender, or importer, baseline gasoline shall be sub-
20 stituted for 1990 gasoline in determining compliance with sub-
21 paragraph (A).

22 (10) EMISSIONS FROM ENTIRE VEHICLE.—In applying the require-
23 ments of this subsection, the Administrator shall take into account
24 emissions from the entire motor vehicle, including evaporative, running,
25 refueling, and exhaust emissions.

26 (l) DETERGENTS.—No person may sell or dispense to an ultimate con-
27 sumer in the United States, and no refiner or marketer may directly or indi-
28 rectly sell or dispense to persons that sell or dispense to ultimate consumers
29 in the United States, any gasoline that does not contain additives to prevent
30 the accumulation of deposits in engines or fuel supply systems. The Admin-
31 istrator shall promulgate a regulation establishing specifications for such ad-
32 ditives.

33 (m) OXYGENATED FUELS.—

34 (1) PLAN REVISIONS FOR CARBON MONOXIDE NONATTAINMENT
35 AREAS.—

36 (A) STATES IN WHICH THERE IS LOCATED ALL OR PART OF AN
37 AREA THAT IS DESIGNATED AS A NONATTAINMENT AREA FOR CAR-
38 BON MONOXIDE AND THAT HAS A CARBON MONOXIDE DESIGN
39 VALUE OF 9.5 OR MORE PARTS PER MILLION.—The applicable im-
40 plementation plan of a State in which there is located all or part
41 of an area that is designated under subdivision 2 as a nonattain-

1 ment area for carbon monoxide and that has a carbon monoxide
2 design value of 9.5 or more parts per million based on data for
3 the 2-year period of 1988 and 1989 and calculated according to
4 the most recent interpretation methodology issued by the Adminis-
5 trator prior to November 15, 1990, shall contain for that area the
6 provisions specified under this subsection regarding oxygenated
7 gasoline.

8 (B) STATES IN WHICH THERE IS LOCATED ANY AREA THAT,
9 FOR ANY 2-YEAR PERIOD AFTER 1989, HAS A CARBON MONOXIDE
10 DESIGN VALUE OF 9.5 OR MORE PARTS PER MILLION.—Each State
11 in which there is located any area that, for any 2-year period after
12 1989, has a carbon monoxide design value of 9.5 or more parts
13 per million shall, within 18 months after that 2-year period, sub-
14 mit a plan provision that contains the provisions specified under
15 this subsection regarding oxygenated gasoline.

16 (2) OXYGENATED GASOLINE IN CARBON MONOXIDE NONATTAINMENT
17 AREAS.—

18 (A) IN GENERAL.—Each plan provision under this subsection
19 shall contain provisions to require that any gasoline sold or dis-
20 pensed to an ultimate consumer in the carbon monoxide nonattain-
21 ment area or sold or dispensed directly or indirectly by fuel refin-
22 ers or marketers to persons that sell or dispense to ultimate con-
23 sumers, in the larger of—

24 (i) the Consolidated Metropolitan Statistical Area in which
25 the area is located; or

26 (ii) if the area is not located in a Consolidated Metropoli-
27 tan Statistical Area, the Metropolitan Statistical Area in
28 which the area is located;

29 be blended, during the portion of the year in which the area is
30 prone to high ambient concentrations of carbon monoxide, to con-
31 tain not less than 2.7 percent oxygen by weight (subject to a test-
32 ing tolerance established by the Administrator).

33 (B) PORTION OF YEAR.—

34 (i) IN GENERAL.—The portion of the year in which the
35 area is prone to high ambient concentrations of carbon mon-
36 oxide shall be as determined by the Administrator, but shall
37 not be less than 4 months.

38 (ii) REDUCTION.—At the request of a State with respect to
39 any area designated as nonattainment for carbon monoxide,
40 the Administrator may reduce the period specified in clause

41 (i) if the State can demonstrate that because of meteorologi-

1 cal conditions, a reduced period will ensure that there will be
2 no exceedances of the carbon monoxide standard outside the
3 reduced period.

4 (C) EFFECTIVE DATE.—A plan provision under this subsection
5 shall provide that the requirement shall take effect not later than
6 November 1 of the 3d year after the last year of the applicable
7 2-year period described in paragraph (1) (or at such other date
8 during the 3d year as the Administrator establishes under sub-
9 paragraphs (A) and (B)).

10 (D) IMPLEMENTATION AND ENFORCEMENT.—A plan provision
11 under this subsection shall include a program for implementation
12 and enforcement of the requirement consistent with guidance is-
13 sued by the Administrator.

14 (3) WAIVERS.—

15 (A) PREVENTION OF OR INTERFERENCE WITH ATTAINMENT
16 FOR AIR POLLUTANT OTHER THAN CARBON MONOXIDE.—The Ad-
17 ministrator shall waive, in whole or in part, the requirements of
18 paragraph (2) on a demonstration by the State to the satisfaction
19 of the Administrator that the use of oxygenated gasoline would
20 prevent or interfere with the attainment by the area of a primary
21 NAAQS (or a State or local ambient air quality standard) for any
22 air pollutant other than carbon monoxide.

23 (B) NO SIGNIFICANT CONTRIBUTION TO CARBON MONOXIDE
24 LEVELS.—The Administrator shall, on demonstration by the State
25 satisfactory to the Administrator, waive the requirements of para-
26 graph (2) where the Administrator determines that mobile sources
27 of carbon monoxide do not contribute significantly to carbon mon-
28 oxide levels in an area.

29 (C) INADEQUATE SUPPLY OR CAPACITY.—

30 (i) DEFINITION OF DISTRIBUTION CAPACITY.—In this sub-
31 paragraph, the term “distribution capacity” includes capacity
32 for transportation, storage, and blending.

33 (ii) PETITION.—Any person may petition the Administrator
34 to make a finding that there is, or is likely to be, for any
35 area, an inadequate domestic supply of, or distribution capac-
36 ity for, oxygenated gasoline meeting the requirements of para-
37 graph (2) or fuel additives (oxygenates) necessary to meet
38 those requirements. The Administrator shall act on such a pe-
39 tition within 6 months after receipt of the petition.

40 (iii) DETERMINATION OF INADEQUACY.—If the Adminis-
41 trator determines, in response to a petition under clause (ii),

1 that there is an inadequate supply or capacity described in
2 clause (ii), the Administrator shall delay the effective date of
3 paragraph (2) for 1 year. On petition, the Administrator may
4 extend the effective date for 1 additional year. No partial
5 delay or lesser waiver may be granted under this clause.

6 (iv) CONSIDERATIONS.—In granting waivers under this
7 subparagraph, the Administrator shall consider distribution
8 capacity separately from the adequacy of domestic supply and
9 shall grant such waivers in such a manner as will ensure that,
10 if supplies of oxygenated gasoline are limited, areas having
11 the highest design value for carbon monoxide will have a pri-
12 ority in obtaining oxygenated gasoline that meets the require-
13 ments of paragraph (2).

14 (4) FUEL DISPENSING SYSTEMS.—Any person selling oxygenated
15 gasoline at retail pursuant to this subsection shall be required under
16 regulations promulgated by the Administrator to label the fuel dispens-
17 ing system with a notice that the gasoline is oxygenated and will reduce
18 the carbon monoxide emissions from the motor vehicle.

19 (5) GUIDELINES FOR CREDIT.—The Administrator shall promulgate
20 guidelines allowing the use, during the portion of the year specified in
21 paragraph (2), of marketable oxygen credits from gasolines with higher
22 oxygen content than required to offset the sale or use of gasoline with
23 a lower oxygen content than is required. No credits may be transferred
24 between nonattainment areas.

25 (6) ATTAINMENT AREAS.—Nothing in this subsection shall be inter-
26 preted as requiring an oxygenated gasoline program in an area that is
27 in attainment for carbon monoxide, except that in a carbon monoxide
28 nonattainment area that is redesignated as attainment for carbon mon-
29 oxide, the requirements of this subsection shall remain in effect to the
30 extent that the program is necessary to maintain the standard there-
31 after in the area.

32 (7) FAILURE TO ATTAIN CARBON MONOXIDE STANDARD.—If the Ad-
33 ministrator determines under section 215302(b)(2) of this title that the
34 primary NAAQS for carbon monoxide has not been attained in a seri-
35 ous area by the applicable attainment date, the State shall submit a
36 plan provision for the area within 9 months after the date of the deter-
37 mination. The plan revision shall provide that the minimum oxygen
38 content of gasoline described in paragraph (2) shall be 3.1 percent by
39 weight unless the requirement is waived in accordance with this sub-
40 section.

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1 (n) PROHIBITION OF LEADED GASOLINE FOR HIGHWAY USE.—It shall
2 be unlawful for any person to sell, offer for sale, supply, offer for supply,
3 dispense, transport, or introduce into commerce, for use as fuel in any
4 motor vehicle (as defined in section 221101 of this title) any gasoline that
5 contains lead or lead additives.

6 (o) RENEWABLE FUEL PROGRAM.—

7 (1) DEFINITIONS.—In this subsection:

8 (A) ADDITIONAL RENEWABLE FUEL.—The term “additional re-
9 newable fuel” means fuel that is produced from renewable biomass
10 and that is used to replace or reduce the quantity of fossil fuel
11 in home heating oil or jet fuel.

12 (B) ADVANCED BIOFUEL.—

13 (i) IN GENERAL.—The term “advanced biofuel” means re-
14 newable fuel, other than ethanol derived from corn starch,
15 that has lifecycle greenhouse gas emissions, as determined by
16 the Administrator, after notice and opportunity for comment,
17 that are at least 50 percent less than baseline lifecycle green-
18 house gas emissions.

19 (ii) INCLUSIONS.—The types of fuels eligible for consider-
20 ation as “advanced biofuel” may include any of the following:

21 (I) Ethanol derived from cellulose, hemicellulose, or
22 lignin.

23 (II) Ethanol derived from sugar or starch (other than
24 corn starch).

25 (III) Ethanol derived from waste material, including
26 crop residue, other vegetative waste material, animal
27 waste, food waste, and yard waste.

28 (IV) Biomass-based diesel.

29 (V) Biogas (including landfill gas and sewage waste
30 treatment gas) produced through the conversion of or-
31 ganic matter from renewable biomass.

32 (VI) Butanol or other alcohols produced through the
33 conversion of organic matter from renewable biomass.

34 (VII) Other fuel derived from cellulosic biomass.

35 (C) BASELINE LIFECYCLE GREENHOUSE GAS EMISSIONS.—The
36 term “baseline lifecycle greenhouse gas emissions” means the aver-
37 age lifecycle greenhouse gas emissions, as determined by the Ad-
38 ministrator, after notice and opportunity for comment, for gasoline
39 or diesel (whichever is being replaced by the renewable fuel) sold
40 or distributed as transportation fuel in 2005.

41 (D) BIOMASS-BASED DIESEL.—

1 (i) IN GENERAL.—The term “biomass-based diesel” means
2 renewable fuel that is biodiesel as defined in section 312(f)
3 of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and
4 that has lifecycle greenhouse gas emissions, as determined by
5 the Administrator, after notice and opportunity for comment,
6 that are at least 50 percent less than the baseline lifecycle
7 greenhouse gas emissions.

8 (ii) RENEWABLE FUEL DERIVED FROM COPROCESSING BIO-
9 MASS WITH A PETROLEUM FEEDSTOCK.—Notwithstanding
10 clause (i), renewable fuel derived from coprocessing biomass
11 with a petroleum feedstock shall be advanced biofuel if it
12 meets the requirements of subparagraph (B) but is not bio-
13 mass-based diesel.

14 (E) CELLULOSIC BIOFUEL.—The term “cellulosic biofuel”
15 means renewable fuel derived from any cellulose, hemicellulose, or
16 lignin that is derived from renewable biomass and that has
17 lifecycle greenhouse gas emissions, as determined by the Adminis-
18 trator, that are at least 60 percent less than the baseline lifecycle
19 greenhouse gas emissions.

20 (F) CONVENTIONAL BIOFUEL.—The term “conventional
21 biofuel” means renewable fuel that is ethanol derived from corn
22 starch.

23 (G) GREENHOUSE GAS.—

24 (i) IN GENERAL.—The term “greenhouse gas” means car-
25 bon dioxide, hydrofluorocarbons, methane, nitrous oxide,
26 perfluorocarbons, and sulfur hexafluoride.

27 (ii) INCLUSION OF OTHER ANTHROPOGENICALLY-EMITTED
28 GASES.—The term “greenhouse gas” includes any other
29 anthropogenically-emitted gas that is determined by the Ad-
30 ministrator, after notice and comment, to contribute to global
31 warming.

32 (H) LIFECYCLE GREENHOUSE GAS EMISSIONS.—The term
33 “lifecycle greenhouse gas emissions” means the aggregate quantity
34 of greenhouse gas emissions (including direct emissions and sig-
35 nificant indirect emissions such as significant emissions from land
36 use changes), as determined by the Administrator, related to the
37 full fuel lifecycle, including all stages of fuel and feedstock produc-
38 tion and distribution, from feedstock generation or extraction
39 through the distribution and delivery and use of the finished fuel
40 to the ultimate consumer, where the mass values for all green-

1 house gases are adjusted to account for their relative global warm-
2 ing potential.

3 (I) RENEWABLE BIOMASS.—The term “renewable biomass”
4 means—

5 (i) planted crops and crop residue harvested from agricul-
6 tural land cleared or cultivated at any time before December
7 19, 2007, that is—

8 (I) actively managed or fallow; and

9 (II) nonforested;

10 (ii) planted trees and tree residue from actively managed
11 tree plantations on non-Federal land cleared at any time be-
12 fore December 19, 2007, including land belonging to an In-
13 dian tribe or an Indian individual, that is held in trust by the
14 United States or subject to a restriction against alienation
15 imposed by the United States;

16 (iii) animal waste material and animal byproducts;

17 (iv) slash and precommercial thinnings that are from non-
18 Federal forestland, including forestland belonging to an In-
19 dian tribe or an Indian individual that is held in trust by the
20 United States or is subject to a restriction against alienation
21 imposed by the United States, but not including—

22 (I) a forest or forestland that is an ecological commu-
23 nity with a global or State ranking of critically imperiled,
24 imperiled, or rare pursuant to a State natural heritage
25 program;

26 (II) an old growth forest; or

27 (III) a late successional forest;

28 (v) biomass obtained from the immediate vicinity of build-
29 ings and other areas regularly occupied by people, or of public
30 infrastructure, at risk from wildfire;

31 (vi) algae; and

32 (vii) separated yard waste or food waste, including recycled
33 cooking grease and trap grease.

34 (J) RENEWABLE FUEL.—The term “renewable fuel” means fuel
35 that is produced from renewable biomass and that is used to re-
36 place or reduce the quantity of fossil fuel in a transportation fuel.

37 (K) SMALL REFINERY.—The term “small refinery” means a re-
38 finery for which the average aggregate daily crude oil throughput
39 for a calendar year (as determined by dividing the aggregate
40 throughput for the calendar year by the number of days in the cal-
41 endar year) does not exceed 75,000 barrels.

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1 (L) TRANSPORTATION FUEL.—The term “transportation fuel”
2 means fuel for use in motor vehicles, motor vehicle engines,
3 nonroad vehicles, or nonroad engines (except for oceangoing ves-
4 sels).

5 (2) RENEWABLE FUEL PROGRAM.—

6 (A) REGULATIONS.—

7 (i) IN GENERAL.—

8 (I) GASOLINE.—The Administrator shall promulgate
9 regulations to ensure that gasoline sold or introduced
10 into commerce in the contiguous States, on an annual
11 average basis, contains the applicable volume of renew-
12 able fuel determined in accordance with subparagraph
13 (B).

14 (II) TRANSPORTATION FUEL.—The regulations shall
15 ensure that transportation fuel sold or introduced into
16 commerce in the contiguous States, on an annual aver-
17 age basis—

18 (aa) contains at least the applicable volume of re-
19 newable fuel, advanced biofuel, cellulosic biofuel,
20 and biomass-based diesel, determined in accordance
21 with subparagraph (B); and

22 (bb) in the case of any such renewable fuel pro-
23 duced from new facilities that commence construc-
24 tion after December 19, 2007, achieves at least a 20
25 percent reduction in lifecycle greenhouse gas emis-
26 sions compared with baseline lifecycle greenhouse
27 gas emissions.

28 (ii) NONCONTIGUOUS STATE OPT-IN.—

29 (I) IN GENERAL.—On the petition of a noncontiguous
30 State or territory, the Administrator may allow the re-
31 newable fuel program established under this subsection
32 to apply in the noncontiguous State or territory at the
33 same time or any time after the Administrator promul-
34 gates regulations under clause (i).

35 (II) OTHER ACTIONS.—In carrying out this clause, the
36 Administrator may—

37 (aa) promulgate or revise regulations under this
38 paragraph;

39 (bb) establish applicable percentages under para-
40 graph (3);

1 (cc) provide for the generation of credits under
2 paragraph (5); and

3 (dd) take such other actions as are necessary to
4 allow for the application of the renewable fuels pro-
5 gram in a noncontiguous State or territory.

6 (iii) PROVISIONS OF REGULATIONS.—Regardless of the
7 date of promulgation, the regulations promulgated under
8 clause (i)—

9 (I) shall contain compliance provisions applicable to
10 refineries, blenders, distributors, and importers, as ap-
11 propriate, to ensure that the requirements of this para-
12 graph are met; but

13 (II) shall not—

14 (aa) restrict geographic areas in which renewable
15 fuel may be used; or

16 (bb) impose any per-gallon obligation for the use
17 of renewable fuel.

18 (B) APPLICABLE VOLUME.—

19 (i) SPECIFIED CALENDAR YEARS.—

20 (I) RENEWABLE FUEL.—For the purpose of subpara-
21 graph (A), the applicable volume of renewable fuel for
22 calendar years 2009 to 2022 specified in the following
23 table shall be determined in accordance with the follow-
24 ing table:

Calendar year:	Applicable volume of renewable fuel (in billions of gallons):
2009	11.10
2010	12.95
2011	13.95
2012	15.20
2013	16.55
2014	18.15
2015	20.50
2016	22.25
2017	24.00
2018	26.00
2019	28.00
2020	30.00
2021	33.00
2022	36.00.

25 (II) ADVANCED BIOFUEL.—For the purpose of sub-
26 paragraph (A), of the volume of renewable fuel required
27 under subclause (I), the applicable volume of advanced
28 biofuel for calendar years 2009 to 2022 shall be deter-
29 mined in accordance with the following table:

Calendar year:	Applicable volume of advanced biofuel (in billions of gallons):
2009	0.60
2010	0.95
2011	1.35
2012	2.00
2013	2.75
2014	3.75
2015	5.50
2016	7.25
2017	9.00
2018	11.00
2019	13.00
2020	15.00
2021	18.00
2022	21.00.

1 (III) CELLULOSIC BIOFUEL.—For the purpose of sub-
 2 paragraph (A), of the volume of advanced biofuel re-
 3 quired under subclause (II), the applicable volume of cel-
 4 lulosic biofuel for calendar years 2010 to 2022 shall be
 5 determined in accordance with the following table:

Calendar year:	Applicable volume of cellulosic biofuel (in billions of gallons):
2010	0.10
2011	0.25
2012	0.50
2013	1.00
2014	1.75
2015	3.00
2016	4.25
2017	5.50
2018	7.00
2019	8.50
2020	10.50
2021	13.50
2022	16.00.

6 (IV) BIOMASS-BASED DIESEL.—For the purpose of
 7 subparagraph (A), of the volume of advanced biofuel re-
 8 quired under subclause (II), the applicable volume of bio-
 9 mass-based diesel for calendar years 2009 to 2012 shall
 10 be determined in accordance with the following table:

Calendar year:	Applicable volume of biomass- based diesel (in billions of gallons):
2009	0.50
2010	0.65
2011	0.80
2012	1.00.

11 (ii) OTHER CALENDAR YEARS.—

12 (I) IN GENERAL.—For the purposes of subparagraph
 13 (A), the applicable volumes of each fuel specified in the
 14 tables in clause (i) for calendar years after the calendar
 15 years specified in the tables shall be determined by the

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1 Administrator, in coordination with the Secretary of En-
2 ergy and the Secretary of Agriculture, based on a review
3 of the implementation of the program during calendar
4 years specified in the tables, and an analysis of—

5 (aa) the impact of the production and use of re-
6 newable fuels on the environment, including on air
7 quality, climate change, conversion of wetland, eco-
8 systems, wildlife habitat, water quality, and water
9 supply;

10 (bb) the impact of renewable fuels on the energy
11 security of the United States;

12 (cc) the expected annual rate of future commer-
13 cial production of renewable fuels, including ad-
14 vanced biofuels in each category (cellulosic biofuel
15 and biomass-based diesel);

16 (dd) the impact of renewable fuels on the infra-
17 structure of the United States, including deliver-
18 ability of materials, goods, and products other than
19 renewable fuel, and the sufficiency of infrastructure
20 to deliver and use renewable fuel;

21 (ee) the impact of the use of renewable fuels on
22 the cost to consumers of transportation fuel and on
23 the cost to transport goods; and

24 (ff) the impact of the use of renewable fuels on
25 other factors, including job creation, the price and
26 supply of agricultural commodities, rural economic
27 development, and food prices.

28 (II) REGULATIONS.—The Administrator shall promul-
29 gate regulations establishing the applicable volumes
30 under subclause (I) not later than 14 months before the
31 1st year for which the applicable volume applies.

32 (iii) APPLICABLE VOLUME OF ADVANCED BIOFUEL.—For
33 the purpose of making the determinations under clause (ii),
34 for each calendar year, the applicable volume of advanced
35 biofuel shall be at least the same percentage of the applicable
36 volume of renewable fuel as for calendar year 2022.

37 (iv) APPLICABLE VOLUME OF CELLULOSIC BIOFUEL.—For
38 the purpose of making the determinations under clause (ii),
39 for each calendar year, the applicable volume of cellulosic
40 biofuel established by the Administrator shall be based on the

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1 assumption that the Administrator will not need to issue a
2 waiver for those years under paragraph (7)(D).

3 (v) MINIMUM APPLICABLE VOLUME OF BIOMASS-BASED
4 DIESEL.—For the purpose of making the determinations
5 under clause (ii), the applicable volume of biomass-based die-
6 sel shall be not less than the applicable volume listed in
7 clause (i)(IV) for calendar year 2012.

8 (3) APPLICABLE PERCENTAGES.—

9 (A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE
10 SALES.—Not later than October 31 of each of calendar years 2009
11 to 2021, the Administrator of the Energy Information Administra-
12 tion shall provide to the Administrator an estimate, with respect
13 to the following calendar year, of the volumes of transportation
14 fuel, biomass-based diesel, and cellulosic biofuel projected to be
15 sold or introduced into commerce.

16 (B) DETERMINATION OF APPLICABLE PERCENTAGES.—

17 (i) IN GENERAL.—Not later than November 30 of each of
18 calendar years 2009 to 2021, based on the estimate provided
19 under subparagraph (A), the Administrator shall determine
20 and publish in the Federal Register, with respect to the fol-
21 lowing calendar year, the renewable fuel obligation that en-
22 sures that the requirements of paragraph (2) are met.

23 (ii) REQUIRED ELEMENTS.—The renewable fuel obligation
24 determined for a calendar year under clause (i) shall—

25 (I) be applicable to refineries, blenders, and importers,
26 as appropriate;

27 (II) be expressed in terms of a volume percentage of
28 transportation fuel sold or introduced into commerce;
29 and

30 (III) subject to subparagraph (C)(i), consist of a sin-
31 gle applicable percentage that applies to all categories of
32 persons specified in subclause (I).

33 (C) ADJUSTMENTS.—In determining the applicable percentage
34 for a calendar year, the Administrator shall make adjustments—

35 (i) to prevent the imposition of redundant obligations on
36 any person specified in subparagraph (B)(ii)(I); and

37 (ii) to account for the use of renewable fuel during the pre-
38 vious calendar year by small refineries that are exempt under
39 paragraph (8).

40 (4) MODIFICATION OF GREENHOUSE GAS REDUCTION PERCENT-
41 AGES.—

1 (A) IN GENERAL.—The Administrator may, in the regulations
2 under paragraph (2)(A)(i)(II), adjust the 20 percent, 50 percent,
3 and 60 percent reductions in lifecycle greenhouse gas emissions
4 specified in paragraphs (2)(A)(i) (relating to renewable fuel),
5 (1)(D) (relating to biomass-based diesel), (1)(B)(i) (relating to ad-
6 vanced biofuel), and (1)(E) (relating to cellulosic biofuel) to a
7 lower percentage. For the 50 and 60 percent reductions, the Ad-
8 ministrator may make such an adjustment only if the Adminis-
9 trator determines that generally such a reduction is not commer-
10 cially feasible for fuels made using a variety of feedstocks, tech-
11 nologies, and processes to meet the applicable reduction.

12 (B) AMOUNT OF ADJUSTMENT.—In promulgating regulations
13 under this paragraph, the Administrator shall not—

14 (i) reduce to below 40 percent the specified 50 percent re-
15 duction in greenhouse gas emissions from advanced biofuel
16 and in biomass-based diesel;

17 (ii) reduce to below 10 percent the specified 20 percent re-
18 duction in greenhouse gas emissions from renewable fuel; or

19 (iii) reduce to below 50 percent the specified 60 percent re-
20 duction in greenhouse gas emissions from cellulosic biofuel.

21 (C) ADJUSTED REDUCTION LEVELS.—An adjustment under this
22 paragraph to a percentage less than the specified 20 percent
23 greenhouse gas reduction for renewable fuel shall be the minimum
24 possible adjustment, and the adjusted greenhouse gas reduction
25 shall be established by the Administrator at the maximum achiev-
26 able level, taking cost into consideration, for natural gas fired
27 corn-based ethanol plants, allowing for the use of a variety of tech-
28 nologies and processes. An adjustment in the 50 or 60 percent
29 greenhouse gas levels shall be the minimum possible adjustment
30 for the fuel or fuels concerned, and the adjusted greenhouse gas
31 reduction shall be established at the maximum achievable level,
32 taking cost into consideration, allowing for the use of a variety of
33 feedstocks, technologies, and processes.

34 (D) 5-YEAR REVIEW.—When the Administrator makes any ad-
35 justment under this paragraph, not later than 5 years thereafter
36 the Administrator shall review and revise (based on the same cri-
37 teria and standards as are required for the initial adjustment) the
38 regulations establishing the adjusted level.

39 (E) SUBSEQUENT ADJUSTMENTS.—After the Administrator pro-
40 mulgates a regulation under paragraph (2)(A)(i)(II) with respect
41 to the method of determining lifecycle greenhouse gas emissions,

1 except as provided in subparagraph (D), the Administrator shall
2 not adjust the percentage greenhouse gas reduction levels unless
3 the Administrator determines that there has been a significant
4 change in the analytical methodology used for determining the
5 lifecycle greenhouse gas emissions. If the Administrator makes
6 such a determination, the Administrator may adjust the 20, 50,
7 or 60 percent reduction levels through rulemaking using the cri-
8 teria and standards set forth in this paragraph.

9 (F) LIMIT ON UPWARD ADJUSTMENTS.—If, under subparagraph
10 (D) or (E), the Administrator revises a percentage level adjusted
11 as provided in subparagraphs (A), (B), and (C) to a higher per-
12 centage, the higher percentage shall not exceed the applicable per-
13 cent specified in paragraph (2)(A)(i), (1)(D), (1)(B)(i), or (1)(E).

14 (G) APPLICABILITY OF ADJUSTMENTS.—If the Administrator
15 adjusts or revises a percentage level described in this paragraph
16 or makes a change in the analytical methodology used for deter-
17 mining the lifecycle greenhouse gas emissions, the adjustment, re-
18 vision, or change (or any combination thereof) shall apply only to
19 renewable fuel from new facilities that commence construction
20 after the effective date of the adjustment, revision, or change.

21 (5) CREDIT PROGRAM.—

22 (A) IN GENERAL.—The regulations promulgated under para-
23 graph (2)(A) shall provide—

24 (i) for the generation of an appropriate amount of credits
25 by any person that refines, blends, or imports gasoline that
26 contains a quantity of renewable fuel that is greater than the
27 quantity required under paragraph (2);

28 (ii) for the generation of an appropriate amount of credits
29 for biodiesel; and

30 (iii) for the generation of credits by small refineries in ac-
31 cordance with paragraph (8)(C).

32 (B) USE OF CREDITS.—A person that generates credits under
33 subparagraph (A) may use the credits, or transfer all or a portion
34 of the credits to another person, for the purpose of complying with
35 paragraph (2).

36 (C) DURATION OF CREDITS.—A credit generated under this
37 paragraph shall be valid to show compliance for the 12 months as
38 of the date of generation.

39 (D) INABILITY TO GENERATE OR PURCHASE SUFFICIENT CRED-
40 ITS.—The regulations promulgated under paragraph (2)(A) shall
41 include provisions allowing any person that is unable to generate

1 or purchase sufficient credits to meet the requirements of para-
2 graph (2) to carry forward a renewable fuel deficit on condition
3 that the person, in the calendar year following the year in which
4 the renewable fuel deficit is created—

5 (i) achieves compliance with the renewable fuel requirement
6 under paragraph (2); and

7 (ii) generates or purchases additional renewable fuel credits
8 to offset the renewable fuel deficit of the previous year.

9 (E) CREDITS FOR ADDITIONAL RENEWABLE FUEL.—The Ad-
10 ministrator may issue regulations providing for—

11 (i) the generation of an appropriate amount of credits by
12 any person that refines, blends, or imports additional renew-
13 able fuels specified by the Administrator; and

14 (ii) the use of such credits by the generator, or the transfer
15 of all or a portion of the credits to another person, for the
16 purpose of complying with paragraph (2).

17 (6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

18 (A) STUDY.—For each of calendar years 2006 to 2012, the Ad-
19 ministrator of the Energy Information Administration shall con-
20 duct a study of renewable fuel blending to determine whether
21 there are excessive seasonal variations in the use of renewable fuel.

22 (B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If,
23 for any calendar year, the Administrator of the Energy Informa-
24 tion Administration, based on the study under subparagraph (A),
25 makes the determinations specified in subparagraph (C), the Ad-
26 ministrator of EPA shall promulgate regulations to ensure that 25
27 percent or more of the quantity of renewable fuel necessary to
28 meet the requirements of paragraph (2) is used during each of the
29 2 periods specified in subparagraph (D) of each subsequent cal-
30 endar year.

31 (C) DETERMINATIONS.—The determinations referred to in sub-
32 paragraph (B) are that—

33 (i) less than 25 percent of the quantity of renewable fuel
34 necessary to meet the requirements of paragraph (2) has been
35 used during 1 of the 2 periods specified in subparagraph (D)
36 of the calendar year;

37 (ii) a pattern of excessive seasonal variation described in
38 clause (i) will continue in subsequent calendar years; and

39 (iii) promulgating regulations or other requirements to im-
40 pose a 25 percent or more seasonal use of renewable fuels will
41 not prevent or interfere with the attainment of NAAQSeS or

1 significantly increase the price of motor fuels to the con-
2 sumer.

3 (D) PERIODS.—The 2 periods referred to in this paragraph
4 are—

5 (i) April to September; and

6 (ii) January to March and October to December.

7 (E) EXCLUSION.—Renewable fuel blended or consumed in cal-
8 endar year 2006 in a State that has received a waiver under sec-
9 tion 221109(b) of this title shall not be included in the study
10 under subparagraph (A).

11 (F) STATE EXEMPTION FROM SEASONALITY REQUIREMENTS.—
12 Notwithstanding any other provision of law, the seasonality re-
13 quirement relating to renewable fuel use established by this para-
14 graph shall not apply to any State that has received a waiver
15 under section 221109(b) of this title or any State dependent on
16 refineries in that State for gasoline supplies.

17 (7) WAIVERS.—

18 (A) IN GENERAL.—On petition by 1 or more States, by any per-
19 son subject to the requirements of this subsection, or by the Ad-
20 ministrator on the Administrator's own motion, the Administrator,
21 in consultation with the Secretary of Agriculture and the Sec-
22 retary of Energy, may waive the requirements of paragraph (2) in
23 whole or in part by reducing the national quantity of renewable
24 fuel required under paragraph (2) based on a determination by the
25 Administrator, after public notice and opportunity for comment,
26 that—

27 (i) implementation of the requirement would severely harm
28 the economy or environment of a State, a region, or the
29 United States; or

30 (ii) there is an inadequate domestic supply.

31 (B) PETITIONS FOR WAIVERS.—The Administrator, in consulta-
32 tion with the Secretary of Agriculture and the Secretary of En-
33 ergy, shall approve or disapprove a petition for a waiver of the re-
34 quirements of paragraph (2) within 90 days after the date on
35 which the petition is received by the Administrator.

36 (C) TERMINATION OF WAIVERS.—A waiver granted under sub-
37 paragraph (A) shall terminate after 1 year, but may be renewed
38 by the Administrator after consultation with the Secretary of Agri-
39 culture and the Secretary of Energy.

40 (D) CELLULOSIC BIOFUEL.—

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(i) PROJECTED VOLUME LESS THAN THE MINIMUM APPLICABLE VOLUME.—

(I) REDUCTION OF APPLICABLE VOLUME.—For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A), not later than November 30 of the preceding calendar year, the Administrator shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year.

(II) RENEWABLE FUEL AND ADVANCED BIOFUELS.—For any calendar year for which the Administrator makes a reduction under subclause (I), the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(ii) CREDITS.—

(I) IN GENERAL.— When the Administrator reduces the minimum cellulosic biofuel volume under this subparagraph, the Administrator shall make available for sale cellulosic biofuel credits at the higher of \$0.25 per gallon or the amount by which \$3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States.

(II) ADJUSTMENT FOR INFLATION.—The Administrator shall adjust the amounts in subclause (I) for inflation for years after 2008.

(iii) REGULATIONS.—

(I) IN GENERAL.—The Administrator shall promulgate regulations to govern the issuance of credits under this subparagraph.

(II) PRICE OF CREDITS.—The regulations shall set forth the method for determining the exact price of credits in the event of a waiver. The price of such credits shall not be changed more frequently than once each quarter.

(III) MARKET LIQUIDITY AND TRANSPARENCY; CERTAINTY; LIMITATION OF MISUSE; OTHER PURPOSES.—The regulations shall include—

1 (aa) such provisions, including limiting the uses
2 and useful life of credits, as the Administrator con-
3 siders appropriate to—

4 (AA) assist market liquidity and trans-
5 parency;

6 (BB) provide appropriate certainty for regu-
7 lated entities and renewable fuel producers;
8 and

9 (CC) limit any potential misuse of cellulosic
10 biofuel credits to reduce the use of other re-
11 newable fuels; and

12 (bb) provisions for such other purposes as the
13 Administrator determines will help achieve the goals
14 of this subsection.

15 (IV) NUMBER OF CREDITS.—The regulations shall
16 limit the number of cellulosic biofuel credits for any cal-
17 endar year to the minimum applicable volume (as re-
18 duced under this subparagraph) of cellulosic biofuel for
19 that year.

20 (E) BIOMASS-BASED DIESEL.—

21 (i) MARKET EVALUATION.—The Administrator, in con-
22 sultation with the Secretary of Energy and the Secretary of
23 Agriculture, shall periodically evaluate the impact of the bio-
24 mass-based diesel requirements established under this para-
25 graph on the price of diesel fuel.

26 (ii) WAIVER.—

27 (I) REDUCTION OF REQUIRED QUANTITY.—If the Ad-
28 ministrator determines that there is a significant renew-
29 able feedstock disruption or other market circumstances
30 that would make the price of biomass-based diesel fuel
31 increase significantly, the Administrator, in consultation
32 with the Secretary of Energy and the Secretary of Agri-
33 culture, shall issue an order to reduce, for up to a 60-
34 day period, the quantity of biomass-based diesel required
35 under subparagraph (A) by an appropriate quantity that
36 does not exceed 15 percent of the applicable annual re-
37 quirement for biomass-based diesel.

38 (II) RENEWABLE FUEL AND ADVANCED BIOFUELS.—
39 For any calendar year for which the Administrator
40 makes a reduction under subclause (I), the Adminis-
41 trator may also reduce the applicable volume of renew-

1 able fuel and advanced biofuels requirement established
2 under paragraph (2)(B) by the same or a lesser volume.

3 (iii) EXTENSIONS.—If the Administrator determines that
4 the feedstock disruption or circumstances described in clause
5 (ii) is continuing beyond the 60-day period described in clause
6 (ii) or this clause, the Administrator, in consultation with the
7 Secretary of Energy and the Secretary of Agriculture, may
8 issue an order to reduce, for up to an additional 60-day pe-
9 riod, the quantity of biomass-based diesel required under sub-
10 paragraph (A) by an appropriate quantity that does not ex-
11 ceed an additional 15 percent of the applicable annual re-
12 quirement for biomass-based diesel.

13 (F) MODIFICATION OF APPLICABLE VOLUMES.—

14 (i) IN GENERAL.—For any of the tables in paragraph
15 (2)(B), if the Administrator waives—

16 (I) at least 20 percent of the applicable volume re-
17 quirement set forth in any such table for 2 consecutive
18 years; or

19 (II) at least 50 percent of such volume requirement
20 for a single year;

21 the Administrator shall promulgate a regulation (within 1
22 year after issuing the waiver) that modifies the applicable vol-
23 umes set forth in the table for all years following the final
24 year to which the waiver applies, except that no such modi-
25 fication in applicable volumes shall be made for any year be-
26 fore 2016.

27 (ii) PROCESSES, CRITERIA, AND STANDARDS.—In promul-
28 gating a regulation under clause (i), the Administrator shall
29 comply with the processes, criteria, and standards set forth
30 in paragraph (2)(B)(ii).

31 (8) SMALL REFINERIES.—

32 (A) TEMPORARY EXEMPTION.—

33 (i) IN GENERAL.—The requirements of paragraph (2) shall
34 not apply to small refineries until calendar year 2011.

35 (ii) EXTENSION OF EXEMPTION.—

36 (I) STUDY BY SECRETARY OF ENERGY.—Not later
37 than December 31, 2008, the Secretary of Energy shall
38 conduct for the Administrator a study to determine
39 whether compliance with the requirements of paragraph
40 (2) would impose a disproportionate economic hardship
41 on small refineries.

1 (II) EXTENSION OF EXEMPTION.—In the case of a
2 small refinery that the Secretary of Energy determines
3 under subclause (I) would be subject to a disproportion-
4 ate economic hardship if required to comply with para-
5 graph (2), the Administrator shall extend the exemption
6 under clause (i) for the small refinery for a period of not
7 less than 2 additional years.

8 (B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC
9 HARDSHIP.—

10 (i) EXTENSION OF EXEMPTION.—A small refinery may at
11 any time petition the Administrator for an extension of the
12 exemption under subparagraph (A) for the reason of dis-
13 proportionate economic hardship.

14 (ii) EVALUATION OF PETITIONS.—In evaluating a petition
15 under clause (i), the Administrator, in consultation with the
16 Secretary of Energy, shall consider the findings of the study
17 under subparagraph (A)(ii) and other economic factors.

18 (iii) DEADLINE FOR ACTION ON PETITIONS.—The Adminis-
19 trator shall act on any petition submitted by a small refinery
20 for a hardship exemption not later than 90 days after the
21 date of receipt of the petition.

22 (C) CREDIT PROGRAM.—If a small refinery notifies the Admin-
23 istrator that the small refinery waives the exemption under sub-
24 paragraph (A), the regulations promulgated under paragraph
25 (2)(A) shall provide for the generation of credits by the small re-
26 finery under paragraph (5) beginning in the calendar year follow-
27 ing the date of notification.

28 (D) OPT-IN FOR SMALL REFINERIES.—A small refinery shall be
29 subject to the requirements of paragraph (2) if the small refinery
30 notifies the Administrator that the small refinery waives the ex-
31 emption under subparagraph (A).

32 (9) ETHANOL MARKET CONCENTRATION ANALYSIS.—

33 (A) ANALYSIS.—

34 (i) IN GENERAL.—The Federal Trade Commission shall an-
35 nually perform a market concentration analysis of the ethanol
36 production industry using the Herfindahl-Hirschman Index to
37 determine whether there is sufficient competition among in-
38 dustry participants to avoid price-setting and other anti-
39 competitive behavior.

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- 1 (ii) SCORING.—For the purpose of scoring under clause (i)
2 using the Herfindahl-Hirschman Index, all marketing ar-
3 rangements among industry participants shall be considered.
- 4 (B) REPORT.—The Federal Trade Commission shall annually
5 submit to Congress and the Administrator a report on the results
6 of the market concentration analysis performed under subpara-
7 graph (A)(i).
- 8 (10) PERIODIC REVIEWS.—To allow for the appropriate adjustment
9 of the requirements described in subparagraph (B) of paragraph (2),
10 the Administrator shall conduct periodic reviews of—
- 11 (A) existing technologies;
- 12 (B) the feasibility of achieving compliance with the require-
13 ments; and
- 14 (C) the impacts of the requirements described in subsection
15 (a)(2) on each individual and entity described in paragraph (2).
- 16 (11) EFFECT ON OTHER PROVISIONS.—
- 17 (A) IN GENERAL.—Nothing in this subsection (including regula-
18 tions under this subsection) shall affect or be construed to—
- 19 (i) affect the regulatory status of carbon dioxide or any
20 other greenhouse gas; or
- 21 (ii) expand or limit regulatory authority regarding carbon
22 dioxide or any other greenhouse gas for purposes of other
23 provisions of this chapter.
- 24 (B) NO EFFECT ON IMPLEMENTATION OR ENFORCEMENT.—
25 Subparagraph (A) shall not affect implementation and enforce-
26 ment of this subsection.
- 27 (12) ENVIRONMENTAL AND RESOURCE CONSERVATION IMPACTS.—
- 28 (A) IN GENERAL.—Every 3 years the Administrator, in con-
29 sultation with the Secretary of Agriculture and the Secretary of
30 Energy, shall assess and submit to Congress a report on the im-
31 pacts to date and likely future impacts of the requirements of this
32 subsection on—
- 33 (i) environmental issues, including air quality, effects on
34 hypoxia, pesticides, sediment, nutrient and pathogen levels in
35 bodies of water, acreage and function of bodies of water, and
36 soil environmental quality;
- 37 (ii) resource conservation issues, including soil conserva-
38 tion, water availability, and ecosystem health and biodiversity,
39 including impacts on forests, grassland, and wetland; and
- 40 (iii) the growth and use of cultivated invasive or noxious
41 plants and their impacts on the environment and agriculture.

1 (B) VIEWS OF OTHERS.—Before preparing a report under sub-
2 paragraph (A), the Administrator may seek the views of the Na-
3 tional Academy of Sciences or another appropriate independent re-
4 search institute.

5 (C) CONTENTS.—A report under subparagraph (A) shall—
6 (i) disclose the annual volume of imported renewable fuels
7 and feedstocks for renewable fuels;
8 (ii) describe the environmental impacts outside the United
9 States of producing renewable fuels and feedstocks for renew-
10 able fuels; and
11 (iii) include recommendations for actions to address any
12 adverse impacts found.

13 (p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS
14 MODEL.—

15 (1) ANTIBACKSLIDING ANALYSIS.—

16 (A) DRAFT ANALYSIS.—Not later than 4 years after August 8,
17 2005, the Administrator shall publish for public comment a draft
18 analysis of the changes in emissions of air pollutants and air qual-
19 ity due to the use of motor vehicle fuel and fuel additives resulting
20 from implementation of the amendments made by the Energy Pol-
21 icy Act of 2005 (119 Stat. 594).

22 (B) FINAL ANALYSIS.—After providing a reasonable opportunity
23 for comment but not later than 5 years after August 8, 2005, the
24 Administrator shall publish the analysis in final form.

25 (2) EMISSIONS MODEL.—For the purposes of this section, not later
26 than 4 years after August 8, 2005, the Administrator shall develop and
27 finalize an emissions model that reflects, to the maximum extent prac-
28 ticable, the effects of gasoline characteristics or components on emis-
29 sions from vehicles in the motor vehicle fleet during calendar year
30 2007.

31 (q) CONVERSION ASSISTANCE FOR CELLULOSIC BIOMASS, WASTE-DE-
32 RIVED ETHANOL, AND APPROVED RENEWABLE FUELS.—

33 (1) DEFINITIONS.—In this subsection:

34 (A) APPROVED RENEWABLE FUEL.—The term “approved re-
35 newable fuel” means a fuel or component of fuel that has been ap-
36 proved by the Secretary of Energy and is made from renewable
37 biomass.

38 (B) OLD GROWTH TIMBER.—The term “old-growth timber”
39 means timber of a forest from the late successional stage of forest
40 development.

1 (C) RENEWABLE BIOMASS.—The term “renewable biomass”
2 means any organic matter that is available on a renewable or re-
3 curring basis (excluding old-growth timber), including dedicated
4 energy crops and trees, agricultural food and feed crop residues,
5 aquatic plants, animal wastes, wood and wood residues, paper and
6 paper residues, and other vegetative waste materials.

7 (2) IN GENERAL.—The Secretary of Energy may provide grants to
8 merchant producers of cellulosic biomass ethanol, waste-derived etha-
9 nol, and approved renewable fuels in the United States to assist the
10 producers in building eligible production facilities described in para-
11 graph (3) for the production of ethanol or approved renewable fuels.

12 (3) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall
13 be eligible to receive a grant under this subsection if the production
14 facility—

15 (A) is located in the United States; and

16 (B) uses cellulosic or renewable biomass or waste-derived feed-
17 stocks derived from agricultural residues, wood residues, municipal
18 solid waste, or agricultural byproducts.

19 (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to
20 be appropriated to carry out this subsection—

21 (A) \$100,000,000 for fiscal year 2006;

22 (B) \$250,000,000 for fiscal year 2007; and

23 (C) \$400,000,000 for fiscal year 2008.

24 (r) BLENDING OF COMPLIANT REFORMULATED GASOLINES.—

25 (1) IN GENERAL.—Notwithstanding subsections (h) and (k) and sub-
26 ject to the limitations in paragraph (2), it shall not be a violation of
27 this chapter for a gasoline retailer, during any month of the year, to
28 blend at a retail location batches of ethanol-blended and non-ethanol-
29 blended reformulated gasoline if—

30 (A) each batch of gasoline to be blended has been individually
31 certified as in compliance with subsections (h) and (k) prior to
32 being blended;

33 (B) the retailer notifies the Administrator prior to the blending,
34 and identifies the exact location of the retail station and the spe-
35 cific tank in which the blending will take place;

36 (C) the retailer retains and, as requested by the Administrator
37 or the Administrator’s designee, makes available for inspection the
38 certifications accounting for all gasoline at the retail outlet; and

39 (D) the retailer does not, between June 1 and September 15 of
40 any year, blend a batch of volatile organic compound-controlled
41 gasoline (summer gasoline) with a batch of non-volatile organic

1 compound-controlled gasoline (winter gasoline) (as those terms are
2 defined under subsections (h) and (k)).

3 (2) LIMITATIONS.—

4 (A) FREQUENCY LIMITATION.—A retailer shall be permitted to
5 blend batches of compliant reformulated gasoline under this sub-
6 section during a maximum of 2 blending periods between May 1
7 and September 15 of any year.

8 (B) DURATION OF BLENDING PERIOD.—Each blending period
9 authorized under subparagraph (A) shall extend for a period of
10 not more than 10 consecutive calendar days.

11 (3) SURVEYS.—A sample of gasoline taken from a retail location
12 that has blended gasoline within the past 30 days and is in compliance
13 with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not
14 be used in a volatile organic compound survey mandated by part 80
15 of title 40, Code of Federal Regulations.

16 (4) STATE IMPLEMENTATION PLANS.—A State shall be held harm-
17 less and shall not be required to revise its State implementation plan
18 under section 211110 of this title to account for the emissions from
19 blended gasoline authorized under paragraph (1).

20 (5) PRESERVATION OF STATE LAW.—Nothing in this subsection
21 shall—

22 (A) preempt existing State laws (including regulations) regulat-
23 ing the blending of compliant gasolines; or

24 (B) preclude a State from adopting such restrictions in the fu-
25 ture.

26 (6) REGULATIONS.—The Administrator shall promulgate, after no-
27 tice and comment, regulations implementing this subsection.

28 (7) APPLICABILITY.—This subsection shall apply to blended batches
29 of reformulated gasoline regardless of whether the implementing regu-
30 lations required by paragraph (6) have been promulgated by the Ad-
31 ministrator.

32 (8) LIABILITY.—No person other than the person responsible for
33 blending under this subsection shall be subject to an enforcement ac-
34 tion or penalties under subsection (s) solely arising from the blending
35 of compliant reformulated gasolines by the retailers.

36 (9) FORMULATION OF GASOLINE.—This subsection does not grant
37 authority to the Administrator or any State (or any subdivision there-
38 of) to require reformulation of gasoline at the refinery to adjust for po-
39 tential or actual emissions increases due to the blending authorized by
40 this subsection.

41 (s) STANDARD SPECIFICATIONS FOR BIODIESEL.—

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1 (1) DEFINITION OF BIODIESEL.—In this subsection, the term “bio-
2 diesel” has the meaning given the term in section 312(f) of Energy
3 Policy Act of 1992 (42 U.S.C. 13220(f)).

4 (2) ANNUAL INSPECTION AND ENFORCEMENT PROGRAM.—

5 (A) IN GENERAL.—The Administrator shall establish an annual
6 inspection and enforcement program to ensure that diesel fuel con-
7 taining biodiesel sold or distributed in commerce meets the stand-
8 ards established under regulations under this section, including
9 testing and certification for compliance with applicable standards
10 of the American Society for Testing and Materials.

11 (B) AUTHORIZATION OF APPROPRIATIONS.—There are author-
12 ized to be appropriated to carry out the inspection and enforcem-
13 ent program under this paragraph \$3,000,000 for each of fiscal
14 years 2008 to 2010.

15 (t) PREVENTION OF AIR QUALITY DETERIORATION.—

16 (1) STUDY.—

17 (A) IN GENERAL.—The Administrator shall complete a study to
18 determine whether the renewable fuel volumes required by this sec-
19 tion will adversely affect air quality as a result of changes in
20 motor vehicle and motor vehicle engine emissions of air pollutants
21 regulated under this division.

22 (B) CONSIDERATIONS.—The study shall include consideration
23 of—

24 (i) various blend levels, types of renewable fuels, and avail-
25 able vehicle technologies; and

26 (ii) appropriate national, regional, and local air quality con-
27 trol measures.

28 (2) REGULATIONS.—Not later than 3 years after December 18,
29 2007, the Administrator shall—

30 (A) promulgate regulations to implement appropriate measures
31 to mitigate, to the greatest extent achievable, considering the re-
32 sults of the study under paragraph (1), any adverse impacts on
33 air quality as the result of the renewable volumes required by this
34 section; or

35 (B) make a determination that no such measures are necessary.

36 (u) PENALTIES AND INJUNCTIONS.—

37 (1) CIVIL PENALTIES.—Any person that violates subsection (b), (f),
38 (g), (k), (l), (m), or (n) or the regulations prescribed under subsection
39 (d), (h), (i), (k), (l), (m), (n), or (o) or that fails to furnish any infor-
40 mation or conduct any tests required by the Administrator under sub-
41 section (c) shall be liable to the United States for a civil penalty of

1 not more than \$25,000 for each day of the violation or failure and the
2 amount of economic benefit or savings resulting from the violation or
3 failure. Any violation with respect to a regulation prescribed under sub-
4 section (d), (k), (l), (m), or (o) that establishes a regulatory standard
5 based on a multiday averaging period shall constitute a separate day
6 of violation for each day in the averaging period. Civil penalties shall
7 be assessed in accordance with subsections (b) and (c) of section
8 221105 of this title.

9 (2) INJUNCTIVE AUTHORITY.—

10 (A) JURISDICTION.—The district courts of the United States
11 shall have jurisdiction to restrain violations of subsection (b), (f),
12 (g), (k), (l), (m), (n) or (o) and of regulations prescribed under
13 subsections (d), (h), (i), (k), (l), (m), (n), or (o), to award other
14 appropriate relief, and to compel the furnishing of information and
15 the conduct of tests required by the Administrator under sub-
16 section (c).

17 (B) ACTIONS BROUGHT BY AND IN NAME OF UNITED STATES.—
18 An action to restrain a violation or compel action described in sub-
19 paragraph (A) shall be brought by and in the name of the United
20 States.

21 (C) SUBPOENAS.—In any such action, a subpoena for a wit-
22 nesses who is required to attend a district court in any judicial
23 district may run into any other judicial district.

24 **§ 221112. Renewable fuel**

25 (a) DEFINITIONS.—In this section:

26 (1) MUNICIPAL SOLID WASTE.—The term “municipal solid waste”
27 has the meaning given the term “solid waste” in section 1004 of the
28 Solid Waste Disposal Act (42 U.S.C. 6903).

29 (2) RFG STATE.—The term “RFG State” means a State in which
30 is located 1 or more covered areas (as defined in section 221111(k)(1)
31 of this title).

32 (3) SECRETARY.—The term “Secretary” means the Secretary of En-
33 ergy.

34 (b) CELLULOSIC BIOMASS ETHANOL AND MUNICIPAL SOLID WASTE
35 LOAN GUARANTEE PROGRAM.—

36 (1) IN GENERAL.—Funds may be provided for the cost (as defined
37 in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of
38 loan guarantees issued under section 1516 of the Energy Policy Act
39 of 2005 (42 U.S.C. 16503) to carry out commercial demonstration
40 projects for cellulosic biomass and sucrose-derived ethanol.

41 (2) DEMONSTRATION PROJECTS.—

1 (A) IN GENERAL.—The Secretary shall issue loan guarantees
2 under this section to carry out not more than 4 projects to com-
3 mercially demonstrate the feasibility and viability of producing cel-
4 lulosic biomass ethanol or sucrose-derived ethanol, including at
5 least 1 project that uses cereal straw as a feedstock and 1 project
6 that uses municipal solid waste as a feedstock.

7 (B) DESIGN CAPACITY.—Each project shall have a design ca-
8 pacity to produce at least 30,000,000 gallons of cellulosic biomass
9 ethanol each year.

10 (3) APPLICANT ASSURANCES.—An applicant for a loan guarantee
11 under this section shall provide assurances, satisfactory to the Sec-
12 retary, that—

13 (A) the project design has been validated through the operation
14 of a continuous process facility with a cumulative output of at
15 least 50,000 gallons of ethanol;

16 (B) the project has been subject to a full technical review;

17 (C) the project is covered by adequate project performance
18 guarantees;

19 (D) the project, with the loan guarantee, is economically viable;
20 and

21 (E) there is a reasonable assurance of repayment of the guaran-
22 teed loan.

23 (4) LIMITATIONS.—

24 (A) MAXIMUM GUARANTEE.—Except as provided in subpara-
25 graph (B), a loan guarantee under this section may be issued for
26 up to 80 percent of the estimated cost of a project, but may not
27 exceed \$250,000,000 for a project.

28 (B) ADDITIONAL GUARANTEES.—

29 (i) IN GENERAL.—The Secretary may issue additional loan
30 guarantees for a project to cover up to 80 percent of the ex-
31 cess of actual project cost over estimated project cost but not
32 to exceed 15 percent of the amount of the original guarantee.

33 (ii) PRINCIPAL AND INTEREST.—Subject to subparagraph
34 (A), the Secretary shall guarantee 100 percent of the prin-
35 cipal and interest of a loan made under subparagraph (A).

36 (5) EQUITY CONTRIBUTIONS.—To be eligible for a loan guarantee
37 under this section, an applicant for the loan guarantee shall have bind-
38 ing commitments from equity investors to provide an initial equity con-
39 tribution of at least 20 percent of the total project cost.

40 (6) INSUFFICIENT AMOUNTS.—If the amount made available to carry
41 out this section is insufficient to allow the Secretary to make loan

1 guarantees for 3 projects described in this subsection, the Secretary
2 shall issue loan guarantees for 1 or more qualifying projects under this
3 section in the order in which the applications for the projects are re-
4 ceived by the Secretary.

5 (7) APPROVAL.—An application for a loan guarantee under this sec-
6 tion shall be approved or disapproved by the Secretary not later than
7 90 days after the application is received by the Secretary.

8 (e) RENEWABLE FUEL PRODUCTION RESEARCH AND DEVELOPMENT
9 GRANTS.—

10 (1) IN GENERAL.—The Administrator shall provide grants for the re-
11 search into, and development and implementation of, renewable fuel
12 production technologies in RFG States with low rates of ethanol pro-
13 duction, including low rates of production of cellulosic biomass ethanol.

14 (2) ELIGIBILITY.—

15 (A) IN GENERAL.—The entities eligible to receive a grant under
16 this subsection are academic institutions in RFG States, and con-
17 sortia made up of combinations of academic institutions, industry,
18 State government agencies, or local government agencies in RFG
19 States, that have proven experience and capabilities with relevant
20 technologies.

21 (B) APPLICATION.—To be eligible to receive a grant under this
22 subsection, an eligible entity shall submit to the Administrator an
23 application in such manner and form, and accompanied by such
24 information, as the Administrator may specify.

25 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to
26 be appropriated to carry out this subsection \$25,000,000 for each of
27 fiscal years 2006 to 2010.

28 **§ 221113. Nonroad engines and nonroad vehicles**

29 (a) EMISSION STANDARDS.—

30 (1) STUDY.—The Administrator shall conduct a study of emissions
31 from nonroad engines and nonroad vehicles (other than locomotives or
32 engines used in locomotives) to determine if such emissions cause, or
33 significantly contribute to, air pollution that may reasonably be antici-
34 pated to endanger public health or welfare.

35 (2) DETERMINATION.—After notice and opportunity for public hear-
36 ing, the Administrator shall determine within 12 months after comple-
37 tion of the study under paragraph (1), based on the results of the
38 study, whether emissions of carbon monoxide, nitrogen oxides, and
39 volatile organic compounds from new and existing nonroad engines or
40 nonroad vehicles (other than locomotives or engines used in loco-
41 motives) are significant contributors to ozone or carbon monoxide con-

1 centrations in more than 1 area that has failed to attain the NAAQSEs
2 for ozone or carbon monoxide. That determination shall be included in
3 the regulations under paragraph (3).

4 (3) REGULATIONS.—

5 (A) IN GENERAL.—If the Administrator makes an affirmative
6 determination under paragraph (2), the Administrator shall, with-
7 in 12 months after completion of the study under paragraph (1),
8 promulgate (and from time to time revise) regulations containing
9 standards applicable to emissions from the classes or categories of
10 new nonroad engines and new nonroad vehicles (other than loco-
11 motives or engines used in locomotives) that in the Administrator's
12 judgment, cause or contribute to air pollution that may reasonably
13 be anticipated to endanger public health or welfare.

14 (B) GREATEST DEGREE OF EMISSION REDUCTION ACHIEV-
15 ABLE.—The standards shall achieve the greatest degree of emis-
16 sion reduction achievable through the application of technology
17 that the Administrator determines will be available for the engines
18 or vehicles to which the standards apply, giving appropriate con-
19 sideration to—

20 (i) the cost of applying the technology within the period of
21 time available to manufacturers; and

22 (ii) noise, energy, and safety factors associated with the ap-
23 plication of the technology.

24 (C) CONSIDERATIONS.—Before determining what degree of re-
25 duction will be available, the Administrator shall consider stand-
26 ards equivalent in stringency to standards for comparable motor
27 vehicles or engines (if any) regulated under section 221102 of this
28 title, taking into account the technological feasibility, costs, safety,
29 noise, and energy factors associated with achieving, as appro-
30 priate, standards of such stringency and lead time.

31 (D) USEFUL LIFE.—The regulations shall apply to the useful
32 life of the engines or vehicles (as determined by the Adminis-
33 trator).

34 (4) OTHER AIR POLLUTANTS.—

35 (A) IN GENERAL.—If the Administrator determines that any
36 emissions not described in paragraph (2) from new nonroad en-
37 gines or vehicles significantly contribute to air pollution that may
38 reasonably be anticipated to endanger public health or welfare, the
39 Administrator may promulgate such regulations as the Adminis-
40 trator considers appropriate containing standards applicable to
41 emissions from the classes or categories of new nonroad engines

1 and new nonroad vehicles (other than locomotives or engines used
2 in locomotives) that, in the Administrator's judgment, cause or
3 contribute to air pollution that may reasonably be anticipated to
4 endanger public health or welfare, taking into account costs, noise,
5 safety, and energy factors associated with the application of tech-
6 nology that the Administrator determines will be available for the
7 engines and vehicles to which the standards apply.

8 (B) USEFUL LIFE.—The regulations shall apply to the useful
9 life of the engines or vehicles (as determined by the Adminis-
10 trator).

11 (5) NEW LOCOMOTIVES AND NEW ENGINES USED IN LOCO-
12 MOTIVES.—

13 (A) IN GENERAL.—The Administrator shall promulgate regula-
14 tions containing standards applicable to emissions from new loco-
15 motives and new engines used in locomotives.

16 (B) GREATEST DEGREE OF EMISSION REDUCTION ACHIEV-
17 ABLE.—The standards shall achieve the greatest degree of emis-
18 sion reduction achievable through the application of technology
19 that the Administrator determines will be available for the loco-
20 motives or engines to which the standards apply, giving appro-
21 priate consideration to—

22 (i) the cost of applying the technology within the period of
23 time available to manufacturers; and

24 (ii) noise, energy, and safety factors associated with the ap-
25 plication of the technology.

26 (b) EFFECTIVE DATE.—Standards under this section shall take effect at
27 the earliest possible date considering the lead time necessary to permit the
28 development and application of the requisite technology, giving appropriate
29 consideration to the cost of compliance within that period and energy and
30 safety.

31 (c) SAFE CONTROLS.—

32 (1) IN GENERAL.—Effective with respect to new engines or vehicles
33 to which standards under this section apply, no emission control device,
34 system, or element of design shall be used in a new nonroad engine
35 or new nonroad vehicle described in this section for purposes of comply-
36 ing with the standards if the device, system, or element of design will
37 cause or contribute to an unreasonable risk to public health, welfare,
38 or safety in its operation or function.

39 (2) CONSIDERATIONS.—In determining whether an unreasonable risk
40 exists, the Administrator shall consider factors including those de-
41 scribed in section 221102(a)(4)(B) of this title.

1 (d) STATIONARY INTERNAL COMBUSTION ENGINES.—Nothing in this
2 subdivision relating to nonroad engines shall be construed to apply to sta-
3 tionary internal combustion engines.

4 (e) ENFORCEMENT.—The standards under this section—

5 (1) shall be subject to sections 221106, 221107, 221108, and
6 221109 of this title with such modifications of the applicable regula-
7 tions implementing those sections as the Administrator considers ap-
8 propriate; and

9 (2) shall be enforced in the same manner as standards prescribed
10 under section 221102 of this title.

11 (f) REVISION OR PROMULGATION OF REGULATIONS.—The Administrator
12 shall revise or promulgate regulations as may be necessary to determine
13 compliance with, and enforce, standards in effect under this section.

14 **§ 221114. High altitude performance adjustments**

15 (a) INSTRUCTION OF THE MANUFACTURER.—

16 (1) TREATMENT AS NOT IN VIOLATION.—Any action taken with re-
17 spect to any element of design installed on or in a motor vehicle or
18 motor vehicle engine in compliance with regulations under this subdivi-
19 sion (including any alteration or adjustment of such an element) shall
20 be treated as not in violation of section 221103(a) of this title if the
21 action is performed in accordance with high altitude adjustment in-
22 structions provided by the manufacturer under subsection (b) and ap-
23 proved by the Administrator.

24 (2) DISAPPROVAL OF INSTRUCTIONS.—If the Administrator finds
25 that adjustments or modifications made pursuant to instructions of the
26 manufacturer under paragraph (1) will not ensure emission control per-
27 formance with respect to each standard under section 221102 of this
28 title at least equivalent to that which would result if no such adjust-
29 ments or modifications were made, the Administrator shall disapprove
30 the instructions. Such a finding shall be based on minimum engineering
31 evaluations consistent with good engineering practice.

32 (b) REGULATIONS.—

33 (1) SUBMISSION OF INSTRUCTIONS TO THE ADMINISTRATOR.—In-
34 structions respecting each class or category of vehicles or engines to
35 which this subdivision applies providing for such vehicle and engine ad-
36 justments and modifications as may be necessary to ensure emission
37 control performance at different altitudes shall be submitted by the
38 manufacturer to the Administrator pursuant to regulations promul-
39 gated by the Administrator.

40 (2) VIOLATION.—Any knowing violation by a manufacturer of re-
41 quirements of the Administrator under paragraph (1) shall be treated

1 as a violation by the manufacturer of section 221103(a)(1)(C) of this
2 title for purposes of the penalties under section 221105 of this title.

3 (3) ADJUSTMENTS.—The instructions shall provide, in addition to
4 other adjustments, for adjustments for vehicles moving from high alti-
5 tude areas to low altitude areas after the initial registration of the vehi-
6 cles.

7 (e) MANUFACTURER PARTS.—No instructions under this section respect-
8 ing adjustments or modifications may require the use of any manufacturer
9 parts (as defined in section 221103(a)(2) of this title) unless the manufactur-
10 er demonstrates to the satisfaction of the Administrator that the use of
11 manufacturer parts is necessary to ensure emission control performance.

12 (d) STATE INSPECTION AND MAINTENANCE PROGRAMS.—The authority
13 provided by this section shall be available in any high altitude State (as de-
14 termined under regulations of the Administrator promulgated before August
15 7, 1977) in which an inspection and maintenance program for the testing
16 of motor vehicle emissions has been instituted for the portions of the State
17 where any NAAQS for auto-related pollutants has not been attained.

18 (e) HIGH ALTITUDE TESTING.—

19 (1) DEFINITION OF HIGH ALTITUDE CONDITIONS.—In this sub-
20 section, the term “high altitude conditions” has the meaning given the
21 term “high altitude” in regulations of the Administrator in effect as
22 of November 15, 1990.

23 (2) TESTING CENTER.—The Administrator shall establish at least 1
24 testing center (in addition to the testing centers existing on November
25 15, 1990) located at a site that represents high altitude conditions, to
26 ascertain in a reasonable manner whether, when in actual use through-
27 out their useful life (as determined under section 221102(a)(1)(C) of
28 this title), each class or category of vehicle and engines to which regu-
29 lations under section 221102 of this title apply conforms to the emis-
30 sion standards established by those regulations.

31 (3) RESEARCH AND TECHNOLOGY ASSESSMENT CENTER.—

32 (A) IN GENERAL.—The Administrator, in cooperation with the
33 Secretary of Energy, the Administrator of the Federal Transit Ad-
34 ministration, and such other agencies as the Administrator consid-
35 ers appropriate, shall establish a research and technology assess-
36 ment center to provide for the development and evaluation of less-
37 polluting heavy-duty engines and fuels for use in buses, heavy-duty
38 trucks, nonroad engines, and nonroad vehicles

39 (B) LOCATION.—The research and technology assessment cen-
40 ter shall be located at a high altitude site that represents high alti-
41 tude conditions.

1 (C) PREFERENCE.—In establishing and funding the research
2 and technology assessment center, the Administrator shall give
3 preference to proposals that provide for local cost-sharing of facili-
4 ties and recovery of costs of operation through utilization of the
5 center for the purposes of this section.

6 (4) RESEARCH SUBJECTS.—

7 (A) DESIGNATION.—The Administrator shall designate at least
8 1 center at high altitude conditions to provide research on—

- 9 (i) after-market emission components;
10 (ii) dual-fueled vehicles and conversion kits;
11 (iii) the effects of tampering on emissions equipment;
12 (iv) testing of alternate fuels and conversion kits; and
13 (v) the development of curricula, training courses, and ma-
14 terials to maximize the effectiveness of inspection and mainte-
15 nance programs as they relate to promoting effective control
16 of vehicle emissions at high altitude elevations.

17 (B) PREFERENCE.—Preference shall be given to existing vehicle
18 emission testing and research centers that—

- 19 (i) have established reputations for vehicle emission re-
20 search and development and training; and
21 (ii) possess in-house Federal test procedure capacity.

22 **§ 221115. Motor vehicle compliance program fees**

23 (a) FEE COLLECTION.—Consistent with section 9701 of title 31, the Ad-
24 ministrator may promulgate (and from time to time revise) regulations es-
25 tablishing fees to recover all reasonable costs to the Administrator associ-
26 ated with—

- 27 (1) new vehicle or engine certification under section 221106(a) of
28 this title or chapter 225;
29 (2) new vehicle or engine compliance monitoring and testing under
30 section 221106(b) of this title or chapter 225; and
31 (3) in-use vehicle or engine compliance monitoring and testing under
32 section 221107(d) of this title or chapter 225.

33 (b) FEE SCHEDULE.—The Administrator may establish for all foreign
34 and domestic manufacturers a fee schedule based on such factors as the Ad-
35 ministrator finds appropriate, equitable, and nondiscriminatory, including
36 the number of vehicles or engines produced under a certificate of conform-
37 ity. In the case of heavy-duty engine and vehicle manufacturers, the fees
38 shall not exceed a reasonable amount to recover an appropriate portion of
39 the reasonable costs.

40 (c) SPECIAL TREASURY FUND.—Any fees collected under this section
41 shall be deposited in the Treasury in a special fund for licensing and other

1 services which thereafter shall be available for appropriation, to remain
2 available until expended, to carry out EPA's activities for which the fees
3 were collected.

4 (d) LIMITATION ON FUND USE.—Amounts in the special fund described
5 in subsection (c) shall not be used until after the 1st fiscal year commencing
6 after the 1st July 1 when fees are paid into the fund.

7 (e) TESTING AUTHORITY.—Nothing in this section shall be construed to
8 limit the Administrator's authority to require manufacturer or confirmatory
9 testing as provided in this chapter.

10 **§ 221116. Prohibition of production of engines requiring**
11 **leaded gasoline**

12 The Administrator shall promulgate regulations applicable to motor vehi-
13 cle engines and nonroad engines manufactured after model year 1992 that
14 prohibit the manufacture, sale, or introduction into commerce of any engine
15 that requires leaded gasoline.

16 **§ 221117. Urban bus standards**

17 (a) DEFINITIONS.—In this section:

18 (1) LOW-POLLUTING FUEL.—

19 (A) IN GENERAL.—The term “low-polluting fuel” means meth-
20 anol, ethanol, propane, or natural gas, or any comparably low-pol-
21 luting fuel.

22 (B) DETERMINATION.—In determining whether a fuel is com-
23 parably low-polluting, the Administrator shall consider—

24 (i) the level of emissions of air pollutants from vehicles
25 using the fuel; and

26 (ii) the contribution of such emissions to ambient levels of
27 air pollutants.

28 (2) METHANOL.—The term “methanol” includes any fuel that con-
29 tains at least 85 percent methanol unless the Administrator increases
30 that percentage as the Administrator considers appropriate to protect
31 public health and welfare.

32 (3) URBAN BUS.—The term “urban bus” has the meaning given the
33 term under regulations of the Administrator promulgated under section
34 221102(a) of this title.

35 (b) STANDARDS.—The Administrator shall promulgate regulations under
36 section 221102(a) of this title applicable to urban buses. The standards
37 shall be based on the best technology that can reasonably be anticipated to
38 be available at the time at which the measures are to be implemented, tak-
39 ing costs, safety, energy, lead time, and other relevant factors into account.
40 The regulations shall require that urban buses comply with subsection (c)
41 (and subsection (d), if applicable) and the standards applicable under sec-

1 tion 221102(a) of this title for heavy-duty vehicles of the same type and
2 model year.

3 (c) PM STANDARD.—

4 (1) 50 PERCENT REDUCTION.—The standards under section
5 221102(a) of this title applicable to urban buses shall require that
6 emissions of particulate matter from urban buses shall not exceed 50
7 percent of the emissions of particulate matter allowed under the emis-
8 sion standard applicable under section 202(a) of the Clean Air Act (42
9 U.S.C. 7521(a)) as of November 15, 1990, for particulate matter in
10 the case of heavy-duty diesel vehicles and engines manufactured in
11 model year 1994.

12 (2) REVISED REDUCTION.—The Administrator shall increase the
13 level of emissions of particulate matter allowed under the standard de-
14 scribed in paragraph (1) if the Administrator determines that the 50
15 percent reduction described in paragraph (1) is not technologically
16 achievable, taking into account durability, costs, lead time, safety, and
17 other relevant factors. The Administrator may not increase the level of
18 emissions above 70 percent of the emissions of particulate matter al-
19 lowed under the emission standard applicable under section 202(a) of
20 the Clean Air Act (42 U.S.C. 7521(a)) as of November 15, 1990, for
21 particulate matter in the case of heavy-duty diesel vehicles and engines
22 manufactured in model year 1994.

23 (3) DETERMINATION AS PART OF RULEMAKING.—As part of the
24 rulemaking under subsection (b), the Administrator shall make a deter-
25 mination whether the 50 percent reduction described in paragraph (1)
26 is technologically achievable, taking into account durability, costs, lead
27 time, safety, and other relevant factors.

28 (d) LOW-POLLUTING FUEL REQUIREMENT.—

29 (1) ANNUAL TESTING.—The Administrator shall conduct annual
30 tests of a representative sample of operating urban buses subject to the
31 particulate matter standard applicable pursuant to subsection (c) to de-
32 termine whether urban buses comply with the standard in use over
33 their full useful life.

34 (2) PROMULGATION OF ADDITIONAL LOW-POLLUTING FUEL RE-
35 QUIREMENT.—

36 (A) IN GENERAL.—If the Administrator determines, based on
37 the testing under paragraph (1), that urban buses subject to the
38 particulate matter standard applicable pursuant to subsection (c)
39 do not comply with the standard in use over their full useful life,
40 the Administrator shall revise the standards applicable to urban
41 buses to require (in addition to compliance with the particulate

1 matter standard applicable pursuant to subsection (e)) that all
2 new urban buses purchased or placed into service by owners or op-
3 erators of urban buses in all metropolitan statistical areas or con-
4 solidated metropolitan statistical areas with a 1980 population of
5 750,000 or more shall be capable of operating, and shall be exclu-
6 sively operated, on low-polluting fuels. The Administrator shall es-
7 tablish the pass-fail rate for purposes of testing under this sub-
8 paragraph.

9 (B) PHASE-IN SCHEDULE.—The Administrator shall promulgate
10 a schedule phasing in any low-polluting fuel requirement estab-
11 lished pursuant to this paragraph to an increasing percentage of
12 new urban buses purchased or placed into service in each of the
13 1st 5 model years commencing 3 years after the determination
14 under subparagraph (A). Under the schedule 100 percent of new
15 urban buses placed into service in the 5th model year commencing
16 3 years after the determination under subparagraph (A) shall
17 comply with the low-polluting fuel requirement established pursu-
18 ant to this paragraph.

19 (C) AREAS WITH A 1980 POPULATION OF LESS THAN 750,000.—
20 The Administrator may extend the requirements of this paragraph
21 to metropolitan statistical areas or consolidated metropolitan sta-
22 tistical areas with a 1980 population of less than 750,000 if the
23 Administrator determines that a significant benefit to public
24 health could be expected to result from such an extension.

25 (e) RETROFIT REQUIREMENTS.—

26 (1) IN GENERAL.—The Administrator shall promulgate regulations
27 under section 221102(a) of this title requiring that buses described in
28 paragraph (2) comply with an emission standard or emission control
29 technology requirement established by the Administrator in the regula-
30 tions.

31 (2) BUSES.—Buses referred to in paragraph (1) are urban buses
32 that—

33 (A) are operating in areas described in subparagraph (A) of
34 subsection (d)(2) (or subparagraph (C) of subsection (d)(2) if the
35 Administrator has taken action under that subparagraph);

36 (B) were not subject to standards in effect under the regula-
37 tions under subsection (b); and

38 (C) have their engines replaced or rebuilt after January 1,
39 1995;

1 (3) BEST TECHNOLOGY AND PRACTICES.—The emission standard or
 2 emission control technology requirement shall reflect the best retrofit
 3 technology and maintenance practices reasonably achievable.

4 (f) PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT.—The Ad-
 5 ministrator shall establish, in accordance with section 221106(h) of this
 6 title, procedures for the administration and enforcement of standards for
 7 urban buses subject to standards under this section, testing procedures,
 8 sampling protocols, in-use compliance requirements, and criteria governing
 9 evaluation of buses. Procedures for testing (including certification testing)
 10 shall reflect actual operating conditions.

11 **Chapter 223—Aircraft Emission Standards**

Sec.

223101. Definitions.

223102. Establishment of standards.

223103. Enforcement of standards.

223104. State standards and controls.

12 **§ 223101. Definitions**

13 Terms used in this chapter (other than the term Administrator) have the
 14 meanings given the terms in section 40102(a) of title 49.

15 **§ 223102. Establishment of standards**

16 (a) STUDY; PROPOSED STANDARDS; HEARINGS; ISSUANCE OF REGULA-
 17 TIONS.—The Administrator shall conduct a study and investigation of emis-
 18 sions of air pollutants from aircraft to determine—

19 (1) the extent to which such emissions affect air quality in air qual-
 20 ity control regions throughout the United States; and

21 (2) the technological feasibility of controlling such emissions.

22 (b) EMISSION STANDARDS.—The Administrator shall from time to time
 23 issue proposed emission standards applicable to the emission of any air pol-
 24 lutant from any class of aircraft engines that, in the Administrator's judg-
 25 ment, causes or contributes to air pollution that may reasonably be antici-
 26 pated to endanger public health or welfare.

27 (c) CONSULTATION.—The Administrator shall consult with the Adminis-
 28 trator of the Federal Aviation Administration on aircraft engine emission
 29 standards.

30 (d) LIMITATION.—The Administrator shall not change the aircraft engine
 31 emission standards if the change would significantly increase noise and ad-
 32 versely affect safety.

33 (e) HEARINGS.—The Administrator shall hold public hearings with re-
 34 spect to standards proposed under subsection (b). The hearings shall, to the
 35 extent practicable, be held in air quality control regions that are most seri-
 36 ously affected by aircraft emissions.

37 (f) FINAL REGULATIONS.—Within 90 days after the issuance of stand-
 38 ards proposed under subsection (b), the Administrator shall issue regula-

1 tions with such modifications as the Administrator considers appropriate.
2 The regulations may be revised from time to time.

3 (g) EFFECTIVE DATE OF REGULATIONS.—Any regulation prescribed
4 under this section (and any revision thereof) shall take effect after such pe-
5 riod as the Administrator finds necessary (after consultation with the Sec-
6 retary of Transportation) to permit the development and application of the
7 requisite technology, giving appropriate consideration to the cost of compli-
8 ance within that period.

9 (h) REGULATIONS THAT CREATE HAZARDS TO AIRCRAFT SAFETY.—
10 Any regulation in effect under this section with respect to aircraft shall not
11 apply if disapproved by the President, after notice and opportunity for pub-
12 lic hearing, on the basis of a finding by the Secretary of Transportation
13 that the regulation would create a hazard to aircraft safety. Any such find-
14 ing shall include a reasonably specific statement of the basis on which the
15 finding is made.

16 **§ 223103. Enforcement of standards**

17 (a) REGULATIONS TO ENSURE COMPLIANCE WITH STANDARDS.—The
18 Secretary of Transportation, after consultation with the Administrator, shall
19 prescribe regulations to ensure compliance with all standards prescribed
20 under section 223102 of this title by the Administrator. The regulations of
21 the Secretary of Transportation shall include provisions making those stand-
22 ards applicable in the issuance, amendment, modification, suspension, or
23 revocation of any certificate authorized by chapter 447 of title 49.

24 (b) EXECUTION OF POWERS AND DUTIES.—In the execution of all powers
25 and duties vested in the Secretary under this section, the Secretary of
26 Transportation—

- 27 (1) shall ensure that all necessary inspections are accomplished; and
28 (2) may execute any power or duty vested in the Secretary by any
29 other provision of law.

30 (c) NOTICE AND APPEAL RIGHTS.—In any action to amend, modify, sus-
31 pend, or revoke a certificate in which violation of an emission standard pre-
32 scribed under section 223102 of this title or of a regulation prescribed
33 under subsection (a) is at issue, the certificate holder shall have the same
34 notice and appeal rights as are prescribed for such holders in chapter 461
35 of title 49, except that in any appeal to the National Transportation Safety
36 Board, the Board may amend, modify, or revoke the order of the Secretary
37 of Transportation only if the Board finds no violation of the standard or
38 regulation and that the amendment, modification, or revocation is consistent
39 with safety in air transportation.

1 **§ 223104. State standards and controls**

2 No State or political subdivision thereof may adopt or attempt to enforce
3 any standard respecting emissions of any air pollutant from any aircraft or
4 engine thereof unless the standard is identical to a standard applicable to
5 such aircraft under this chapter.

6 **Chapter 225—Clean Fuel Vehicles**

Sec.

- 225101. Definitions.
- 225102. Requirements applicable to clean-fuel vehicles.
- 225103. Standards for light-duty clean-fuel vehicles.
- 225104. Administration and enforcement as per California standards.
- 225105. Standards for heavy-duty clean-fuel vehicles of more than 8,500 up to 26,000 pounds gross vehicle weight rating.
- 225106. Centrally fueled fleets.
- 225107. Vehicle conversions.
- 225108. Federal agency fleets.
- 225109. California pilot test program.
- 225110. General provisions.

7 **§ 225101. Definitions**

8 (a) IN GENERAL.—In this chapter:

9 (1) BASE GASOLINE.—The term “base gasoline” means gasoline that
10 meets the following specifications:

Specifications of Base Gasoline Used as Basis for Reactivity Readjustment:		
API gravity		57.8
Sulfur, ppm		317
Color	Purple	
Benzene, vol. %		1.35
Reid vapor pressure		8.7
Drivability		1195
Antiknock index		87.3
Distillation, D–86 degrees F		
IBP		92
10%		126
50%		219
90%		327
EP		414
Hydrocarbon Type, Vol. % FIA:		
Aromatics		30.9
Olefins		8.2
Saturates		60.9

11 (2) CLEAN ALTERNATIVE FUEL.—

12 (A) IN GENERAL.—The term “clean alternative fuel” means any
13 fuel (including methanol, ethanol, or other alcohols (including any
14 mixture thereof containing 85 percent or more by volume of such
15 alcohol with gasoline or other fuels), reformulated gasoline, diesel,
16 natural gas, liquefied petroleum gas, and hydrogen) or power
17 source (including electricity) used in a clean-fuel vehicle that com-
18 plies with the standards and requirements applicable to the vehicle
19 under this subdivision when using that fuel or power source.

20 (B) FLEXIBLE FUEL VEHICLES AND DUAL FUEL VEHICLES.—

21 In the case of any flexible fuel vehicle or dual fuel vehicle, the
22 term “clean alternative fuel” means a fuel with respect to which
23 the vehicle was certified as a clean-fuel vehicle meeting the stand-
24 ards applicable to clean-fuel vehicles under section 225103(d)(2)

1 of this title when operating on clean alternative fuel (or any Cali-
2 fornia Air Resources Board standards that replace those standards
3 pursuant to section 225103(e) of this title).

4 (3) CLEAN-FUEL VEHICLE.—The term “clean-fuel vehicle” means a
5 vehicle in a class or category of vehicles that has been certified to meet
6 for any model year the clean-fuel vehicle standards applicable under
7 this chapter for that model year to clean-fuel vehicles in that class or
8 category.

9 (4) COVERED FLEET.—

10 (A) IN GENERAL.—The term “covered fleet” means 10 or more
11 motor vehicles that are owned or operated by a single person.

12 (B) DETERMINATION.—In determining the number of vehicles
13 owned or operated by a single person for purposes of this para-
14 graph, all motor vehicles owned or operated, leased or otherwise
15 controlled by the person, by any person that controls the person,
16 by any person controlled by the person, and by any person under
17 common control with the person shall be treated as owned by the
18 person.

19 (C) EXCLUSIONS.—The term “covered fleet” does not include—

20 (i) motor vehicles held for lease or rental to the general
21 public;

22 (ii) motor vehicles held for sale by motor vehicle dealers
23 (including demonstration vehicles);

24 (iii) motor vehicles used for motor vehicle manufacturer
25 product evaluations or tests;

26 (iv) law enforcement and other emergency vehicles; or

27 (v) nonroad vehicles (including farm and construction vehi-
28 cles).

29 (5) COVERED FLEET VEHICLE.—

30 (A) IN GENERAL.—The term “covered fleet vehicle” means a
31 motor vehicle that is—

32 (i) in a vehicle class for which standards are applicable
33 under this chapter; and

34 (ii) in a covered fleet that is centrally fueled (or capable
35 of being centrally fueled).

36 (B) CAPABILITY OF BEING CENTRALLY FUELED.—No vehicle
37 that under normal operations is garaged at a personal residence
38 at night shall be considered to be a vehicle that is capable of being
39 centrally fueled within the meaning of subparagraph (A)(ii).

40 (6) NONMETHANE ORGANIC GAS.—

1 (A) IN GENERAL.—The term “nonmethane organic gas” means
2 the sum of nonoxygenated and oxygenated hydrocarbons contained
3 in a gas sample.

4 (B) INCLUSIONS.—The term “nonmethane organic gas” in-
5 cludes, at a minimum—

6 (i) all oxygenated organic gases containing 5 or fewer car-
7 bon atoms (including aldehydes, ketones, alcohols, ethers, and
8 others); and

9 (ii) all alkanes, alkenes, alkynes, and aromatics containing
10 12 or fewer carbon atoms.

11 (C) DEMONSTRATION OF COMPLIANCE WITH NONMETHANE OR-
12 GANIC GAS STANDARD.—To demonstrate compliance with a stand-
13 ard, nonmethane organic gas emissions shall be measured in ac-
14 cordance with the procedures entitled “California Non-Methane
15 Organic Gas Test Procedures”.

16 (D) ADJUSTMENT.—In the case of vehicles using fuels other
17 than base gasoline, the level of nonmethane organic gas emissions
18 shall be adjusted based on the reactivity of the emissions relative
19 to vehicles using base gasoline.

20 (b) TERMS DEFINED IN CHAPTER 221.—The definitions applicable to
21 chapter 221 under section 221101 of this title shall apply for purposes of
22 this chapter.

23 (c) MODIFICATION OF DEFINITIONS AND METHODS FOR MAKING REAC-
24 TIVITY ADJUSTMENTS.—The Administrator shall modify the definitions of
25 nonmethane organic gas and base gasoline and the methods for making re-
26 activity adjustments to conform to the definitions and method used in Cali-
27 fornia under the Low-Emission Vehicle and Clean Fuel Regulations of the
28 California Air Resources Board, so long as the California definitions are,
29 in the aggregate, at least as protective of public health and welfare as the
30 definitions in this section.

31 **§ 225102. Requirements applicable to clean-fuel vehicles**

32 (a) PROMULGATION OF STANDARDS.—The Administrator shall promul-
33 gate regulations under this chapter containing clean-fuel vehicle standards
34 for the clean-fuel vehicles specified in this chapter.

35 (b) OTHER REQUIREMENTS.—

36 (1) CLEAN-FUEL VEHICLES OF UP TO 8,500 POUNDS.—Clean-fuel ve-
37 hicles of up to 8,500 pounds gross vehicle weight rating subject to
38 standards set forth in this chapter shall comply with all motor vehicle
39 requirements of this subdivision (such as requirements relating to on-
40 board diagnostics, evaporative emissions, and others) that are applica-
41 ble to conventional gasoline-fueled vehicles of the same category and

1 model year, except as provided in section 225104 of this title with re-
2 spect to administration and enforcement, and except to the extent that
3 any such requirement is in conflict with this chapter.

4 (2) CLEAN-FUEL VEHICLES OF MORE THAN 8,500 POUNDS.—Clean-
5 fuel vehicles of more than 8,500 pounds gross vehicle weight rating
6 subject to standards set forth in this chapter shall comply with all re-
7 quirements of this subdivision that apply to conventional gasoline-
8 fueled or diesel-fueled vehicles of the same category and model year,
9 except as provided in section 225104 of this title with respect to ad-
10 ministration and enforcement, and except to the extent that any such
11 requirement is in conflict with this chapter.

12 (c) IN-USE USEFUL LIFE AND TESTING.—

13 (1) LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS UP TO 6,000
14 POUNDS.—In the case of light-duty vehicles and light-duty trucks up
15 to 6,000 pounds gross vehicle weight rating, the useful life for purposes
16 of determining in-use compliance with the standards under section
17 225103 of this title shall be—

18 (A) a period of 5 years or 50,000 miles (or the equivalent),
19 whichever first occurs, in the case of standards applicable for pur-
20 poses of certification at 50,000 miles; and

21 (B) a period of 10 years or 100,000 miles (or the equivalent),
22 whichever first occurs, in the case of standards applicable for pur-
23 poses of certification at 100,000 miles, except that in-use testing
24 shall not be done for a period beyond 7 years or 75,000 miles (or
25 the equivalent), whichever first occurs.

26 (2) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—In the case
27 of light-duty trucks of more than 6,000 pounds gross vehicle weight
28 rating, the useful life for purposes of determining in-use compliance
29 with the standards under section 225103 of this title shall be—

30 (A) a period of 5 years or 50,000 miles (or the equivalent),
31 whichever first occurs, in the case of standards applicable for pur-
32 poses of certification at 50,000 miles; and

33 (B) a period of 11 years or 120,000 miles (or the equivalent),
34 whichever first occurs, in the case of standards applicable for pur-
35 poses of certification at 120,000 miles, except that in-use testing
36 shall not be done for a period beyond 7 years or 90,000 miles (or
37 the equivalent), whichever first occurs.

38 **§ 225103. Standards for light-duty clean-fuel vehicles**

39 (a) EXHAUST STANDARDS FOR LIGHT-DUTY VEHICLES AND CERTAIN
40 LIGHT-DUTY TRUCKS.—

1 (1) APPLICABILITY.—The standards set forth in this subsection shall
2 apply in the case of clean-fuel vehicles that are—

3 (A) light-duty trucks of up to 6,000 pounds gross vehicle weight
4 rating (but not including light-duty trucks of more than 3,750
5 pounds loaded vehicle weight); or

6 (B) light-duty vehicles.

7 (2) STANDARDS.—For air pollutants specified in the following table,
8 the clean-fuel vehicle standards under this section shall provide that ve-
9 hicle exhaust emissions shall not exceed the levels specified in the fol-
10 lowing table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750
LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard	0.075	3.4	0.2	.....	0.015
100,000 mile standard	0.090	4.2	0.3	0.08	0.018

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

11 (b) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN
12 3,750 POUNDS LOADED VEHICLE WEIGHT BUT NOT MORE THAN 5,750
13 POUNDS LOADED VEHICLE WEIGHT AND NOT MORE THAN 6,000 POUNDS
14 GROSS VEHICLE WEIGHT RATING.—

15 (1) APPLICABILITY.—The standards set forth in this subsection shall
16 apply in the case of clean-fuel vehicles that are light-duty trucks of
17 more than 3,750 pounds loaded vehicle weight but not more than 5,750
18 pounds loaded vehicle weight and not more than 6,000 pounds gross
19 vehicle weight rating.

20 (2) STANDARDS.—For the air pollutants specified in the following
21 table, the clean-fuel vehicle standards under this section shall provide
22 that vehicle exhaust emissions shall not exceed the levels specified in
23 the following table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN
3,750 LBS. LVW BUT NOT MORE THAN 5,750 LBS. LVW AND NOT MORE THAN 6,000
LBS. GVWR

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formaldehyde)
50,000 mile standard	0.100	4.4	0.4	.....	0.018
100,000 mile standard	0.130	5.5	0.5	0.08	0.023

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

24 (c) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN
25 6,000 POUNDS.—The standards set forth in this subsection shall apply in
26 the case of clean-fuel vehicles that are light-duty trucks of more than 6,000

1 pounds gross weight rating and less than or equal to 8,500 pounds gross
 2 weight rating, beginning with model year 1998. For the air pollutants speci-
 3 fied in the following table, the clean-fuel vehicle standards under this section
 4 shall provide that vehicle exhaust emissions of vehicles within the test
 5 weight categories specified in the following table shall not exceed the levels
 6 specified in the table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS GREATER THAN
 6,000 LBS. GVWR

Test Weight Category: Up to 3,750 lbs. tw

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formalde- hyde)
50,000 mile standard	0.125	3.4	0.4**	.....	0.015
120,000 mile standard	0.180	5.0	0.6	0.08	0.022

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formalde- hyde)
50,000 mile standard	0.160	4.4	0.7**	.....	0.018
120,000 mile standard	0.230	6.4	1.0	0.10	0.027

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gwvr

Pollutant	NMOG	CO	NO _x	PM*	HCHO (formalde- hyde)
50,000 mile standard	0.195	5.0	1.1**	.....	0.022
120,000 mile standard	0.280	7.3	1.5	0.12	0.032

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

**Standard not applicable to diesel-fueled vehicles.

For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

7 (d) FLEXIBLE AND DUAL-FUEL VEHICLES.—

8 (1) IN GENERAL.—The Administrator shall establish standards and
 9 requirements under this section for vehicles weighing not more than
 10 8,500 pounds gross vehicle weight rating that are capable of operating
 11 on more than 1 fuel. The standards shall require that such vehicles
 12 meet the exhaust standards applicable under subsections (a), (b), and
 13 (c) for carbon monoxide, nitrogen oxides, formaldehyde, and, if appro-
 14 priate, particulate matter for single-fuel vehicles of the same vehicle
 15 category and model year.

16 (2) EXHAUST NMOG STANDARD FOR OPERATION ON CLEAN ALTER-
 17 NATIVE FUEL.—In addition to standards for the pollutants described
 18 in paragraph (1), the standards established under paragraph (1) shall
 19 require that vehicle exhaust emissions of nonmethane organic gas not
 20 exceed the levels (expressed in grams per mile) specified in the tables
 21 below when the vehicle is operated on the clean alternative fuel for
 22 which the vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL

Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty Vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.125	0.156
LDT's (3,751–5,750 lbs. LVW)	0.160	0.20
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.075	0.090
LDT's (3,751–5,750 lbs. LVW)	0.100	0.130

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More Than 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (120,000 mi.) Standard (gpm)
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.125	0.180
LDT's (3,751–5,750 lbs. TW)	0.160	0.230
LDT's (above 5,750 lbs. TW)	0.195	0.280

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 120,000 miles.

1 (3) NMOG STANDARD FOR OPERATION ON CONVENTIONAL FUEL.—

2 In addition to the standards described in paragraph (1), the standards
 3 established under paragraph (1) shall require that vehicle exhaust emis-
 4 sions of nonmethane organic gas not exceed the levels (expressed in
 5 grams per mile) specified in the tables below:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty Vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.25	0.31
LDT's (3,751–5,750 lbs. LVW)	0.32	0.40
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles	0.125	0.156
LDT's (3,751–5,750 lbs. LVW)	0.160	0.200

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks of up to 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (120,000 mi.) Standard (gpm)
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.25	0.36
LDT's (3,751–5,750 lbs. TW)	0.32	0.46
LDT's (above 5,750 lbs. TW)	0.39	0.56

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 120,000 miles.

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1 (e) REPLACEMENT BY CARB STANDARDS.—

2 (1) SINGLE SET OF CARB STANDARDS.—If California promulgates
3 regulations establishing and implementing a single set of standards ap-
4 plicable in California pursuant to a waiver approved under section
5 221109 of this title to any category of vehicles described in subsection
6 (a), (b), (c), or (d) and that set of standards is, in the aggregate, at
7 least as protective of public health and welfare as the otherwise applica-
8 ble standards set forth in section 225102 of this title and subsection
9 (a), (b), (c), or (d), the California set of standards shall apply to clean-
10 fuel vehicles in that category in lieu of the standards otherwise applica-
11 ble under section 225102 of this title and subsection (a), (b), (c), or
12 (d), as the case may be.

13 (2) MULTIPLE SETS OF CARB STANDARDS.—If California promul-
14 gates regulations establishing and implementing several different sets
15 of standards applicable in California pursuant to a waiver approved
16 under section 221109 of this title to any category of vehicles described
17 in subsection (a), (b), (c), or (d) and each of the California sets of
18 standards is, in the aggregate, at least as protective of public health
19 and welfare as the otherwise applicable standards set forth in section
20 225102 of this title and subsection (a), (b), (c), or (d), those standards
21 shall be treated as qualifying California standards for purposes of this
22 paragraph. Where more than 1 set of qualifying standards are estab-
23 lished and administered by California, the least stringent set of qualify-
24 ing California standards shall apply to the clean-fuel vehicles concerned
25 in lieu of the standards otherwise applicable to those vehicles under
26 section 225102 of this title and this section.

27 (f) LESS STRINGENT CARB STANDARDS.—If the Low-Emission Vehicle
28 and Clean Fuels Regulations of the California Air Resources Board applica-
29 ble to any category of vehicles described in subsection (a), (b), (c), or (d)
30 are modified after November 15, 1990, to provide an emission standard that
31 is less stringent than the otherwise applicable standard set forth in sub-
32 section (a), (b), (c), or (d), or if any effective date contained in the regula-
33 tions is delayed, the modified standards or the delay (or both, as the case
34 may be) shall apply, for an interim period, in lieu of the standard or effec-
35 tive date otherwise applicable under subsection (a), (b), (c), or (d) to any
36 vehicles covered by the modified standard or delayed effective date. The in-
37 terim period shall be a period of not more than 2 model years after the ef-
38 fective date otherwise applicable under subsection (a), (b), (c), or (d). After
39 the interim period, the otherwise applicable standard set forth in subsection
40 (a), (b), (c), or (d) shall take effect with respect to those vehicles (unless
41 subsequently replaced under subsection (e)).

1 (g) NONAPPLICABILITY TO HEAVY-DUTY VEHICLES.—Notwithstanding
2 any provision of the Low-Emission Vehicle and Clean Fuels Regulations of
3 the California Air Resources Board, nothing in this section shall apply to
4 heavy-duty engines in vehicles of more than 8,500 pounds gross vehicle
5 weight rating.

6 **§ 225104. Administration and enforcement as per California**
7 **standards**

8 (a) IN GENERAL.—Where the numerical clean-fuel vehicle standards ap-
9 plicable under this chapter to vehicles of not more than 8,500 pounds gross
10 vehicle weight rating are the same as numerical emission standards applica-
11 ble in California under the Low-Emission Vehicle and Clean Fuels Regula-
12 tions of the California Air Resources Board, those standards shall be admin-
13 istered and enforced by the Administrator—

14 (1) in the same manner and with the same flexibility as California
15 administers and enforces corresponding standards applicable under the
16 Low-Emission Vehicle and Clean Fuels Regulations of the California
17 Air Resources Board; and

18 (2) subject to the same requirements, and utilizing the same inter-
19 pretations and policy judgments, as are applicable in the case of the
20 California standards, including requirements regarding certification,
21 production-line testing, and in-use compliance;

22 unless the Administrator determines (in promulgating the regulations estab-
23 lishing the clean-fuel vehicle program under this section) that any such ad-
24 ministration and enforcement would not meet the criteria for a waiver under
25 section 221109 of this title.

26 (b) HEAVY-DUTY VEHICLES.—Nothing in this section shall apply in the
27 case of standards under section 225105 of this title for heavy-duty vehicles.

28 **§ 225105. Standards for heavy-duty clean-fuel vehicles of**
29 **more than 8,500 up to 26,000 pounds gross vehicle**
30 **weight rating**

31 (a) COMBINED NITROGEN OXIDE AND NONMETHANE HYDROCARBON
32 STANDARD.—For classes or categories of heavy-duty vehicles or engines
33 having a gross vehicle weight rating greater than 8,500 pounds and up to
34 26,000 pounds gross vehicle weight rating, the standards under this chapter
35 for clean-fuel vehicles shall require that combined emissions of nitrogen ox-
36 ides and nonmethane hydrocarbons shall not exceed 3.15 grams per brake
37 horsepower hour. No standard shall be promulgated under this section for
38 any heavy-duty vehicle of more than 26,000 pounds gross vehicle weight rat-
39 ing.

40 (b) REVISED STANDARDS THAT ARE LESS STRINGENT.—

1 (1) IN GENERAL.—The Administrator may promulgate a revised less
2 stringent standard for the vehicles or engines described in subsection
3 (a) if the Administrator determines that the 50 percent reduction re-
4 quired under subsection (a) is not technologically feasible for clean die-
5 sel-fueled vehicles and engines, taking into account durability, costs,
6 lead time, safety, and other relevant factors.

7 (2) PETITION.—Any person may at any time petition the Adminis-
8 trator to make a determination under paragraph (1). The Adminis-
9 trator shall act on such a petition within 6 months after the petition
10 is filed.

11 (3) PERCENTAGE REDUCTION.—Any revised less stringent standards
12 promulgated under this subsection shall require at least a 30 percent
13 reduction in lieu of the 50 percent reduction described in paragraph
14 (1).

15 **§ 225106. Centrally fueled fleets**

16 (a) DEFINITION OF COVERED AREA.—In this section:

17 (1) IN GENERAL.—The term “covered area” means—

18 (A) an ozone nonattainment area with a 1980 population of
19 250,000 or more classified under subchapter II of chapter 215 as
20 a serious area, severe area, or extreme area based on data for cal-
21 endar years 1987, 1988, and 1989; and

22 (B) a carbon monoxide nonattainment area with a 1980 popu-
23 lation of 250,000 or more and a carbon monoxide design value at
24 or above 16.0 parts per million based on data for calendar years
25 1988 and 1989.

26 (2) EXCLUSION.—The term “covered area” does not include a car-
27 bon monoxide nonattainment area in which mobile sources do not con-
28 tribute significantly to carbon monoxide exceedances.

29 (3) INTERPRETATION METHODOLOGY.—In determining the areas to
30 be treated as covered areas under paragraph (1), the Administrator
31 shall use the most recent interpretation methodology issued by the Ad-
32 ministrator prior to November 15, 1990.

33 (b) FLEET PROGRAM REQUIRED FOR COVERED AREAS.—

34 (1) STATE IMPLEMENTATION PLAN PROVISION.—The implementation
35 plan of each State in which there is located all or part of a covered
36 area shall contain a provision establishing a clean-fuel vehicle program
37 for fleets under this section.

38 (2) PLAN PROVISIONS FOR RECLASSIFIED AREAS.—In the case of an
39 ozone nonattainment areas reclassified as a serious area, severe area,
40 or extreme area under chapter 215 with a 1980 population of 250,000
41 or more, the State shall submit a plan provision meeting the require-

1 ments of this subsection within 1 year after reclassification. The plan
2 provision shall implement the requirements applicable under this sub-
3 section at the time of reclassification and thereafter, except that the
4 Administrator may adjust for a limited period the deadlines for compli-
5 ance where compliance with those deadlines would be infeasible.

6 (3) CONSULTATION; CONSIDERATION OF FACTORS.—Each State re-
7 quired to have an implementation plan provision under this subsection
8 shall develop the provision in consultation with fleet operators, vehicle
9 manufacturers, vehicle fuel producers and distributors, and other inter-
10 ested persons, taking into consideration operational range, specialty
11 uses, vehicle and fuel availability, costs, safety, resale values of vehicles
12 and equipment, and other relevant factors.

13 (e) REQUIREMENTS.—

14 (1) IN GENERAL.—The plan provision required under this section
15 shall require that at least a specified percentage of all new covered fleet
16 vehicles in model year 1998 and thereafter purchased by each covered
17 fleet operator in each covered area shall be clean-fuel vehicles and shall
18 use clean alternative fuels when operating in the covered area.

19 (2) SPECIFIED PERCENTAGE.—For each model year, the specified
20 percentage shall be as follows:

21 (A) Light-duty trucks up to 6,000 pounds gross vehicle weight
22 rating and light-duty vehicles: 70%.

23 (B) Heavy-duty trucks above 8,500 pounds gross vehicle weight
24 rating: 50%.

25 (d) CHOICE OF VEHICLES AND FUEL.—The plan provision shall provide
26 that the choice of clean-fuel vehicles and clean alternative fuels shall be
27 made by the covered fleet operator subject to the requirements of subsection
28 (e).

29 (e) AVAILABILITY OF CLEAN ALTERNATIVE FUEL.—The plan provision
30 shall require fuel providers to make clean alternative fuel available to cov-
31 ered fleet operators at locations at which covered fleet vehicles are centrally
32 fueled.

33 (f) CREDITS.—

34 (1) ISSUANCE OF CREDITS.—The plan provision shall provide for the
35 issuance by the State of appropriate credits to a fleet operator for any
36 of the following (or any combination thereof):

37 (A) The purchase of more clean-fuel vehicles than required
38 under this section.

39 (B) The purchase of clean-fuel vehicles that meet more strin-
40 gent standards established by the Administrator pursuant to para-
41 graph (4).

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1 (C) The purchase of vehicles in categories that are not covered
2 by this section but that meet standards established for such vehi-
3 cles under paragraph (4).

4 (2) USE OF CREDITS; LIMITATIONS BASED ON WEIGHT CLASSES.—

5 (A) USE OF CREDITS.—Credits under this subsection may be
6 used by the person holding the credits to demonstrate compliance
7 with this section or may be traded or sold for use by any other
8 person to demonstrate compliance with other requirements appli-
9 cable under this section in the same nonattainment area. Credits
10 obtained at any time may be held or banked for use at any later
11 time, and when so used, the credits shall maintain the same value
12 as if used at an earlier date.

13 (B) LIMITATIONS BASED ON WEIGHT CLASSES.—Credits issued
14 with respect to the purchase of vehicles of up to 8,500 pounds
15 gross vehicle weight rating may not be used to demonstrate com-
16 pliance by any person with the requirements applicable under this
17 subsection to vehicles of more than 8,500 pounds gross vehicle
18 weight rating. Credits issued with respect to the purchase of vehi-
19 cles of more than 8,500 pounds gross vehicle weight rating may
20 not be used to demonstrate compliance by any person with the re-
21 quirements applicable under this subsection to vehicles weighing
22 up to 8,500 pounds gross vehicle weight rating.

23 (C) WEIGHTING.—Credits issued for purchase of a clean-fuel
24 vehicle under this subsection shall be adjusted with appropriate
25 weighting to reflect the level of emission reduction achieved by the
26 vehicle.

27 (3) REGULATIONS; ADMINISTRATION.—The Administrator shall pro-
28 mulgate regulations for a credit program under this subsection. The
29 State shall administer the credit program under this subsection.

30 (4) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—

31 (A) IN GENERAL.—Solely for purposes of issuing credits under
32 paragraph (1)(B), the Administrator shall establish under this
33 paragraph standards for ultra-low emission vehicles and zero emis-
34 sion vehicles that are more stringent than the standard otherwise
35 applicable to clean-fuel vehicles under this chapter.

36 (B) CERTIFICATION; ADMINISTRATION; ENFORCEMENT.—The
37 Administrator shall certify clean-fuel vehicles as complying with
38 the more stringent standards, and administer and enforce the
39 more stringent standards, in the same manner as in the case of
40 the otherwise applicable clean-fuel vehicle standards established
41 under this section.

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1 (C) CALIFORNIA STANDARDS.—The standards established by
2 the Administrator under this paragraph for vehicles under 8,500
3 pounds gross vehicle weight rating shall conform as closely as possible
4 to standards established by California for ultra-low emission
5 vehicles and zero emission vehicles in the same class. For vehicles
6 of 8,500 pounds gross vehicle weight rating or greater, the Administrator
7 shall promulgate comparable standards for purposes of
8 this subsection.

9 (5) EARLY FLEET CREDITS.—The plan provision shall provide credits
10 under this subsection to fleet operators that purchase vehicles certified
11 to meet clean-fuel vehicle standards under this chapter during
12 any period after approval of the plan provision and prior to the effective
13 date of the fleet program under this section.

14 (g) AVAILABILITY TO PUBLIC.—At any facility owned or operated by a
15 department, agency, or instrumentality of the United States where vehicles
16 subject to this subsection are supplied with clean alternative fuel, the fuel
17 shall be offered for sale to the public for use in other vehicles during reasonable
18 business times and subject to national security concerns, unless such
19 fuel is commercially available for vehicles in the vicinity of the Federal facility.
20

21 (h) TRANSPORTATION CONTROL MEASURES.—The Administrator shall by
22 regulation ensure that certain transportation control measures including
23 time-of-day or day-of-week restrictions, and other similar measures that restrict
24 vehicle usage, do not apply to any clean-fuel vehicle that meets the
25 requirements of this section. This subsection shall apply notwithstanding
26 subdivision 2.

27 **§ 225107. Vehicle conversions**

28 (a) CONVERSION OF EXISTING AND NEW CONVENTIONAL VEHICLES TO
29 CLEAN-FUEL VEHICLES.—

30 (1) IN GENERAL.—The requirements of section 225106 of this title
31 may be met through the conversion of existing or new gasoline or diesel-powered
32 vehicles to clean-fuel vehicles that comply with the applicable
33 requirements of that section.

34 (2) TREATMENT AS PURCHASE.—For purposes of those requirements
35 the conversion of a vehicle to a clean-fuel vehicle shall be treated as
36 the purchase of a clean-fuel vehicle.

37 (3) EFFECT OF CHAPTER.—Nothing in this chapter shall be construed
38 to provide that any covered fleet operator subject to fleet vehicle
39 purchase requirements under section 225106 of this title shall be required
40 to convert existing or new gasoline or diesel-powered vehicles to
41 clean-fuel vehicles or to purchase converted vehicles.

1 (b) REGULATIONS.—

2 (1) IN GENERAL.—The Administrator shall, consistent with the re-
3 quirements of this subdivision applicable to new vehicles, promulgate
4 regulations governing conversions of conventional vehicles to clean-fuel
5 vehicles.

6 (2) CONTENTS.—The regulations shall—

7 (A) establish criteria for such conversions that will ensure that
8 a converted vehicle will comply with the standards applicable
9 under this chapter to clean-fuel vehicles; and

10 (B) provide for the application to such conversions of the same
11 provisions of this subdivision (including provisions relating to ad-
12 ministration and enforcement) as are applicable to standards
13 under sections 225102, 225103, 225104, and 225105 of this title,
14 except that in the case of conversions the Administrator may mod-
15 ify the applicable regulations implementing those provisions as the
16 Administrator considers necessary to implement this chapter.

17 (c) ENFORCEMENT.—

18 (1) IN GENERAL.—A person that converts conventional vehicles to
19 clean-fuel vehicles pursuant to subsection (b) shall be considered to be
20 a manufacturer for purposes of sections 221106 and 221107 of this
21 title and related enforcement provisions.

22 (2) EFFECT OF PARAGRAPH.—Nothing in paragraph (1) shall re-
23 quire a person that performs such conversions to warrant any part or
24 operation of a vehicle other than as required under this chapter. Noth-
25 ing in this paragraph shall limit the applicability of any other warranty
26 to unrelated parts or operations.

27 (d) TAMPERING.—The conversion from a vehicle capable of operating on
28 gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered
29 a violation of section 221103(a)(1)(C) of this title if the conversion complies
30 with the regulations promulgated under subsection (b).

31 (e) SAFETY.—The Secretary of Transportation shall, if necessary, pro-
32 mulgate regulations under applicable motor vehicle laws regarding the safety
33 of vehicles converted from existing and new vehicles to clean-fuel vehicles.

34 **§ 225108. Federal agency fleets**

35 (a) ADDITIONAL PROVISIONS APPLICABLE.—This section shall apply, in
36 addition to the other provisions of this chapter, in the case of covered fleet
37 vehicles owned or operated by an agency, department, or instrumentality of
38 the United States, except as otherwise provided in subsection (e).

39 (b) COST OF VEHICLES TO FEDERAL AGENCY.—Notwithstanding section
40 604 of title 40, the Administrator of General Services shall not include the
41 incremental costs of clean-fuel vehicles in the amount to be reimbursed to

1 Federal agencies if the Administrator of General Services determines that
2 amounts appropriated under subsection (g) are sufficient to provide for the
3 incremental cost of such vehicles over the cost of comparable conventional
4 vehicles.

5 (e) LIMITATIONS ON APPROPRIATIONS.—Amounts appropriated under
6 subsection (g) shall be applicable only to—

7 (1) the portion of the costs of acquisition, maintenance, and oper-
8 ation of clean-fuel vehicles that exceeds the cost of acquisition, mainte-
9 nance, and operation of comparable conventional vehicles;

10 (2) the portion of the costs of fuel storage and dispensing equipment
11 attributable to clean-fuel vehicles that exceeds the costs for those pur-
12 poses required for conventional vehicles; and

13 (3) the portion of the costs of acquisition of clean-fuel vehicles that
14 represents a reduction in revenue from the disposal of clean-fuel vehi-
15 cles as compared with revenue resulting from the disposal of com-
16 parable conventional vehicles.

17 (d) VEHICLE COSTS.—The incremental cost of clean-fuel vehicles over the
18 cost of comparable conventional vehicles shall not be applied to any calcula-
19 tion with respect to a limitation under law on the maximum cost of individ-
20 ual vehicles that may be required by the United States.

21 (e) EXEMPTIONS.—The requirements of this chapter shall not apply to
22 vehicles with respect to which the Secretary of Defense certifies to the Ad-
23 ministrator that an exemption is needed based on national security consider-
24 ations.

25 (f) ACQUISITION REQUIREMENT.—Federal agencies, to the extent prac-
26 ticable, shall obtain clean-fuel vehicles from original equipment manufactur-
27 ers.

28 (g) AUTHORIZATION OF APPROPRIATIONS.—

29 (1) IN GENERAL.—There are authorized to be appropriated such
30 sums as are required to carry out this section.

31 (2) ADDITION TO ACQUISITION SERVICES FUND.—Such sums as are
32 appropriated for the Administrator of General Services to carry out
33 this section shall be added to the Acquisition Services Fund established
34 by section 321 of title 40.

35 **§ 225109. California pilot test program**

36 (a) ESTABLISHMENT.—The Administrator shall establish a pilot program
37 in California to demonstrate the effectiveness of clean-fuel vehicles in con-
38 trolling air pollution in ozone nonattainment areas.

39 (b) APPLICABILITY.—This section shall apply—

40 (1) only to light-duty trucks and light-duty vehicles; and

41 (2) only in California, except as provided in subsection (f).

1 (c) PROGRAM REQUIREMENTS.—

2 (1) IN GENERAL.—The Administrator shall promulgate regulations
3 establishing requirements under this section applicable in California.

4 (2) CLEAN-FUEL VEHICLES.—The regulations shall provide that
5 clean-fuel vehicles shall be produced, sold, and distributed (in accord-
6 ance with normal business practices and applicable franchise agree-
7 ments) to ultimate purchasers in California (including owners of cov-
8 ered fleets under section 225106 of this title) in numbers that meet
9 or exceed 300,000 in each model year.

10 (3) CLEAN ALTERNATIVE FUELS.—

11 (A) SIP.—The California implementation plan shall include a
12 clean fuel plan that requires that clean alternative fuels on which
13 the clean-fuel vehicles required under this section can operate shall
14 be produced and distributed by fuel suppliers and made available
15 in California.

16 (B) SUFFICIENCY.—At a minimum, sufficient clean alternative
17 fuels shall be produced, distributed, and made available to ensure
18 that all clean-fuel vehicles required under this section can operate,
19 to the maximum extent practicable, exclusively on such fuels in
20 California. The State shall require that clean alternative fuels be
21 made available and offered for sale at an adequate number of loca-
22 tions with sufficient geographic distribution to ensure convenient
23 refueling with clean alternative fuels, considering the number of,
24 and type of, such vehicles sold and the geographic distribution of
25 such vehicles within the State.

26 (C) DETERMINATION.—The State shall determine the clean al-
27 ternative fuels to be produced, distributed, and made available
28 based on motor vehicle manufacturers' projections of future sales
29 of such vehicles and consultations with the affected local govern-
30 ments and fuel suppliers.

31 (D) CREDITS.—The State may by regulation grant persons sub-
32 ject to the requirements prescribed under this paragraph an ap-
33 propriate amount of credits for exceeding the requirements, and
34 any person granted credits may transfer some or all of the credits
35 for use by 1 or more persons in demonstrating compliance with
36 the requirements. The State may make the credits available for
37 use after consideration of enforceability, environmental, and eco-
38 nomic factors and on such terms and conditions as the State finds
39 appropriate.

40 (E) SPECIFICATIONS.—The State may by regulation establish
41 specifications for any clean alternative fuel produced and made

1 available under this paragraph as the State finds necessary to re-
2 duce or eliminate an unreasonable risk to public health, welfare,
3 or safety associated with its use or to ensure acceptable vehicle
4 maintenance and performance characteristics.

5 (F) UNDERGROUND STORAGE TANKS.—If a retail gasoline dis-
6 pensing facility would have to remove or replace 1 or more motor
7 vehicle fuel underground storage tanks and accompanying piping
8 to comply with this section, and it had removed and replaced the
9 tank or tanks and accompanying piping to comply with subtitle I
10 of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) before
11 November 15, 1990, it shall not be required to comply with this
12 subsection until a period of 7 years has passed from the date of
13 the removal and replacement of the tank or tanks.

14 (G) EFFECT OF SECTION.—Nothing in this section authorizes
15 any State other than California to adopt provisions regarding
16 clean alternative fuels.

17 (H) FAILURE OF STATE TO MAINTAIN CLEAN AIR PROGRAM.—
18 If California fails to adopt a clean fuel program that meets the
19 requirements of this paragraph, the Administrator shall establish
20 a clean fuel program for California under this paragraph and sec-
21 tion 211110(c) of this title that meets the requirements of this
22 paragraph.

23 (d) CREDITS FOR MOTOR VEHICLE MANUFACTURERS.—

24 (1) IN GENERAL.—

25 (A) GRANT OF CREDITS.—The Administrator may by regulation
26 grant a motor vehicle manufacturer an appropriate amount of
27 credits toward fulfillment of the manufacturer's share of the re-
28 quirements of subsection (c)(2) for either of the following (or any
29 combination thereof):

30 (i) The sale of more clean-fuel vehicles than is required
31 under subsection (c)(2).

32 (ii) The sale of clean-fuel vehicles that meet standards es-
33 tablished by the Administrator as provided in paragraph (3)
34 that are more stringent than the clean-fuel vehicle standards
35 otherwise applicable to clean-fuel vehicles.

36 (B) USE OF CREDITS.—A manufacturer granted credits under
37 subparagraph (A) may transfer some or all of the credits for use
38 by 1 or more other manufacturers in demonstrating compliance
39 with the requirements prescribed under this section.

40 (C) CONSIDERATIONS.—The Administrator may make the cred-
41 its available for use after consideration of enforceability, environ-

1 mental, and economic factors and on such terms and conditions
2 as the Administrator finds appropriate.

3 (D) OTHER REQUIREMENTS OR CREDITS.—The Administrator
4 shall grant credits in accordance with this paragraph notwith-
5 standing any requirements of State law or any credits granted
6 with respect to the same vehicles under any State law (including
7 a regulation).

8 (2) ADMINISTRATION; REGULATIONS.—The Administrator shall ad-
9 minister the credit program established under this subsection. The Ad-
10 ministrator shall promulgate regulations for the credit program.

11 (3) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—
12 The more stringent standards and other requirements (including re-
13 quirements relating to the weighting of credits) established by the Ad-
14 ministrator for purposes of the credit program under section 225106(f)
15 of this title shall apply for purposes of the credit program under this
16 subsection.

17 (e) NO EXTENSION OR TERMINATION BY ADMINISTRATOR; NONAPPLI-
18 CABILITY OF SECTION 215109.—

19 (1) NO EXTENSION OR TERMINATION BY ADMINISTRATOR.—The pro-
20 gram under this section cannot be extended or terminated by the Ad-
21 ministrator except by Act of Congress enacted after November 15,
22 1990.

23 (2) NONAPPLICABILITY OF SECTION 215109.—Section 215109 of this
24 title does not apply to the program under this section.

25 (f) VOLUNTARY OPT-IN FOR OTHER STATES.—

26 (1) REGULATIONS.—The Administrator shall promulgate regulations
27 establishing a voluntary opt-in program under this subsection pursuant
28 to which—

29 (A) clean-fuel vehicles that are required to be produced, sold,
30 and distributed in California under this section; and

31 (B) clean alternative fuels required to be produced and distrib-
32 uted under this section by fuel suppliers and made available in
33 California;

34 may also be sold and used in other States that have an implementation
35 plan provision under paragraph (2).

36 (2) PLAN PROVISION.—Any State in which there is located all or
37 part of an ozone nonattainment area classified under chapter 215 as
38 a serious area, severe area, or extreme area may include in its imple-
39 mentation plan a provision under which incentives are provided for the
40 sale or use in the ozone nonattainment area or State of clean-fuel vehi-
41 cles that are required to be produced, sold, and distributed in Califor-

1 nia, and for the use in the ozone nonattainment area or State of clean
2 alternative fuels required to be produced and distributed by fuel suppli-
3 ers and made available in California. Such a plan provision shall not
4 take effect until 1 year after the State has provided notice of the provi-
5 sion to motor vehicle manufacturers and to fuel suppliers.

6 (3) INCENTIVES.—

7 (A) IN GENERAL.—The incentives under paragraph (2) may in-
8 clude any or all of the following:

9 (i) A State registration fee on new motor vehicles reg-
10 istered in the State that are not clean-fuel vehicles in the
11 amount of at least 1 percent of the cost of the vehicle.

12 (ii) Provisions to exempt clean-fuel vehicles from high occu-
13 pancy vehicle or trip reduction requirements.

14 (iii) Provisions to provide preference in the use of existing
15 parking spaces for clean-fuel vehicles.

16 (B) USE OF PROCEEDS.—The proceeds of a fee under subpara-
17 graph (A)(i) shall be used to provide financial incentives to pur-
18 chasers of clean-fuel vehicles and to vehicle dealers that sell high
19 volumes or high percentages of clean-fuel vehicles and to defray
20 the administrative costs of the incentive program.

21 (C) COVERED FLEET VEHICLES.—The incentives under this
22 paragraph shall not apply in the case of covered fleet vehicles.

23 (4) NO SALES OR PRODUCTION MANDATE.—The regulations and
24 plan provisions under paragraphs (1) and (2) shall not include any pro-
25 duction or sales mandate for clean-fuel vehicles or clean alternative
26 fuels. The regulations and plan provisions shall provide that vehicle
27 manufacturers and fuel suppliers may not be subject to penalties or
28 sanctions for failing to produce or sell clean-fuel vehicles or clean alter-
29 native fuels.

30 **§ 225110. General provisions**

31 (a) STATE REFUELING FACILITIES.—If any State adopts an enforceable
32 provision in an implementation plan applicable to a nonattainment area that
33 provides that existing State refueling facilities will be made available to the
34 public for the purchase of clean alternative fuels or that State-operated re-
35 fueling facilities for clean alternative fuels will be constructed and operated
36 by the State and made available to the public at reasonable times, taking
37 into consideration safety, costs, and other relevant factors, in approving the
38 plan under section 211110 of this title and chapter 215 the Administrator
39 may credit a State with the emission reductions attributable to those actions
40 for purposes of chapter 215.

1 (b) NO PRODUCTION MANDATE.—The Administrator shall have no au-
 2 thority under this chapter to mandate the production of clean-fuel vehicles
 3 except as provided in the California pilot test program or to specify as appli-
 4 cable the models, lines, or types of, or marketing or price practices, policies,
 5 or strategies for, vehicles subject to this chapter. Nothing in this chapter
 6 shall be construed to give the Administrator authority to mandate market-
 7 ing or pricing practices, policies, or strategies for fuels.

8 (c) TANK AND FUEL SYSTEM SAFETY.—The Secretary of Transportation
 9 shall, in accordance with chapter 301 of title 49, promulgate regulations re-
 10 garding the safety and use of fuel storage cylinders and fuel systems, in-
 11 cluding appropriate testing and retesting, in conversions of motor vehicles.

12 (d) COORDINATION WITH SECRETARY OF ENERGY AND SECRETARY OF
 13 TRANSPORTATION.—The Administrator shall coordinate with the Secretary
 14 of Energy and the Secretary of Transportation in carrying out the Adminis-
 15 trator’s duties under this chapter.

16 **Subdivision 4—Noise Pollution** 17 **Chapter 231—Noise Pollution**

Sec.

231101. Abatement of noise from Federal activities.

18 **§ 231101. Abatement of noise from Federal activities**

19 In any case where a Federal department or agency is carrying out or
 20 sponsoring an activity resulting in noise that the Administrator determines
 21 amounts to a public nuisance or is otherwise objectionable, the department
 22 or agency shall consult with the Administrator to determine possible means
 23 of abating the noise.

24 **Subdivision 5—Acid Deposition Control** 25 **Chapter 233—Acid Deposition Control**

Sec.

233101. Findings and purposes.

233102. Definitions.

233103. Sulfur dioxide allowance program for existing units and new units.

233104. Conservation and renewable energy reserve; alternative allowance allocation for units
 in certain utility systems with optional baseline.

233105. Phase II sulfur dioxide requirements.

233106. Allowances for States with emission rates at or below 0.80 pound per million British
 thermal units.

233107. Nitrogen oxide emission reduction program.

233108. Permits and compliance plans.

233109. Election for additional sources.

233110. Excess emission penalty; excess emission offset.

233111. Monitoring, reporting, and recordkeeping requirements.

233112. General compliance with other provisions.

233113. Enforcement.

233114. Clean coal technology regulatory incentives.

233115. Contingency guarantee; auctions; reserve.

26 **§ 233101. Findings and purposes**

27 (a) FINDINGS.—Congress finds that—

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1 (1) the presence of acidic compounds and their precursors in the at-
2 mosphere and in deposition from the atmosphere represents a threat
3 to natural resources, ecosystems, materials, visibility, and public health;

4 (2) the principal sources of the acidic compounds and their precur-
5 sors in the atmosphere are emissions of sulfur and nitrogen oxides from
6 the combustion of fossil fuels;

7 (3) the problem of acid deposition is of national and international
8 significance;

9 (4) there exist strategies and technologies for the control of precur-
10 sors to acid deposition that are economically feasible;

11 (5) current and future generations of Americans would be adversely
12 affected by delaying measures to remedy the problem;

13 (6) reduction of total atmospheric loading of sulfur dioxide and ni-
14 trogen oxides will enhance protection of the public health and welfare
15 and the environment; and

16 (7) steam-electric generating units should use control measures to re-
17 duce precursor emissions.

18 (b) PURPOSES.—

19 (1) EMISSION REDUCTIONS.—

20 (A) IN GENERAL.—A purpose of this subdivision is to reduce
21 the adverse effects of acid deposition through reductions in annual
22 emissions of sulfur dioxide of 10,000,000 tons from 1980 emission
23 levels, and, in combination with other provisions of this division,
24 of nitrogen oxides emissions of approximately 2,000,000 tons from
25 1980 emission levels, in the 48 contiguous States and the District
26 of Columbia.

27 (B) INTENT.—It is the intent of this subdivision to effectuate
28 the reductions described in subparagraph (A) by requiring compli-
29 ance by affected sources with prescribed emission limitations by
30 specified deadlines, which limitations may be met through alter-
31 native methods of compliance provided by an emission allocation
32 and transfer system.

33 (2) ENERGY CONSERVATION, USE OF RENEWABLE AND CLEAN AL-
34 TERNATIVE TECHNOLOGIES, AND POLLUTION PREVENTION.—A purpose
35 of this subdivision is to encourage energy conservation, use of renew-
36 able and clean alternative technologies, and pollution prevention as a
37 long-range strategy, consistent with this subdivision, for reducing air
38 pollution and other adverse impacts of energy production and use.

39 **§ 233102. Definitions**

40 In this subdivision:

41 (1) ACTUAL 1985 SULFUR DIOXIDE EMISSION RATE.—

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1 (A) UTILITY UNITS.—The term “actual 1985 sulfur dioxide
2 emission rate”, with respect to a utility unit, means the 1985 sul-
3 fur dioxide emission rate in pounds per million British thermal
4 units as reported for the utility unit in the NAPAP Emissions In-
5 ventory, Version 2, National Utility Reference File.

6 (B) NONUTILITY UNITS.—The term “actual 1985 sulfur dioxide
7 emission rate”, with respect to a nonutility unit, means the 1985
8 sulfur dioxide emission rate in pounds per million British thermal
9 units as reported for the nonutility unit in the NAPAP Emissions
10 Inventory, Version 2.

11 (2) AFFECTED SOURCE.—The term “affected source” means a
12 source that includes 1 or more affected units.

13 (3) AFFECTED UNIT.—The term “affected unit” means a unit that
14 is subject to emission reduction requirements or limitations under this
15 subdivision.

16 (4) ALLOWABLE 1985 SULFUR DIOXIDE EMISSION RATE.—

17 (A) IN GENERAL.—The term “allowable 1985 sulfur dioxide
18 emission rate”, with respect to a unit, means—

19 (i) a federally enforceable emission limitation for sulfur di-
20 oxide applicable to the unit in 1985; or

21 (ii) the limitation applicable in such year after 1985 as the
22 Administrator may determine if a limitation described in
23 clause (i) for 1985 does not exist.

24 (B) EMISSION LIMITATION NOT EXPRESSED IN POUNDS OF
25 EMISSIONS PER MILLION BRITISH THERMAL UNITS OR AVERAGING
26 PERIOD NOT EXPRESSED ON AN ANNUAL BASIS.—If the emission
27 limitation for a unit is not expressed in pounds of emissions per
28 million British thermal units or the averaging period of the emis-
29 sion limitation is not expressed on an annual basis, the Adminis-
30 trator shall calculate the annual equivalent of that emission limita-
31 tion in pounds per million British thermal units to establish the
32 allowable 1985 sulfur dioxide emission rate.

33 (5) ALLOWANCE.—The term “allowance” means an authorization,
34 allocated to an affected unit by the Administrator under this subdivi-
35 sion, to emit, during or after a specified calendar year, 1 ton of sulfur
36 dioxide.

37 (6) BASELINE.—The term “baseline” means the annual quantity of
38 fossil fuel consumed by an affected unit, measured in millions of Brit-
39 ish thermal units, calculated as follows:

40 (A) UTILITY UNITS.—

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1 (i) IN GENERAL.—For a utility unit that was in commercial
2 operation prior to January 1, 1985, the baseline is the annual
3 average quantity of million British thermal units consumed in
4 fuel during calendar years 1985, 1986, and 1987, as recorded
5 by the Department of Energy pursuant to Form EIA-767.

6 (ii) FORM EIA-767 NOT FILED.—For a utility unit for
7 which a Form EIA-767 was not filed, the baseline is the level
8 specified for the unit in—

9 (I) the 1985 NAPAP Emissions Inventory, Version 2,
10 National Utility Reference File; or

11 (II) a corrected database established by the Adminis-
12 trator pursuant to subparagraph (E).

13 (B) NONUTILITY UNITS.—

14 (i) IN GENERAL.—For nonutility units, the baseline is the
15 NAPAP Emissions Inventory, Version 2.

16 (ii) NONUTILITY UNITS NOT INCLUDED IN THE NAPAP
17 EMISSIONS INVENTORY, VERSION 2, OR A CORRECTED DATA-
18 BASE.—For a nonutility unit that is not included in the
19 NAPAP Emissions Inventory, Version 2, or a corrected data-
20 base established by the Administrator pursuant to subpara-
21 graph (E), the baseline is the annual average quantity, in mil-
22 lion British thermal units consumed in fuel by the unit, as
23 calculated pursuant to a method that the Administrator shall
24 prescribe by regulation.

25 (C) EXCLUSION OF SHUTDOWN PERIODS OF 4 MONTHS OR
26 LONGER.—The Administrator may exclude periods during which a
27 unit is shut down for a continuous period of 4 calendar months
28 or longer and make appropriate adjustments under this para-
29 graph.

30 (D) ADJUSTMENT FOR ACCIDENTS.—On petition of the owner
31 or operator of a unit, the Administrator may make appropriate
32 baseline adjustments for accidents that caused prolonged outages.

33 (E) DATABASE.—The Administrator shall, on application or on
34 the Administrator's own motion, supplement data needed in sup-
35 port of this subdivision and correct any factual errors in data from
36 which affected Phase II units' baselines or actual 1985 sulfur di-
37 oxide emission rates have been calculated. Corrected data shall be
38 used for purposes of issuing allowances under this subdivision.
39 The corrections shall not be subject to judicial review, nor shall
40 the failure of the Administrator to correct an alleged factual error
41 in the reports be subject to judicial review.

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1 (7) BASIC PHASE II ALLOWANCE ALLOCATION.—The term “basic
2 Phase II allowance allocation” means—

3 (A) for calendar years 2000 to 2009, an allocation of allowances
4 made by the Administrator pursuant to section 233103 of this
5 title and paragraph (1), (3), or (4) of subsection (b), paragraph
6 (1), (2), (3), or (5) of subsection (c), paragraph (1), (2), (4), or
7 (5) of subsection (d), subsection (e) or (f), paragraph (1), (2), (3),
8 (4), or (5) of subsection (g), or subsection (h)(1), (i), or (j) of sec-
9 tion 233105 of this title; and

10 (B) for each calendar year beginning in 2010, an allocation of
11 allowances made by the Administrator pursuant to section 233103
12 of this title and paragraph (1), (3), or (4) of subsection (b), para-
13 graph (1), (2), (3), or (5) of subsection (c), paragraph (1), (2),
14 (4), or (5) of subsection (d), subsection (e) or (f), paragraph (1),
15 (2), (3), (4), or (5) of subsection (g), paragraph (1) or (2)(B) of
16 subsection (h), or subsection (i) or (j) of section 233105 of this
17 title.

18 (8) CAPACITY FACTOR.—The term “capacity factor” means the ratio
19 of the actual electric output from a unit to the potential electric output
20 from that unit.

21 (9) COMMENCE.—The term “commence”, as applied to construction
22 of a new electric utility unit by an owner or operator, means to—

23 (A) undertake a continuous program of construction; or

24 (B) enter into a contractual obligation to undertake and com-
25 plete, within a reasonable time, a continuous program of construc-
26 tion.

27 (10) COMMENCE COMMERCIAL OPERATION.—The term “commence
28 commercial operation” means to begin to generate electricity for sale.

29 (11) COMPLIANCE PLAN.—The term “compliance plan” means, for
30 purposes of the requirements of this subdivision—

31 (A) a statement that a source will comply with all applicable re-
32 quirements under this subdivision; or

33 (B) where applicable, a schedule and description of the method
34 or methods for compliance and certification by an owner or opera-
35 tor that a source is in compliance with the requirements of this
36 subdivision.

37 (12) CONSTRUCTION.—The term “construction” means fabrication,
38 erection, or installation of an affected unit.

39 (13) CONTINUOUS EMISSION MONITORING SYSTEM.—The term “con-
40 tinuous emission monitoring system” means the equipment, as required
41 by section 233111 of this title, used to sample, analyze, measure, and

1 provide on a continuous basis a permanent record of emissions and
2 flow (expressed in pounds per million British thermal units, pounds per
3 hour, or such other form as the Administrator may prescribe by regula-
4 tions under section 233111 of this title).

5 (14) DESIGNATED REPRESENTATIVE.—The term “designated rep-
6 resentative” means a responsible person or official authorized by the
7 owner or operator of a unit to represent the owner or operator in mat-
8 ters pertaining to the holding, transfer, or disposition of allowances al-
9 located to a unit and the submission of and compliance with permits,
10 permit applications, and compliance plans for the unit.

11 (15) EXISTING UNIT.—

12 (A) IN GENERAL.—The term “existing unit” means a unit (in-
13 cluding a unit subject to section 211111 of this title) that com-
14 menced commercial operation before November 15, 1990. Any unit
15 that commenced commercial operation before November 15, 1990,
16 that is modified, reconstructed, or repowered after November 15,
17 1990, shall continue to be an existing unit for the purposes of this
18 subdivision.

19 (B) EXCLUSIONS.—The term “existing unit” does not include
20 a simple combustion turbine or a unit that serves a generator with
21 a nameplate capacity of 25 megawatts electric or less.

22 (16) EXISTING UTILITY UNIT.—The term “existing utility unit”
23 means an existing unit that is a utility unit.

24 (17) GENERATOR.—The term “generator” means a device that pro-
25 duces electricity and that is reported as a generating unit pursuant to
26 Department of Energy Form EIA-860.

27 (18) INDUSTRIAL SOURCE.—The term “industrial source” means a
28 unit that does not serve a generator that produces electricity, a nonutil-
29 ity unit, or a process source (as defined in section 233109 of this title).

30 (19) LIFE-OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGE-
31 MENT.—The term “life-of-the-unit, firm power contractual arrange-
32 ment” means a unit participation power sales agreement under which
33 a utility or industrial customer reserves, or is entitled to receive, a
34 specified amount or percentage of capacity and associated energy gen-
35 erated by a specified generating unit (or units) and pays its propor-
36 tional amount of the unit’s total costs, pursuant to a contract—

37 (A) for the life of the unit;

38 (B) for a cumulative term of not less than 30 years, including
39 contracts that permit an election for early termination; or

40 (C) for a period equal to or greater than 25 years or 70 percent
41 of the economic useful life of the unit determined as of the time

1 the unit is built, with option rights to purchase or re-lease a por-
2 tion of the capacity and associated energy generated by the unit
3 (or units) at the end of the period.

4 (20) NAPAP.—The term “NAPAP” means the National Acid Pre-
5 cipitation Assessment Program.

6 (21) NEW UNIT.—The term “new unit” means a unit that com-
7 mences commercial operation on or after November 15, 1990.

8 (22) NEW UTILITY UNIT.—The term “new utility unit” means a new
9 unit that is a utility unit.

10 (23) NONUTILITY UNIT.—The term “nonutility unit” means a unit
11 other than a utility unit.

12 (24) PERMITTING AUTHORITY.—The term “permitting authority”
13 means—

14 (A) the Administrator; or

15 (B) a State or local air pollution control agency, with an ap-
16 proved permitting program under subdivision 6.

17 (25) PHASE II BONUS ALLOWANCE ALLOCATION.—The term “Phase
18 II bonus allowance allocation” means, for calendars years 2000
19 through 2009, an allocation made by the Administrator pursuant to—

20 (A) section 233103 of this title;

21 (B) subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as other-
22 wise provided therein), and (h)(2) of section 233105 of this title;
23 or

24 (C) section 233106 of this title.

25 (26) QUALIFYING PHASE I TECHNOLOGY.—The term “qualifying
26 phase I technology” means a technological system of continuous emis-
27 sion reduction that achieves a 90 percent reduction in emissions of sul-
28 fur dioxide from the emissions that would have resulted from the use
29 of fuels that were not subject to treatment prior to combustion.

30 (27) REPOWER.—

31 (A) IN GENERAL.—The term “repower” means—

32 (i) to replace an existing coal-fired boiler with 1 of the
33 clean coal technologies described in subparagraph (B); or

34 (ii) to be an oil- or gas-fired unit that was awarded clean
35 coal technology demonstration funding as of January 1, 1991,
36 by the Department of Energy.

37 (B) CLEAN COAL TECHNOLOGIES.—The clean coal technologies
38 described in subparagraph (A)(i) are—

39 (i) atmospheric or pressurized fluidized bed combustion
40 technology;

41 (ii) integrated gasification combined cycle technology;

- 1 (iii) magnetohydrodynamic technology;
- 2 (iv) direct and indirect coal-fired turbine technology;
- 3 (v) integrated gasification fuel cell technology;
- 4 (vi) a derivative of 1 or more of the technologies described
- 5 in clauses (i) through (v), as determined by the Administrator
- 6 in consultation with the Secretary of Energy; and
- 7 (vii) any other technology capable of controlling multiple
- 8 combustion emissions simultaneously with improved boiler or
- 9 generation efficiency and with significantly greater waste re-
- 10 duction relative to the performance of technology in wide-
- 11 spread commercial use as of November 15, 1990.

12 (28) RESERVE.—The term “reserve” means a bank of allowances es-

13 tablished by the Administrator under this subdivision.

14 (29) STATE.—The term “State” means 1 of the 48 contiguous

15 States and the District of Columbia.

16 (30) UNIT.—The term “unit” means a fossil fuel-fired combustion

17 device used to generate electricity.

18 (31) UTILITY UNIT.—

19 (A) IN GENERAL.—The term “utility unit” means—

- 20 (i) a unit that serves a generator in any State that pro-
- 21 duces electricity for sale; or
- 22 (ii) a unit that, during 1985, served a generator in any
- 23 State that produced electricity for sale.

24 (B) EXCLUSIONS.—The term “utility unit” does not include—

- 25 (i) a unit that—
- 26 (I) was in commercial operation during 1985; but
- 27 (II) did not, during 1985, serve a generator in any
- 28 State that produced electricity for sale; or
- 29 (ii) a unit that cogenerates steam and electricity, unless the
- 30 unit is constructed for the purpose of supplying, or com-
- 31 mences construction after November 15, 1990, and supplies,
- 32 more than $\frac{1}{3}$ of its potential electric output capacity and
- 33 more than 25 megawatts electrical output to any utility power
- 34 distribution system for sale.

35 **§ 233103. Sulfur dioxide allowance program for existing**

36 **units and new units**

37 (a) ALLOCATIONS OF ANNUAL ALLOWANCES FOR EXISTING UNITS AND

38 NEW UNITS.—

39 (1) IN GENERAL.—For the emission limitation programs under this

40 subdivision, the Administrator shall allocate annual allowances for the

41 unit, to be held or distributed by the designated representative of the

1 owner or operator of each affected unit at an affected source in accord-
2 ance with this subdivision, in an amount equal to the annual tonnage
3 emission limitation calculated under section 233105, 233106, or
4 233109 of this title except as otherwise specifically provided elsewhere
5 in this subdivision.

6 (2) TOTAL ANNUAL EMISSIONS.—

7 (A) IN GENERAL.—Except as provided in paragraphs (2) and
8 (3) of section 233105(a) and section 233109 of this title, the Ad-
9 ministrators shall not allocate annual allowances to emit sulfur di-
10 oxide pursuant to section 233105 of this title in such an amount
11 as would result in total annual emissions of sulfur dioxide from
12 utility units in excess of 8,900,000 tons, except that the Adminis-
13 trator shall not take into account unused allowances carried for-
14 ward by owners and operators of affected units or by other per-
15 sons holding such allowances, following the year for which they
16 were allocated.

17 (B) REDUCTION IN BASIC PHASE II ALLOWANCE ALLOCA-
18 TIONS.—If necessary to meet the restrictions imposed in subpara-
19 graph (A), the Administrator shall reduce, pro rata, the basic
20 Phase II allowance allocations for each unit subject to the require-
21 ments of section 233105 of this title.

22 (3) ANNUAL ALLOCATION.—Subject to section 233115 of this title,
23 the Administrator shall allocate allowances for each affected unit at an
24 affected source annually, as provided in this subsection and section
25 233108 of this title.

26 (4) REMOVAL FROM COMMERCIAL OPERATION.—Except as provided
27 in section 233109 of this title, the removal of an existing unit from
28 commercial operation at any time shall not terminate or otherwise af-
29 fect the allocation of allowances pursuant to section 233105 of this title
30 to which the unit is entitled.

31 (5) COST.—Allowances shall be allocated by the Administrator with-
32 out cost to the recipient, except for allowances sold by the Adminis-
33 trator pursuant to section 233115 of this title.

34 (6) LIST OF ALLOCATIONS.—The Administrator shall publish a pro-
35 posed list of the basic Phase II allowance allocations, the Phase II
36 bonus allowance allocations and, if applicable, allocations pursuant to
37 section 233105(a)(3) of this title for each unit subject to the emission
38 limitation requirements of section 233105 of this title for the year
39 2000 and the year 2010. After notice and opportunity for public com-
40 ment, the Administrator shall publish a final list of such allocations,
41 subject to section 233105(a)(2) of this title. The Administrator shall

1 publish a revised final statement of allowance allocations, subject to
2 section 233105(a)(2) of this title.

3 (b) ALLOWANCE TRANSFER SYSTEM.—

4 (1) IN GENERAL.—Allowances allocated under this subdivision may
5 be transferred among designated representatives of the owners or oper-
6 ators of affected sources under this subdivision and any other person
7 that holds allowances, as provided by the allowance system regulations
8 promulgated by the Administrator. The regulations shall establish the
9 allowance system prescribed under this section, including requirements
10 for the allocation, transfer, and use of allowances under this subdivi-
11 sion.

12 (2) USE OF ALLOWANCES.—The regulations shall—

13 (A) prohibit the use of any allowance prior to the calendar year
14 for which the allowance is allocated; and

15 (B) provide, consistent with the purposes of this subdivision, for
16 the identification of unused allowances and for unused allowances
17 to be carried forward and added to allowances allocated in subse-
18 quent years, including allowances allocated to units subject to
19 Phase I requirements (as described in section 404 of the Clean Air
20 Act (42 U.S.C. 7651c) (as in effect before the repeal of that sec-
21 tion)) that are applied to emission limitations requirements in
22 Phase II (as described in section 233105 of this title).

23 (3) CERTIFICATION OF TRANSFER.—A transfers of allowances shall
24 not be effective until written certification of the transfer, signed by a
25 responsible official of each party to the transfer, is received and re-
26 corded by the Administrator.

27 (4) PRE-ALLOCATION TRANSFERS.—The regulations shall permit the
28 transfer of an allowance prior to issuance of the allowance. Recorded
29 pre-allocation transfers shall be deducted by the Administrator from
30 the number of allowances that would otherwise be allocated to the
31 transferor, and added to the allowances allocated to the transferee. A
32 pre-allocation transfer shall not affect the prohibition contained in this
33 subsection against the use of an allowance prior to the year for which
34 the allowance is allocated.

35 (c) ALLOWANCE TRACKING SYSTEM.—

36 (1) IN GENERAL.—The Administrator shall by regulation promulgate
37 a system for issuing, recording, and tracking allowances, which shall
38 specify all necessary procedures and requirements for an orderly and
39 competitive functioning of the allowance system. All allowance alloca-
40 tions and transfers shall, on recordation by the Administrator, be

1 deemed a part of each unit's permit requirements pursuant to section
2 233108 of this title, without any further permit review and revision.

3 (2) ELECTRIC RELIABILITY.—

4 (A) IN GENERAL.—To ensure electric reliability—

5 (i) the regulations shall not prohibit or affect temporary in-
6 creases and decreases in emissions from units in a utility sys-
7 tem, power pool, or utility entering into an allowance pool
8 agreement that result from their operations (including emer-
9 gencies and central dispatch); and

10 (ii) such temporary emissions increases and decreases shall
11 not require transfer of allowances among units or require re-
12 cordation.

13 (B) DESIGNATED REPRESENTATIVES.—The owners or operators
14 of such units shall act through a designated representative.

15 (C) TOTAL TONNAGE OF EMISSIONS.—The total tonnage of
16 emissions in any calendar year (calculated at the end thereof)
17 from all such units shall not exceed the total allowances for such
18 units for the calendar year concerned.

19 (d) NEW UTILITY UNITS.—It shall be unlawful for a new utility unit to
20 emit an annual tonnage of sulfur dioxide in excess of the number of allow-
21 ances to emit held for the unit by the unit's owner or operator. A new utility
22 unit shall not be eligible for an allocation of sulfur dioxide allowances under
23 subsection (a) unless the new utility unit is subject to paragraph (2) or (3)
24 of section 233105(g) of this title. A new utility unit may obtain an allow-
25 ance from any person in accordance with this subdivision. The owner or op-
26 erator of any new utility unit in violation of this subsection shall be liable
27 for fulfilling the obligations specified in section 233110 of this title.

28 (e) NATURE OF ALLOWANCES.—

29 (1) LIMITED AUTHORIZATION.—An allowance allocated under this
30 subdivision is a limited authorization to emit sulfur dioxide in accord-
31 ance with this subdivision.

32 (2) NOT A PROPERTY RIGHT.—An allowance does not constitute a
33 property right.

34 (3) NO LIMITATION ON AUTHORITY TO TERMINATE OR LIMIT AU-
35 THORIZATION.—Nothing in this subdivision or in any other provision
36 of law shall be construed to limit the authority of the United States
37 to terminate or limit an allowance.

38 (4) OTHER PROVISIONS.—Nothing in this section relating to allow-
39 ances shall be construed as affecting the application of any other provi-
40 sion of this division (including provisions relating to applicable

1 NAAQSEs and State implementation plans) to, or compliance with any
2 other such provision by, an affected unit or affected source.

3 (5) STATE LAW.—Nothing in this section shall be construed as re-
4 quiring a change of any kind in any State law regulating electric utility
5 rates and charges or affecting any State law regarding such State reg-
6 ulation or as limiting State regulation (including any prudency review)
7 under such a State law.

8 (6) FEDERAL POWER ACT.—Nothing in this section shall be con-
9 strued as modifying the Federal Power Act (16 U.S.C. 791a et seq.)
10 or as affecting the authority of the Federal Energy Regulatory Com-
11 mission under that Act.

12 (7) COMPETITIVE BIDDING.—Nothing in this subdivision shall be
13 construed to interfere with or impair any program for competitive bid-
14 ding for power supply in a State in which the program is established.

15 (8) PERMITS.—An allowance, once allocated to a person by the Ad-
16 ministrator, may be received, held, and temporarily or permanently
17 transferred in accordance with this subdivision (including the regula-
18 tions of the Administrator) without regard to whether a permit is in
19 effect under subdivision 6 or section 233108 of this title with respect
20 to the unit for which the allowance was originally allocated and re-
21 corded. Each permit under this subdivision and each permit issued
22 under subdivision 6 for any affected unit shall provide that the affected
23 unit may not emit an annual tonnage of sulfur dioxide in excess of the
24 allowances held for that affected unit.

25 (f) PROHIBITION.—

26 (1) HOLDING, USE, OR TRANSFER OF ALLOWANCE.—It shall be un-
27 lawful for any person to hold, use, or transfer an allowance allocated
28 under this subdivision except in accordance with regulations promul-
29 gated by the Administrator.

30 (2) EMISSIONS.—

31 (A) IN GENERAL.—It shall be unlawful for any affected unit to
32 emit sulfur dioxide in excess of the number of allowances held for
33 that affected unit for that year by the owner or operator of the
34 unit.

35 (B) OTHER EMISSION LIMITATIONS.—On the allocation of allow-
36 ances under this subdivision, the prohibition contained in subpara-
37 graph (A) shall supersede any other emission limitation applicable
38 under this subdivision to the units for which the allowances are
39 allocated.

40 (3) CALENDAR YEAR FOR USE.—An allowance may not be used prior
41 to the calendar year for which the allowance is allocated.

1 (4) PERMITTING, MONITORING, AND ENFORCEMENT.—Nothing in
2 this section (including the allowance system regulations) shall—

3 (A) relieve the Administrator of the Administrator’s permitting,
4 monitoring, and enforcement obligations under this division; or

5 (B) relieve affected sources of their requirements and liabilities
6 under this division.

7 (g) COMPETITIVE BIDDING FOR POWER SUPPLY.—Nothing in this sub-
8 division shall be construed to interfere with or impair any program for com-
9 petitive bidding for power supply in a State in which such a program is es-
10 tablished.

11 (h) APPLICABILITY OF ANTITRUST LAWS.—

12 (1) DEFINITION OF ANTITRUST LAWS.—In this section, the term
13 “antitrust laws” has the meaning given the term in the 1st section of
14 the Clayton Act (15 U.S.C. 12).

15 (2) EFFECT OF SECTION.—Nothing in this section affects—

16 (A) the applicability of the antitrust laws to the transfer, use,
17 or sale of an allowance; or

18 (B) the authority of the Federal Energy Regulatory Commission
19 under any provision of law respecting unfair methods of competi-
20 tion or anticompetitive acts or practices.

21 **§ 233104. Conservation and renewable energy reserve; alter-**
22 **native allowance allocation for units in certain**
23 **utility systems with optional baseline**

24 (a) CONSERVATION AND RENEWABLE ENERGY RESERVE.—

25 (1) ESTABLISHMENT.—The Administrator shall establish a conserva-
26 tion and renewable energy reserve (referred to in this subsection as the
27 “Reserve”).

28 (2) ALLOCATIONS.—The Administrator may allocate from the Re-
29 serve an amount equal to a total of 300,000 allowances for emissions
30 of sulfur dioxide pursuant to section 233103 of this title.

31 (3) REDUCTION OF BASIC PHASE II ALLOWANCE ALLOCATION.—To
32 provide 300,000 allowances for the Reserve, in each year through cal-
33 endar year 2009, the Administrator shall reduce each unit’s basic
34 Phase II allowance allocation on the basis of its pro rata share of
35 30,000 allowances.

36 (4) REMAINING ALLOWANCES.—If allowances remain in the Reserve
37 after January 2, 2010, the Administrator shall allocate those allow-
38 ances for affected units under section 233105 of this title on a pro rata
39 basis.

476

1 (5) PRO RATA BASIS.—For purposes of this subsection, for any unit
2 subject to the emission limitation requirements of section 233105 of
3 this title, the term “pro rata basis” refers to the ratio that—

4 (A) the reductions made in the unit’s allowances to establish the
5 Reserve; bears to

6 (B) the total of such reductions for all such units.

7 (b) ALTERNATIVE ALLOWANCE ALLOCATION FOR UNITS IN CERTAIN
8 UTILITY SYSTEMS WITH OPTIONAL BASELINE.—

9 (1) OPTIONAL BASELINE FOR UNITS IN CERTAIN SYSTEMS.—

10 (A) IN GENERAL.—In the case of a unit described in subpara-
11 graph (B), at the election of the owner or operator of the unit
12 made not later than March 1, 1991, the unit’s baseline may be
13 calculated—

14 (i) as provided under section 233102(6) of this title; or

15 (ii) by utilizing the unit’s average annual fuel consumption
16 at a 60 percent capacity factor.

17 (B) UNITS.—A unit referred to in subparagraph (A) is a unit
18 that was subject to the emission limitation requirements of section
19 404 of the Clean Air Act (42 U.S.C. 7651c) (as in effect before
20 the repeal of that section) that, as of November 15, 1990—

21 (i) had an emission rate below 1.0 pound per million Brit-
22 ish thermal units;

23 (ii) had decreased its sulfur dioxide emission rate by 60
24 percent or greater since 1980; and

25 (iii) was part of a utility system that had a weighted aver-
26 age sulfur dioxide emission rate for all fossil fuel-fired units
27 below 1.0 pound per million British thermal units.

28 (2) ALLOWANCE ALLOCATION.—

29 (A) IN GENERAL.—When the owner or operator of a unit de-
30 scribed in paragraph (1) elects to calculate the unit’s baseline as
31 provided in paragraph (1)(A)(ii), the Administrator shall allocate
32 allowances for the unit pursuant to section 233103(a)(1) of this
33 title, this section, and section 233105 of this title (as basic Phase
34 II allowance allocations) in an amount equal to—

35 (i) the baseline selected; multiplied by

36 (ii) the lower of—

37 (I) the average annual emission rate for the unit in
38 1989; or

39 (II) 1.0 pound per million British thermal units.

40 (B) ALLOWANCE IN LIEU OF OTHER ALLOCATION.—An allow-
41 ance allocation under subparagraph (A) shall be in lieu of any al-

1 location of allowances under this section and section 233105 of
2 this title.

3 **§ 233105. Phase II sulfur dioxide requirements**

4 (a) APPLICABILITY.—

5 (1) IN GENERAL.—

6 (A) EXISTING UNITS.—Each existing utility unit as provided in
7 this subsection is subject to the limitations or requirements of this
8 section.

9 (B) AFFECTED UNITS.—Each utility unit subject to an annual
10 sulfur dioxide tonnage emission limitation under this section is an
11 affected unit under this subdivision.

12 (C) AFFECTED SOURCES.—Each source that includes 1 or more
13 affected units is an affected source.

14 (D) EXISTING UNITS NOT IN OPERATION DURING 1985.—In the
15 case of an existing unit that was not in operation during calendar
16 year 1985, the emission rate for a calendar year after 1985, as
17 determined by the Administrator, shall be used in lieu of the 1985
18 rate.

19 (E) UNIT OPERATED IN VIOLATION OF THIS SECTION.—The
20 owner or operator of any unit operated in violation of this section
21 shall be fully liable under this chapter for fulfilling the obligations
22 specified in section 233110 of this title.

23 (2) ALLOCATION OF PHASE II BONUS ALLOWANCES.—

24 (A) ALLOCATION.—In addition to basic Phase II allowance allo-
25 cations, in each year ending in calendar year 2009, the Adminis-
26 trator shall allocate up to 530,000 Phase II bonus allowances pur-
27 suant to subsections (b)(2) and (c)(4), subparagraphs (A) and (B)
28 of subsection (d)(3), and subsection (h)(2) and section 233106 of
29 this title.

30 (B) CALCULATION.—The Administrator shall—

31 (i) calculate, for each unit granted an extension pursuant
32 to section 409 of the Clean Air Act (42 U.S.C. 7651h) (as
33 in effect before the repeal of that section), the difference be-
34 tween—

35 (I) the number of allowances allocated for the unit in
36 calendar year 2000; and

37 (II)(aa) the unit's baseline; multiplied by

38 (bb) 1.20 pounds per million British thermal units; di-
39 vided by

40 (cc) 2000; and

41 (ii) sum the calculations for all such units.

1 (C) DEDUCTION.—In each year ending in calendar year 2009,
 2 the Administrator shall deduct from each unit’s basic Phase II al-
 3 lowance allocation its pro rata share of 10 percent of the sum cal-
 4 culated pursuant to subparagraph (B).

5 (3) ADDITIONAL ALLOWANCES.—

6 (A) IN GENERAL.—In addition to basic Phase II allowance allo-
 7 cations and Phase II bonus allowance allocations, the Adminis-
 8 trator shall allocate for each unit listed on table A and located in
 9 Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania,
 10 West Virginia, Kentucky, or Tennessee allowances in an amount
 11 equal to—

- 12 (i) 50,000; multiplied by
- 13 (ii) the unit’s pro rata share of the total number of basic
- 14 Phase II allowances allocated for all units listed on table A.

TABLE A.—UNITS

State	Plant Name	Gener- tor
Alabama	Colbert	1
		2
		3
		4
		5
	E.C. Gaston	1
		2
		3
		4
		4
Florida	Big Bend	1
		2
	Crist	3
		6
		7
Georgia	Bowen	1
		2
		3
		4
	Hammond	1
		2
		3
		4
		4
	J. McDonough	1
		2
		2
		2
Wansley	1	
	2	
Yates	1	
	2	
	3	
	4	
	5	
	6	
	7	
Illinois	Baldwin	1
		2
		3
	Coffeen	1
		2
	Grand Tower	4
		2
		2
		1
		2
Indiana	Meredosia	3
		2
	Vermilion	2
		2
	Baily	7
		8
Breed.	1	
	Cayuga	2

TABLE A.—UNITS—Continued

State	Plant Name	Generator
	E. W. Stout	5
		6
		7
	F. B. Culley	2
		3
	F. E. Ratts	1
		2
	Gibson	1
		2
		3
		4
	H. T. Pritchard.	
	Michigan City	12
	Petersburg	1
		2
	R. Gallagher	1
		2
		3
		4
	Tanners Creek	4
	Wabash River	1
		2
		3
		5
		6
	Warrick	4
Iowa	Burlington	1
	Des Moines	7
	George Neal	1
	M.L. Kapp	2
	Prairie Creek	4
	Riverside	5
Kansas	Quindaro	2
Kentucky	Coleman	1
		2
		3
	Cooper	1
		2
	E.W. Brown	1
		2
		3
	Elmer Smith	1
		2
	Ghent	1
	Green River	4
	H.L. Spurlock	1
	Henderson II	1
		2
	Paradise	3
	Shawnee	10
Maryland	Chalk Point	1
		2
	C. P. Crane	1
		2
	Morgantown	1
		2
Michigan	J. H. Campbell	1
		2
Minnesota	High Bridge	6
Mississippi	Jack Watson	4
		5
Missouri	Asbury	1
	James River	5
	Labadie	1
		2
		3
		4
	Montrose	1
		2
		3
	New Madrid	1
		2
	Sibley	3
	Sioux	1
		2
	Thomas Hill	1
		2
New Hampshire	Merrimack	1
		2

TABLE A.—UNITS—Continued

State	Plant Name	Generator	
New Jersey	B.L. England	1	
		2	
New York	Dunkirk	3	
		4	
		Greenidge	4
		Milliken	1
			2
		Northport	1
			2
			3
		Port Jefferson	3
			4
Ohio	Ashtabula	5	
		8	
		9	
		Cardinal	1
			2
		Conesville	1
			2
			3
			4
		Eastlake	1
			2
			3
			4
			5
		Edgewater	4
		Gen. J.M. Gavin	1
			2
		Miami Fort	5
			6
			7
		Muskingum River	1
			2
			3
			4
			5
		Niles	1
			2
Picway	5		
R.E. Burger	3		
	4		
	5		
W.H. Sammis	5		
	6		
	7		
W.C. Beckjord	5		
	6		
Pennsylvania	Armstrong	1	
		2	
		Brunner Island	1
			2
			3
		Cheswick	1
		Conemaugh	1
			2
		Hatfield's Ferry	1
			2
			3
		Martins Creek	1
			2
		Portland	1
			2
		Shawville	1
			2
	3		
	4		
Sunbury	3		
	4		
Tennessee	Allen	1	
		2	
		3	
		Cumberland	1
			2
		Gallatin	1
			2
	3		
	4		

TABLE A.—UNITS—Continued

State	Plant Name	Generator
	Johnsonville	1 2 3 4 5 6 7 8 9 10
West Virginia	Albright	3
	Fort Martin	1 2
	Harrison	1 2 3
	Kammer	1 2 3
	Mitchell	1 2
	Mount Storm	1 2 3
Wisconsin	Edgewater	4
	La Crosse/Genoa	3
	Nelson Dewey	1 2
	N. Oak Creek	1 2 3 4
	Pulliam	8
	S. Oak Creek	5 6 7 8

1 (B) ALLOWANCES NOT SUBJECT TO 8,900,000 TON LIMITA-
 2 TION.—Allowances allocated pursuant to this paragraph shall not
 3 be subject to the 8,900,000 ton limitation under section 223103(a)
 4 of this title.

5 (b) UNITS EQUAL TO OR GREATER THAN 75 MEGAWATTS ELECTRIC
 6 AND 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—

7 (1) GENERAL PROHIBITION.—Except as otherwise provided in para-
 8 graph (3), unless the owner or operator of the existing utility unit
 9 holds allowances to emit not less than the existing utility unit’s total
 10 annual emissions, it shall be unlawful for an existing unit that serves
 11 a generator with nameplate capacity equal to, or greater, than 75
 12 megawatts electric and an actual 1985 sulfur dioxide emission rate
 13 equal to or greater than 1.20 pounds per million British thermal units
 14 to exceed an annual sulfur dioxide tonnage emission limitation equal
 15 to—

- 16 (A) the unit’s baseline; multiplied by
- 17 (B) an emission rate equal to 1.20 pounds per million British
- 18 thermal units; divided by
- 19 (C) 2,000.

1 (2) ADDITIONAL ALLOWANCES FOR UNITS WITH AN ACTUAL 1985
2 SULFUR DIOXIDE EMISSION RATE GREATER THAN 1.20 POUNDS PER
3 MILLION BRITISH THERMAL UNITS AND LESS THAN 2.50 POUNDS PER
4 MILLION BRITISH THERMAL UNITS AND A BASELINE CAPACITY FACTOR
5 OF LESS THAN 60 PERCENT.—In addition to allowances allocated pur-
6 suant to paragraph (1) and section 233103(a) of this title as basic
7 Phase II allowance allocations, for each calendar year through 2009,
8 the Administrator shall allocate annually for each unit subject to the
9 emission limitation requirements of paragraph (1) with an actual 1985
10 sulfur dioxide emission rate greater than 1.20 pounds per million Brit-
11 ish thermal units and less than 2.50 pounds per million British thermal
12 units and a baseline capacity factor of less than 60 percent, allowances
13 from the reserve created pursuant to subsection (a)(2) in an amount
14 equal to—

- 15 (A) 1.20 pounds per million British thermal units; multiplied by
16 (B) 50 percent of the difference, on a British thermal unit
17 basis, between—
18 (i) the unit's baseline; and
19 (ii) the unit's fuel consumption at a 60 percent capacity
20 factor.

21 (3) PROHIBITION APPLICABLE TO CERTAIN UNITS CONSUMING LIG-
22 NITE COAL.—Unless the owner or operator of the existing unit holds
23 allowances to emit not less than the existing unit's total annual emis-
24 sions, it shall be unlawful for an existing utility unit with an actual
25 1985 sulfur dioxide emission rate equal to or greater than 1.20 pounds
26 per million British thermal units whose annual average fuel consump-
27 tion during 1985, 1986, and 1987 on a British thermal unit basis ex-
28 ceeded 90 percent in the form of lignite coal located in a State in
29 which, as of July 1, 1989, no county or portion of a county was des-
30 ignated nonattainment under section 107 of the Clean Air Act (42
31 U.S.C. 7407) (as in effect on that date) for any pollutant subject to
32 the requirements of section 109 of the Clean Air Act (42 U.S.C. 7409)
33 (as in effect on that date) to exceed an annual sulfur dioxide tonnage
34 limitation equal to—

- 35 (A) the unit's baseline; multiplied by
36 (B) the lesser of—
37 (i) the unit's actual 1985 sulfur dioxide emission rate; or
38 (ii) its allowable 1985 sulfur dioxide emission rate; divided
39 by
40 (C) 2,000.

41 (4) ALLOWANCES FOR CERTAIN UNITS CONVERTED TO COAL.—

1 (A) IN GENERAL.—The Administrator shall allocate annually
2 for each unit that is subject to the emission limitation require-
3 ments of paragraph (1) and is located in a State with an installed
4 electrical generating capacity of more than 30,000,000 kilowatts
5 in 1988 and for which was issued a prohibition order or a pro-
6 posed prohibition order (from burning oil), which unit subse-
7 quently converted to coal between January 1, 1980, and December
8 31, 1985, allowances equal to the difference between—

9 (i)(I) the unit's annual fuel consumption, on a British ther-
10 mal unit basis, at a 65 percent capacity factor; multiplied by

11 (II) the lesser of the unit's actual emission rate or allow-
12 able emission rate during the 1st full calendar year after con-
13 version; divided by

14 (III) 2,000; and

15 (ii) the number of allowances allocated for the unit pursu-
16 ant to paragraph (1).

17 (B) RESTRICTION.—

18 (i) IN GENERAL.—The number of allowances allocated pur-
19 suant to this paragraph shall not exceed an annual total of
20 5,000.

21 (ii) REDUCTION OF ALLOWANCE.—If necessary to meeting
22 the restriction imposed by clause (i), the Administrator shall
23 reduce, pro rata, the annual allowances allocated for each
24 unit under this paragraph.

25 (c) COAL- OR OIL-FIRED UNITS BELOW 75 MEGAWATTS ELECTRIC AND
26 ABOVE 1.20 POUNDS PER MILLION BRITISH THERMAL UNITS.—

27 (1) UTILITY OPERATING COMPANIES WITH CAPACITY EQUAL TO OR
28 GREATER THAN 250 MEGAWATTS ELECTRIC.—Except as provided in
29 paragraph (3), unless the owner or operator of the unit holds allow-
30 ances to emit not less than the unit's total annual emissions, it shall
31 be unlawful for a coal- or oil-fired existing utility unit that serves a
32 generator with nameplate capacity of less than 75 megawatts electric
33 and an actual 1985 sulfur dioxide emission rate equal to or greater
34 than 1.20 pounds per million British thermal units and that is a unit
35 owned by a utility operating company whose aggregate nameplate fossil
36 fuel steam-electric capacity was, as of December 31, 1989, equal to or
37 greater than 250 megawatts electric to exceed an annual sulfur dioxide
38 emission limitation equal to—

39 (A) the unit's baseline; multiplied by

40 (B) an emission rate equal to 1.20 pounds per million British
41 thermal units; divided by

1 (C) 2,000.

2 (2) UTILITY OPERATING COMPANIES WITH CAPACITY OF LESS THAN
3 250 MEGAWATTS ELECTRIC.—Unless the owner or operator of the unit
4 holds allowances to emit not less than the unit's total annual emissions,
5 it shall be unlawful for a coal or oil-fired existing utility unit that
6 serves a generator with nameplate capacity of less than 75 megawatts
7 electric and an actual 1985 sulfur dioxide emission rate equal to or
8 greater than 1.20 pounds per million British thermal units (excluding
9 units subject to section 211111 of this title or to a federally enforceable
10 emission limitation for sulfur dioxide equivalent to an annual rate of
11 less than 1.20 pounds per million British thermal units) and that is
12 a unit owned by a utility operating company whose aggregate name-
13 plate fossil fuel steam-electric capacity was, as of December 31, 1989,
14 less than 250 megawatts electric to exceed an annual sulfur dioxide
15 tonnage emission limitation equal to—

16 (A) the unit's baseline; multiplied by

17 (B) the lesser of the unit's actual 1985 sulfur dioxide emission
18 rate or its allowable 1985 sulfur dioxide emission rate; divided by

19 (C) 2,000.

20 (3) CERTAIN EXISTING UTILITY UNITS WITH CAPACITY OF LESS
21 THAN 75 MEGAWATTS ELECTRIC AND AN ACTUAL 1985 SULFUR DIOXIDE
22 EMISSION RATE EQUAL TO OR GREATER THAN 1.20 POUNDS PER MIL-
23 LION BRITISH THERMAL UNITS.—

24 (A) BEFORE JANUARY 2, 2010.—Unless the owner or operator
25 of the unit holds allowances to emit not less than the unit's total
26 annual emissions, it shall be unlawful for an existing utility unit
27 that has a nameplate capacity of less than 75 megawatts electric
28 and an actual 1985 sulfur dioxide emission rate equal to or great-
29 er than 1.20 pounds per million British thermal units that became
30 operational on or before December 31, 1965, and that is owned
31 by a utility operating company with, as of December 31, 1989, a
32 total fossil fuel steam-electric generating capacity of greater than
33 250 and less than 450 megawatts electric that served fewer than
34 78,000 electrical customers as of November 15, 1990, to exceed
35 an annual sulfur dioxide emission tonnage limitation equal to—

36 (i) the unit's baseline; multiplied by

37 (ii) the lesser of its actual 1985 sulfur dioxide emission
38 rate or its allowable 1985 sulfur dioxide emission rate; di-
39 vided by

40 (iii) 2,000.

1 (B) AFTER JANUARY 1, 2010.—After January 1, 2010, it shall
2 be unlawful for a unit described in subparagraph (A) to exceed an
3 annual emission tonnage limitation equal to—

- 4 (i) its baseline; multiplied by
5 (ii) an emission rate of 1.20 pounds per million British
6 thermal units; divided by
7 (iii) 2,000.

8 (4) ADDITIONAL ALLOWANCES FOR CERTAIN UNITS WITH AN AC-
9 TUAL 1985 EMISSION RATE OF LESS THAN 2.50 POUNDS PER MILLION
10 BRITISH THERMAL UNITS.—In addition to allowances allocated pursu-
11 ant to paragraph (1) and section 233103(a) of this title as basic Phase
12 II allowance allocations, for each calendar year through 2009, the Ad-
13 ministrator shall allocate annually for each unit subject to the emission
14 limitation requirements of paragraph (1) with an actual 1985 sulfur di-
15 oxide emission rate equal to or greater than 1.20 and less than 2.50
16 pounds per million British thermal units and a baseline capacity factor
17 of less than 60 percent allowances from the reserve created pursuant
18 to subsection (a)(2) in an amount equal to—

- 19 (A) 1.20 pounds per million British thermal units; multiplied by
20 (B) 50 percent of the difference, on a British thermal unit
21 basis, between—
22 (i) the unit's baseline; and
23 (ii) the unit's fuel consumption at a 60 percent capacity
24 factor.

25 (5) CERTAIN UNITS THAT ARE PART OF CERTAIN ELECTRIC UTILITY
26 SYSTEMS.—

27 (A) BEFORE JANUARY 2, 2010.—

28 (i) IN GENERAL.—Unless the owner or operator of the ex-
29 isting utility unit holds for use allowances to emit not less
30 than the unit's total annual emissions, it shall be unlawful for
31 any existing utility unit with a nameplate capacity below 75
32 megawatts electric and an actual 1985 sulfur dioxide emission
33 rate equal to or greater than 1.20 pounds per million British
34 thermal units that is part of an electric utility system de-
35 scribed in clause (ii) to exceed an annual sulfur dioxide emis-
36 sions tonnage limitation equal to—

- 37 (I) the unit's baseline; multiplied by
38 (II) an emission rate of 2.5 pounds per million British
39 thermal units; divided by
40 (III) 2,000.

1 (ii) ELECTRIC UTILITY SYSTEMS DESCRIBED.—An electric
2 utility system described in clause (i) is an electric utility sys-
3 tem that, as of November 15, 1990—

4 (I) had at least 20 percent of its fossil-fuel capacity
5 controlled by flue gas desulfurization devices;

6 (II) had more than 10 percent of its fossil-fuel capac-
7 ity consisting of coal-fired units of less than 75 mega-
8 watts electric; and

9 (III) had units of greater than 400 megawatts electric
10 all of which have difficult or very difficult FGD Retrofit
11 Cost Factors (according to the Emissions and the FGD
12 Retrofit Feasibility at the 200 Top Emitting Generating
13 Stations, prepared for EPA on January 10, 1986).

14 (B) AFTER JANUARY 1, 2010.—After January 1, 2010, it shall
15 be unlawful for a unit described in subparagraph (A) to exceed an
16 annual emission tonnage limitation equal to—

17 (i) the unit's baseline; multiplied by

18 (ii) an emission rate of 1.20 pounds per million British
19 thermal units; divided by

20 (iii) 2,000.

21 (d) COAL-FIRED UNITS BELOW 1.20 POUNDS PER MILLION BRITISH
22 THERMAL UNITS.—

23 (1) LESS THAN 0.60 POUND PER MILLION BRITISH THERMAL
24 UNITS.—Unless the owner or operator of the unit holds allowances to
25 emit not less than the unit's total annual emissions, it shall be unlawful
26 for any coal-fired existing utility unit the lesser of whose actual 1985
27 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission
28 rate is less than 0.60 pound per million British thermal units to exceed
29 an annual sulfur dioxide tonnage emission limitation equal to—

30 (A) the unit's baseline; multiplied by

31 (B) the lesser of 0.60 pound per million British thermal units
32 or the unit's allowable 1985 sulfur dioxide emission rate; multi-
33 plied by

34 (C) 120 percent; divided by

35 (D) 2,000.

36 (2) EQUAL TO OR GREATER THAN 0.60 POUND PER MILLION BRITISH
37 THERMAL UNITS.—Unless the owner or operator of the unit holds al-
38 lowances to emit not less than the unit's total annual emissions, it shall
39 be unlawful for any coal-fired existing utility unit the lesser of whose
40 actual 1985 sulfur dioxide emission rate or allowable 1985 sulfur diox-
41 ide emission rate is equal to or greater than 0.60 and less than 1.20

1 pounds per million British thermal units to exceed an annual sulfur di-
2 oxide tonnage emission limitation equal to—

3 (A) the unit's baseline; multiplied by—

4 (B) the lesser of its actual 1985 sulfur dioxide emission rate or
5 its allowable 1985 sulfur dioxide emission rate; multiplied by

6 (C) 120 percent; divided by

7 (D) 2,000.

8 (3) ADDITIONAL ALLOWANCES.—

9 (A) LESS THAN 0.60 POUND PER MILLION BRITISH THERMAL
10 UNITS.—In addition to allowances allocated pursuant to paragraph
11 (1) and section 233103(a) of this title as basic Phase II allowance
12 allocations, at the election of the designated representative of the
13 operating company, for each calendar year through 2009, the Ad-
14 ministrators shall allocate annually for each unit subject to the
15 emission limitation requirements of paragraph (1) allowances from
16 the reserve created pursuant to subsection (a)(2) in an amount
17 equal to the amount by which—

18 (i)(I) the lesser of 0.60 pound per million British thermal
19 units or the unit's allowable 1985 sulfur dioxide emission
20 rate; multiplied by

21 (II) the unit's baseline adjusted to reflect operation at a 60
22 percent capacity factor; divided by

23 (III) 2,000; exceeds

24 (ii) the number of allowances allocated for the unit pursu-
25 ant to paragraph (1) and section 233103(a) of this title as
26 basic Phase II allowance allocations.

27 (B) EQUAL TO OR GREATER THAN 0.60 POUND PER MILLION
28 BRITISH THERMAL UNITS.—In addition to allowances allocated
29 pursuant to paragraph (2) and section 233103(a) of this title as
30 basic Phase II allowance allocations, at the election of the des-
31 ignated representative of the operating company, for each calendar
32 year through 2009, the Administrator shall allocate annually for
33 each unit subject to the emission limitation requirements of para-
34 graph (2) allowances from the reserve created pursuant to sub-
35 section (a)(2) in an amount equal to the amount by which—

36 (i)(I)(aa) the lesser of the unit's actual 1985 sulfur dioxide
37 emission rate or its allowable 1985 sulfur dioxide emission
38 rate; multiplied by

39 (bb) the unit's baseline adjusted to reflect operation at a
40 60 percent capacity factor; divided by

41 (II) 2,000; exceeds

1 (ii) the number of allowances allocated for the unit pursu-
2 ant to paragraph (2) and section 233103(a) of this title as
3 basic Phase II allowance allocations.

4 (C) ELECTION.—An operating company with units subject to
5 the emission limitation requirements of this subsection may elect
6 the allocation of allowances as provided under subparagraphs (A)
7 and (B). Such an election shall apply to the annual allowance allo-
8 cation for each unit in the operating company subject to the emis-
9 sion limitation requirements of this subsection. The Administrator
10 shall allocate allowances pursuant to subparagraphs (A) and (B)
11 only in accordance with this subparagraph.

12 (4) ALTERNATIVE ALLOCATION.—Notwithstanding any other provi-
13 sion of this section, at the election of the owner or operator, the Ad-
14 ministrator shall allocate, in lieu of allocation pursuant to paragraph
15 (1), (2), (3), or (5), allowances for a unit subject to the emission limi-
16 tation requirements of this subsection that commenced commercial op-
17 eration on or after January 1, 1981, and before December 31, 1985,
18 that was subject to, and in compliance with, section 211111 of this title
19 in an amount equal to—

20 (A) the unit's annual fuel consumption, on a British thermal
21 unit basis, at a 65 percent capacity factor; multiplied by

22 (B) the unit's allowable 1985 sulfur dioxide emission rate; di-
23 vided by

24 (C) 2,000.

25 (5) ALLOWANCES FOR OIL- OR GAS-FIRED UNITS AWARDED A CLEAN
26 COAL TECHNOLOGY DEMONSTRATION GRANT.—For the purposes of this
27 section, in the case of an oil- or gas-fired unit that was awarded a
28 clean coal technology demonstration grant as of January 1, 1991, by
29 EPA, the Administrator shall allocate for the oil- or gas-fired unit al-
30 lowances in an amount equal to—

31 (A) the unit's baseline; multiplied by

32 (B) 1.20 pounds per million British thermal units; divided by

33 (C) 2,000.

34 (e) OIL- OR GAS-FIRED EXISTING UTILITY UNITS EQUAL TO OR GREAT-
35 ER THAN 0.60 AND LESS THAN 1.20 POUNDS PER MILLION BRITISH
36 THERMAL UNITS.—Unless the owner or operator of the unit holds allow-
37 ances to emit not less than the unit's total annual emissions, it shall be un-
38 lawful for any oil- or gas-fired existing utility unit the lesser of whose actual
39 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide emission
40 rate is equal to or greater than 0.60 but less than 1.20 pounds per million

1 British thermal units to exceed an annual sulfur dioxide tonnage limitation
2 equal to—

- 3 (1) the unit's baseline; multiplied by
- 4 (2) the lesser of the unit's allowable 1985 sulfur dioxide emission
5 rate or its actual 1985 sulfur dioxide emission rate; multiplied by
- 6 (3) 120 percent; divided by
- 7 (4) 2,000.

8 (f) OIL- OR GAS-FIRED UNITS LESS THAN 0.60 POUND PER MILLION
9 BRITISH THERMAL UNITS.—

10 (1) EMISSION LIMITATION.—Unless the owner or operator of the
11 unit holds allowances to emit not less than the unit's total annual emis-
12 sions, it shall be unlawful for any oil- or gas-fired existing utility unit
13 the lesser of whose actual 1985 sulfur dioxide emission rate or allow-
14 able 1985 sulfur dioxide emission rate is less than 0.60 pound per mil-
15 lion British thermal units and whose average annual fuel consumption
16 during the period 1980 to 1989 on a British thermal unit basis was
17 90 percent or less in the form of natural gas to exceed an annual sulfur
18 dioxide tonnage emission limitation equal to—

- 19 (A) the unit's baseline; multiplied by
- 20 (B) the lesser of 0.60 pound per million British thermal units
21 or the unit's allowable 1985 emissions; multiplied by
- 22 (C) 120 percent; divided by
- 23 (D) 2,000.

24 (2) ADDITIONAL ALLOWANCES.—

25 (A) IN GENERAL.—In addition to allowances allocated pursuant
26 to paragraph (1) as basic Phase II allowance allocations and sec-
27 tion 233103(a) of this title, the Administrator shall allocate—

- 28 (i) for each unit described in subparagraph (B)(i) its pro
29 rata share of 7,000 allowances; and
- 30 (ii) for each unit described in subparagraph (B)(ii) its pro
31 rata share of 2,000 allowances.

32 (B) UNIT DESCRIPTION.—A unit referred to in subparagraph
33 (A) is—

- 34 (i) any unit operated by a utility that furnishes electricity,
35 electric energy, steam, and natural gas within an area con-
36 sisting of a city and 1 contiguous county; and
- 37 (ii) any unit owned by a State authority, the output of
38 which unit is furnished within that same area consisting of
39 a city and 1 contiguous county.

40 (g) UNITS THAT COMMENCED OPERATION BETWEEN 1986 AND DECEM-
41 BER 31, 1995.—

1 (1) EMISSION LIMITATION.—Unless the owner or operator of the
 2 utility unit holds allowances to emit not less than the unit’s total an-
 3 nual emissions, it shall be unlawful for a utility unit that commenced
 4 commercial operation on or after January 1, 1986, but not later than
 5 September 30, 1990, to exceed an annual tonnage emission limitation
 6 equal to—

7 (A) the unit’s annual fuel consumption, on a British thermal
 8 unit basis, at a 65 percent capacity factor; multiplied by

9 (B) the unit’s allowable 1985 sulfur dioxide emission rate (con-
 10 verted, if necessary, to pounds per million British thermal units);
 11 divided by

12 (C) 2,000.

13 (2) ADDITIONAL ALLOWANCES FOR CERTAIN UNITS.—

14 (A) IN GENERAL.—The Administrator shall allocate allowances
 15 pursuant to section 233103 of this title to each unit that is listed
 16 in table B in an annual amount equal to the amount specified in
 17 table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

18 (B) ALLOWANCES UNDER OTHER PARAGRAPHS.—Notwithstand-
 19 ing any other paragraph of this subsection, for units subject to
 20 this paragraph, the Administrator shall not allocate allowances
 21 pursuant to any other paragraph of this subsection, except that
 22 the owner or operator of a unit listed in table B may elect an allo-
 23 cation of allowances under another paragraph of this subsection in
 24 lieu of an allocation under this paragraph.

25 (3) ALLOWANCES FOR UNITS THAT COMMENCED COMMERCIAL OPER-
 26 ATION ON OR AFTER OCTOBER 1, 1990, BUT NOT LATER THAN DECEM-
 27 BER 31, 1992.—The Administrator shall allocate to the owner or opera-
 28 tor of a utility unit that commenced commercial operation on or after
 29 October 1, 1990, but not later than December 31, 1992, allowances in
 30 an amount equal to—

31 (A) the unit’s annual fuel consumption, on a British thermal
 32 unit basis, at a 65 percent capacity factor; multiplied by

1 (B) the lesser of 0.30 pound per million British thermal units
2 or the unit's allowable sulfur dioxide emission rate (converted, if
3 necessary, to pounds per million British thermal units); divided by
4 (C) 2,000.

5 (4) ALLOWANCES FOR UNITS THAT COMMENCED CONSTRUCTION BE-
6 FORE DECEMBER 31, 1990, AND COMMENCED COMMERCIAL OPERATION
7 BETWEEN JANUARY 1, 1993, AND DECEMBER 31, 1995.—The Adminis-
8 trator shall allocate to the owner or operator of any utility unit that
9 commenced construction before December 31, 1990, and commenced
10 commercial operation between January 1, 1993, and December 31,
11 1995, allowances in an amount equal to—

12 (A) the unit's annual fuel consumption, on a British thermal
13 unit basis, at a 65 percent capacity factor; multiplied by

14 (B) the lesser of 0.30 pound per million British thermal units
15 or the unit's allowable sulfur dioxide emission rate (converted, if
16 necessary, to pounds per million British thermal units); divided by
17 (C) 2,000.

18 (5) CERTAIN EXISTING UTILITY UNITS THAT COMPLETED CONVER-
19 SION FROM PREDOMINANTLY GAS-FIRED EXISTING OPERATION TO
20 COAL-FIRED OPERATION BETWEEN JANUARY 1, 1985, AND DECEMBER
21 31, 1987.—Unless the owner or operator of the unit holds allowances
22 equal to its actual emissions, it shall be unlawful for any existing utility
23 unit that completed conversion from predominantly gas-fired existing
24 operation to coal-fired operation between January 1, 1985, and Decem-
25 ber 31, 1987, for which there has been allocated a proposed or final
26 prohibition order pursuant to section 301(b) of the Powerplant and In-
27 dustrial Fuel Use Act of 1978 (42 U.S.C. 8341(b)) to exceed an an-
28 nual sulfur dioxide tonnage emission limitation equal to—

29 (A) the unit's annual fuel consumption, on a British thermal
30 unit basis, at a 65 percent capacity factor; multiplied by

31 (B) the lesser of 1.20 pounds per million British thermal units
32 or the unit's allowable 1987 sulfur dioxide emission rate; divided
33 by

34 (C) 2,000.

35 (6) INAPPLICABILITY TO CERTAIN FACILITIES.—Unless the Adminis-
36 trator has approved a designation of the facility under section 233109
37 of this title, this subdivision shall not apply to—

38 (A) a qualifying small power production facility or qualifying co-
39 generation facility (within the meaning of section 3 of the Federal
40 Power Act (16 U.S.C. 796)); or

1 (B) a new independent power production facility (as defined in
2 section 233115(a) of this title) except that section
3 233115(a)(4)(C) of this title shall not apply for purposes of this
4 paragraph if, as of November 15, 1990—

5 (i) an applicable power sales agreement had been executed;

6 (ii) the facility was the subject of a State regulatory au-
7 thority order requiring an electric utility to enter into a power
8 sales agreement with, purchase capacity from, or (for pur-
9 poses of establishing terms and conditions of the electric util-
10 ity's purchase of power) enter into arbitration concerning, the
11 facility;

12 (iii) an electric utility had issued a letter of intent or simi-
13 lar instrument committing to purchase power from the facility
14 at a previously offered or lower price and a power sales agree-
15 ment was executed within a reasonable period of time; or

16 (iv) the facility had been selected as a winning bidder in
17 a utility competitive bid solicitation)).

18 (h) OIL- OR GAS-FIRED UNITS WHOSE FUEL CONSUMPTION DURING
19 THE PERIOD 1980 TO 1989 EXCEEDED 90 PERCENT IN THE FORM OF
20 NATURAL GAS.—

21 (1) EMISSION LIMITATION.—Unless the owner or operator of the
22 unit holds allowances to emit not less than the oil- or gas-fired utility
23 unit's total annual emissions, it shall be unlawful for any oil- or gas-
24 fired utility unit whose average annual fuel consumption during the pe-
25 riod 1980 to 1989 on a British thermal unit basis exceeded 90 percent
26 in the form of natural gas to exceed an annual sulfur dioxide tonnage
27 limitation equal to—

28 (A) the unit's baseline; multiplied by

29 (B) the unit's actual 1985 sulfur dioxide emission rate; divided
30 by

31 (C) 2,000.

32 (2) ADDITIONAL ALLOWANCES.—

33 (A) THROUGH 2009.—In addition to allowances allocated pursu-
34 ant to paragraph (1) and section 233103(a) of this title as basic
35 Phase II allowance allocations, for each calendar year through
36 2009, the Administrator shall allocate annually for each unit sub-
37 ject to the emission limitation requirements of paragraph (1) al-
38 lowances from the reserve created pursuant to subsection (a)(2) in
39 an amount equal to—

40 (i) the unit's baseline; multiplied by

493

1 (ii) 0.050 pound per million British thermal units; divided
2 by
3 (iii) 2,000.

4 (B) BEGINNING JANUARY 1, 2010.—In addition to allowances al-
5 located pursuant to paragraph (1) and section 233103(a) of this
6 title, beginning January 1, 2010, the Administrator shall allocate
7 annually for each unit subject to the emission limitation require-
8 ments of paragraph (1) allowances in an amount equal to—

9 (i) the unit's baseline; multiplied by
10 (ii) 0.050 pound per million British thermal units; divided
11 by
12 (iii) 2,000.

13 (i) UNITS IN HIGH GROWTH STATES.—

14 (1) UNITS LOCATED IN A STATE THAT EXPERIENCED A GROWTH IN
15 POPULATION IN EXCESS OF 25 PERCENT BETWEEN 1980 AND 1988 AND
16 HAD AN INSTALLED ELECTRICAL GENERATING CAPACITY OF MORE
17 THAN 30,000,000 KILOWATTS IN 1988.—

18 (A) IN GENERAL.—In addition to allowances allocated pursuant
19 to this section and section 233103(a) of this title as basic Phase
20 II allowance allocations, the Administrator shall allocate annually
21 allowances for each unit described in subparagraph (B) in an
22 amount equal to the difference between—

23 (i) the number of allowances that would be allocated for the
24 unit pursuant to the emission limitation requirements of this
25 section applicable to the unit adjusted to reflect the unit's an-
26 nual average fuel consumption on a British thermal unit basis
27 of any 3 consecutive calendar years between 1980 and 1989
28 (inclusive) as elected by the owner or operator; and

29 (ii) the number of allowances allocated for the unit pursu-
30 ant to the emission limitation requirements of this section.

31 (B) UNITS.—A unit referred to in subparagraph (A) is a unit
32 that is subject to an emission limitation requirement under this
33 section and is located in a State that—

34 (i) experienced a growth in population in excess of 25 per-
35 cent between 1980 and 1988 according to State Population
36 and Household Estimates, With Age, Sex, and Components of
37 Change: 1981–1988 allocated by the Secretary of Commerce;
38 and

39 (ii) had an installed electrical generating capacity of more
40 than 30,000,000 kilowatts in 1988.

1 (C) LIMITATION.—The number of allowances allocated pursuant
2 to this paragraph shall not exceed an annual total of 40,000. If
3 necessary to meet the 40,000 allowance restriction, the Adminis-
4 trator shall reduce pro rata the additional annual allowances allo-
5 cated to each unit under this paragraph.

6 (2) CERTAIN UNITS THE LESSER OF WHOSE ACTUAL 1980 EMISSION
7 RATE OR ALLOWABLE 1980 EMISSION RATE HAD DECLINED BY 50 PER-
8 CENT OR MORE AS OF NOVEMBER 15, 1990.—

9 (A) IN GENERAL.—In addition to allowances allocated pursuant
10 to this section and section 233103(a) of this title as basic Phase
11 II allowance allocations, the Administrator shall allocate annually
12 for each unit described in subparagraph (B) allowances in an
13 amount equal to the difference between—

14 (i) the number of allowances that would be allocated for the
15 unit pursuant to the emission limitation requirements of sub-
16 section (b)(1) adjusted to reflect the unit's annual average
17 fuel consumption on a British thermal unit basis for any 3
18 consecutive years between 1980 and 1989 (inclusive), as
19 elected by the owner or operator; and

20 (ii) the number of allowances allocated for the unit pursu-
21 ant to the emission limitation requirements of subsection
22 (b)(1).

23 (B) UNITS.—A unit referred to in subparagraph (A) is a unit
24 subject to the emission limitation requirements of subsection
25 (b)(1)—

26 (i) the lesser of whose actual 1980 emission rate or allow-
27 able 1980 emission rate had declined by 50 percent or more
28 as of November 15, 1990;

29 (ii) whose actual emission rate was less than 1.2 pounds
30 per million British thermal units as of January 1, 2000;

31 (iii) that commenced operation after January 1, 1970;

32 (iv) that is owned by a utility company whose combined
33 commercial and industrial kilowatt-hour sales increased by
34 more than 20 percent between calendar year 1980 and No-
35 vember 15, 1990; and

36 (v) whose company-wide fossil-fuel sulfur dioxide emission
37 rate declined 40 percent or more from 1980 to 1988.

38 (C) LIMITATION.—The number of allowances allocated pursuant
39 to this paragraph shall not exceed an annual total of 5,000. If nec-
40 essary to meet the 5,000 allowance restriction, the Administrator

1 shall reduce pro rata the additional allowances allocated to each
2 unit pursuant to this paragraph.

3 (j) CERTAIN MUNICIPALLY OWNED POWERPLANTS.—

4 (1) ADDITIONAL ALLOWANCES.—In addition to allowances allocated
5 pursuant to this section and section 233103(a) of this title as basic
6 Phase II allowance allocations, the Administrator shall allocate annu-
7 ally for each unit described in paragraph (2) allowances in an amount
8 equal to—

9 (A) the unit's annual fuel consumption on a British thermal
10 unit basis at a 60 percent capacity factor; multiplied by

11 (B) the lesser of its allowable 1985 sulfur dioxide emission rate
12 or its actual 1985 sulfur dioxide emission rate; divided by

13 (C) 2,000.

14 (2) UNITS.—A unit referred to in paragraph (1) is a municipally
15 owned oil- or gas-fired existing utility unit with nameplate capacity
16 equal to or less than 40 megawatts electric the lesser of whose actual
17 1985 sulfur dioxide emission rate or allowable 1985 sulfur dioxide
18 emission rate is less than 1.20 pounds per million British thermal
19 units.

20 **§ 233106. Allowances for States with emission rates at or**
21 **below 0.80 pound per million British thermal units**

22 (a) ELECTION OF GOVERNOR.—In addition to basic Phase II allowance
23 allocations, on the election of the Governor of any State with a statewide
24 1985 sulfur dioxide emission rate equal to or less than 0.80 pound per mil-
25 lion British thermal units averaged over all fossil fuel-fired utility steam
26 generating units, for each calendar year through 2009, the Administrator
27 shall allocate, in lieu of other Phase II bonus allowance allocations, allow-
28 ances from the reserve created pursuant to section 233105(a)(2) of this title
29 to all such units in the State in an amount equal to—

30 (1) 125,000; multiplied by

31 (2) the unit's pro rata share of electricity generated in calendar year
32 1985 at fossil fuel-fired utility steam units in all States eligible for the
33 election.

34 (b) NOTIFICATION OF ADMINISTRATOR.—Pursuant to section 233103(a)
35 of this title, each Governor of a State eligible to make an election under
36 subsection (a) shall notify the Administrator of the election. If the Governor
37 of any such State fails to notify the Administrator of the Governor's elec-
38 tion, the Administrator shall allocate allowances pursuant to section 233105
39 of this title.

1 (c) ALLOWANCES AFTER JANUARY 1, 2010.—After January 1, 2010, the
2 Administrator shall allocate allowances to units subject this section pursu-
3 ant to section 233105 of this title.

4 **§ 233107. Nitrogen oxide emission reduction program**

5 (a) APPLICABILITY.—A coal-fired utility unit that is an affected unit pur-
6 suant to section 233105 of this title is an affected unit for purposes of this
7 section and shall be subject to the emission limitations for nitrogen oxides
8 established under subsection (b).

9 (b) EMISSION LIMITATIONS.—

10 (1) ANNUAL ALLOWABLE EMISSION LIMITATIONS.—

11 (A) IN GENERAL.—The Administrator shall by regulation estab-
12 lish annual allowable emission limitations for nitrogen oxides for
13 the types of utility boilers listed below, which limitations shall not
14 exceed—

15 (i) for tangentially fired boilers, 0.45 pound per million
16 British thermal units; or

17 (ii) for dry bottom wall-fired boilers (other than units ap-
18 plying cell burner technology), 0.50 pound per million British
19 thermal units.

20 (B) HIGHER RATE.—The Administrator may set a rate higher
21 than that listed for any type of utility boiler if the Administrator
22 finds that the maximum listed rate for that boiler type cannot be
23 achieved using low nitrogen oxide burner technology.

24 (C) PROHIBITION.—It shall be unlawful for any unit that is an
25 affected unit on January 1, 1995, and is of the type listed in this
26 paragraph to emit nitrogen oxides in excess of the emission rates
27 set by the Administrator pursuant to this paragraph.

28 (2) ALLOWABLE EMISSION LIMITATIONS ON A POUND PER MILLION
29 BRITISH THERMAL UNIT, ANNUAL AVERAGE BASIS.—

30 (A) IN GENERAL.—The Administrator shall by regulation estab-
31 lish allowable emission limitations on a pound per million British
32 thermal unit, annual average basis, for nitrogen oxides for the fol-
33 lowing types of utility boilers:

34 (i) Wet bottom wall-fired boilers.

35 (ii) Cyclones.

36 (iii) Units applying cell burner technology.

37 (iv) All other types of utility boilers.

38 (B) BASIS.—The Administrator shall base such rates on the de-
39 gree of reduction achievable through the retrofit application of the
40 best system of continuous emission reduction, taking into account
41 available technology, costs, and energy and environmental impacts,

1 the costs of which are comparable to the costs of nitrogen oxides
2 controls set pursuant to subsection (b)(1).

3 (C) REVISION OF APPLICABLE EMISSION LIMITATIONS FOR TAN-
4 GENTIALLY FIRED AND DRY BOTTOM, WALL-FIRED BOILERS
5 (OTHER THAN CELL BURNERS).—

6 (i) IN GENERAL.—Not later than January 1, 1997, the Ad-
7 ministrator may revise the applicable emission limitations for
8 tangentially fired and dry bottom wall-fired boilers (other
9 than cell burners) to be more stringent if the Administrator
10 determines that more effective low nitrogen oxide burner tech-
11 nology is available.

12 (ii) LIMITATION.—No unit that was an affected unit pursu-
13 ant to section 404 of the Clean Air Act (42 U.S.C. 7651c)
14 (as in effect before the repeal of that section) and that is sub-
15 ject to subsection (b)(1) shall be subject to the revised emis-
16 sion limitations under clause (i), if any.

17 (c) REVISED PERFORMANCE STANDARDS.—The Administrator shall pro-
18 mulgate revised standards of performance under section 211111 of this title
19 for nitrogen oxides emissions from fossil fuel-fired steam generating units,
20 including utility units and nonutility units. The revised standards of per-
21 formance shall reflect improvements in methods for the reduction of emis-
22 sions of nitrogen oxides.

23 (d) ALTERNATIVE EMISSION LIMITATIONS.—

24 (1) IN GENERAL.—A permitting authority shall, on request of an
25 owner or operator of a unit subject to this section, authorize an emis-
26 sion limitation less stringent than the applicable limitation established
27 under subsection (b) on a determination that—

28 (A) a unit subject to subsection (b)(1) cannot meet the applica-
29 ble limitation using low nitrogen oxide burner technology; or

30 (B) a unit subject to subsection (b)(2) cannot meet the applica-
31 ble rate using the technology on which the Administrator based
32 the applicable emission limitation.

33 (2) BASIS.—The permitting authority shall base a determination
34 under paragraph (1) on a showing satisfactory to the permitting au-
35 thority, in accordance with regulations established by the Adminis-
36 trator, that the owner or operator—

37 (A) has properly installed appropriate control equipment de-
38 signed to meet the applicable emission rate;

39 (B) has properly operated the equipment for a period of 15
40 months (or such other period of time as the Administrator deter-
41 mines through the regulations), and provides operating and mon-

1 itoring data for that period demonstrating that the unit cannot
2 meet the applicable emission rate; and

3 (C) has specified an emission rate that the unit can meet on an
4 annual average basis.

5 (3) OPERATING PERMIT.—The permitting authority—

6 (A) shall issue an operating permit for the unit in accordance
7 with section 233108 of this title and subdivision 6 that permits
8 the unit, during the demonstration period described in paragraph
9 (2)(B), to emit at a rate in excess of the applicable emission rate;
10 and

11 (B) at the conclusion of the demonstration period, shall revise
12 the operating permit to reflect the alternative emission rate dem-
13 onstrated under subparagraphs (B) and (C) of paragraph (2).

14 (4) NO ADDITIONAL CONTROL TECHNOLOGY.—A unit subject to sub-
15 section (b)(1) for which an alternative emission limitation is established
16 shall not be required to install any control technology except low nitro-
17 gen oxide burners.

18 (5) ALTERNATIVE NITROGEN OXIDE CONTROL TECHNOLOGY.—Noth-
19 ing in this section shall preclude an owner or operator from installing
20 and operating an alternative nitrogen oxide control technology capable
21 of achieving the applicable emission limitation.

22 (e) EMISSIONS AVERAGING.—

23 (1) IN GENERAL.—In lieu of complying with the applicable emission
24 limitations under paragraph (1) or (2) of subsection (b) or under sub-
25 section (d), the owner or operator of 2 or more units subject to 1 or
26 more of the applicable emission limitations set pursuant to those provi-
27 sions may petition the permitting authority for alternative contempora-
28 neous annual emission limitations for the units that ensure that the ac-
29 tual annual emission rate in pounds of nitrogen oxides per million Brit-
30 ish thermal units averaged over the units in question is a rate that is
31 less than or equal to the British thermal unit-weighted average annual
32 emission rate for the same units if they had been operated, during the
33 same period of time, in compliance with limitations set in accordance
34 with the applicable emission rates set pursuant to paragraphs (1) and
35 (2) of subsection (b).

36 (2) OPERATING PERMITS.—If the permitting authority determines,
37 in accordance with regulations issued by the Administrator, that the
38 conditions in paragraph (1) can be met, the permitting authority shall
39 issue operating permits for the units in accordance with section 233108
40 of this title and subdivision 6 that allow alternative contemporaneous
41 annual emission limitations. Such emission limitations shall remain in

1 effect only while both units continue operation under the conditions
2 specified in their respective operating permits.

3 **§ 233108. Permits and compliance plans**

4 (a) PERMIT PROGRAM.—

5 (1) IN GENERAL.—This subdivision shall be implemented, subject to
6 section 233103 of this title, by permits issued to units subject to this
7 subdivision in accordance with subdivision 6 and enforced in accordance
8 with that subdivision, as modified by this subdivision.

9 (2) PROHIBITIONS.—Any such permit issued by the Administrator,
10 or by a State with an approved permit program, shall prohibit—

11 (A) annual emissions of sulfur dioxide in excess of the number
12 of allowances to emit sulfur dioxide that the owner or operator,
13 or the designated representative of the owner or operator, of the
14 unit holds for the unit;

15 (B) exceedances of applicable emission rates;

16 (C) the use of any allowance prior to the year for which it was
17 allocated; and

18 (D) contravention of any other provision of the permit.

19 (3) DURATION.—A permit issued to implement this subdivision shall
20 be issued for a period of 5 years, notwithstanding subdivision 6.

21 (4) INCONSISTENCY WITH REQUIREMENTS.—No permit shall be is-
22 sued that is inconsistent with the requirements of this subdivision or
23 of subdivision 6 as applicable.

24 (b) COMPLIANCE PLAN.—

25 (1) IN GENERAL.—Each initial permit application shall be accom-
26 panied by a compliance plan for the source to comply with its require-
27 ments under this subdivision.

28 (2) MULTIPLE AFFECTED UNITS.—Where an affected source consists
29 of more than 1 affected unit—

30 (A) the plan shall cover all such units; and

31 (B) for purposes of section 235102(c) of this title, the source
32 shall be considered to be a facility.

33 (3) ALLOWANCES.—Nothing in this section regarding compliance
34 plans or in subdivision 6 shall be construed as affecting allowances.

35 (4) STATEMENT DEEMED TO MEET COMPLIANCE PLANNING RE-
36 QUIREMENTS.—Except as provided under subsection (c)(1)(B), submis-
37 sion of a statement by the owner or operator (or the designated rep-
38 resentative of the owners and operators) of a unit subject to the emis-
39 sion limitation requirements of sections 233105 and 233107 of this
40 title that the unit will meet the applicable emission limitation require-
41 ments of those sections in a timely manner or, in the case of the emis-

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1 sion limitation requirements of section 233105 of this title, that the
2 owner or operator will hold allowances to emit not less than the total
3 annual emissions of the unit, shall be deemed to meet the proposed and
4 approved compliance planning requirements of this section and subdivi-
5 sion 6.

6 (5) TRANSFERS OF ALLOWANCES.—Recordation by the Adminis-
7 trator of the transfer of an allowance shall amend automatically all ap-
8 plicable proposed or approved permit applications, compliance plans,
9 and permits.

10 (6) ADDITIONAL REQUIREMENTS.—The Administrator may re-
11 quire—

12 (A) for a source, a demonstration of attainment of NAAQSeS;
13 and

14 (B) from the owner or operator of 2 or more affected sources,
15 an integrated compliance plan providing an overall plan for achiev-
16 ing compliance at the affected sources.

17 (c) NITROGEN OXIDE EMISSION PERMITS.—

18 (1) IN GENERAL.—The Administrator shall issue permits to affected
19 sources under section 233107 of this title.

20 (2) PERMIT APPLICATION AND COMPLIANCE PLAN.—

21 (A) IN GENERAL.—The owner or operator, or the designated
22 representative of the owner or operator, of each affected source
23 under section 233107 of this title shall submit a permit applica-
24 tion and compliance plan for that source in accordance with regu-
25 lations issued by the Administrator under paragraph (4). The per-
26 mit application and the compliance plan shall be binding on the
27 owner or operator and the designated representative of the owner
28 or operator for purposes of this subdivision and shall be enforce-
29 able in lieu of a permit until a permit is issued by the Adminis-
30 trator for the source.

31 (B) REDUCTION OF UTILIZATION OR SHUTDOWN.—In the case
32 of a compliance plan for an affected source under section 233107
33 of this title for which the owner or operator proposes to meet the
34 requirements of that section by reducing utilization of the unit as
35 compared with its baseline or by shutting down the unit, the
36 owner or operator shall include in the proposed compliance plan
37 a specification of the unit or units that will provide electrical gen-
38 eration to compensate for the reduced output at the affected
39 source, or a demonstration that the reduced utilization will be ac-
40 complished through energy conservation or improved unit effi-
41 ciency.

501

1 (3) EPA ACTION ON COMPLIANCE PLANS.—The Administrator shall
2 review each proposed compliance plan to determine whether it satisfies
3 the requirements of this subdivision, and shall approve or disapprove
4 the plan within 6 months after receipt of a complete submission. If a
5 plan is disapproved, it may be resubmitted for approval with such
6 changes as the Administrator shall require consistent with the require-
7 ments of this subdivision and within such period as the Administrator
8 prescribes as part of the disapproval.

9 (4) REGULATIONS; ISSUANCE OF PERMITS.—The Administrator shall
10 promulgate regulations, in accordance with subdivision 6, to implement
11 a Federal permit program to issue permits for affected sources under
12 this subdivision.

13 (d) 2d PHASE PERMITS.—

14 (1) PERMIT PROGRAM.—

15 (A) IN GENERAL.—To provide for permits for—

16 (i) new electric utility steam generating units required
17 under section 233103(d) of this title to have allowances;

18 (ii) affected units or affected sources under section 233105
19 of this title; and

20 (iii) existing units subject to nitrogen oxide emission reduc-
21 tions under section 233107 of this title;

22 each State in which 1 or more such units or sources are located
23 shall submit in accordance with subdivision 6 a permit program
24 for approval as provided by that subdivision.

25 (B) SUSPENSION OF ISSUANCE OF PERMITS UNDER SUBDIVI-
26 SION 6.—On approval of the program, for the units or sources
27 subject to the approved program the Administrator shall suspend
28 the issuance of permits under subdivision 6.

29 (2) SUBMISSION OF PERMIT APPLICATIONS AND COMPLIANCE
30 PLANS.—The owner or operator or the designated representative of
31 each affected source under section 233105 of this title shall submit a
32 permit application and compliance plan for that source to the permit-
33 ting authority.

34 (3) ISSUANCE OF PERMITS.—

35 (A) IN GENERAL.—Each State with an approved permit pro-
36 gram shall issue permits to the owner or operator, or the des-
37 ignated representative of the owner or operator, of affected
38 sources under section 233105 of this title that satisfy the require-
39 ments of this subdivision and subdivision 6 and that submitted to
40 the State a permit application and compliance plan pursuant to
41 paragraph (2). In the case of a State without an approved permit

1 program by July 1, 1996, the Administrator shall issue a permit
2 to the owner or operator or the designated representative of each
3 such affected source. In the case of an affected source for which
4 an application and compliance plan are timely received under
5 paragraph (2), the permit application and the compliance plan, in-
6 cluding amendments thereto, shall be binding on the owner or op-
7 erator or the designated representative of the owner or operator
8 and shall be enforceable as a permit for purposes of this subdivi-
9 sion and subdivision 6 until a permit is issued by the permitting
10 authority for the affected source.

11 (B) RENEWALS.—The 3d sentence of section 558(c) of title 5
12 shall apply to permits issued by a permitting authority under this
13 subdivision and subdivision 6.

14 (4) ANNUAL TONNAGE.—A permit issued in accordance with this
15 subsection for an affected source shall provide that the affected units
16 at the affected source may not emit an annual tonnage of sulfur diox-
17 ide in excess of the number of allowances to emit sulfur dioxide that
18 the owner or operator or designated representative holds for the unit.

19 (e) NEW UNITS.—The owner or operator of each source that includes a
20 new electric utility steam generating unit shall submit a permit application
21 and compliance plan to the permitting authority not later than 24 months
22 before the date on which the unit commences operation. The permitting au-
23 thority shall issue a permit to the owner or operator, or the designated rep-
24 resentative of the owner or operator, of the unit that satisfies the require-
25 ments of this subdivision and subdivision 6.

26 (f) UNITS SUBJECT TO CERTAIN OTHER LIMITS.—The owner or opera-
27 tor, or designated representative of the owner or operator, of any unit sub-
28 ject to an emission rate requirement under section 233107 of this title shall
29 submit a permit application and compliance plan for the unit to the permit-
30 ting authority. The permitting authority shall issue a permit to the owner
31 or operator that satisfies the requirements of this subdivision and subdivi-
32 sion 6, including any appropriate monitoring and reporting requirements.

33 (g) AMENDMENT OF APPLICATION AND COMPLIANCE PLAN.—At any
34 time after the submission of an application and compliance plan under this
35 section, the applicant may submit a revised application and compliance plan,
36 in accordance with the requirements of this section. In considering any per-
37 mit application and compliance plan under this subdivision, a permitting au-
38 thority shall ensure coordination with the applicable electric ratemaking au-
39 thority, in the case of regulated utilities, and with unregulated public utili-
40 ties.

41 (h) PROHIBITIONS.—

1 (1) FAILURE TO SUBMIT APPLICATION OR COMPLIANCE PLAN.—It
2 shall be unlawful for an owner or operator, or designated representa-
3 tive, required to submit a permit application or compliance plan under
4 this subdivision to fail to submit an application or compliance plan in
5 accordance with the deadlines specified in this section or to otherwise
6 fail to comply with regulations implementing this section.

7 (2) OPERATION.—It shall be unlawful for any person to operate any
8 source subject to this subdivision except in compliance with the terms
9 and requirements of a permit application and compliance plan (includ-
10 ing amendments thereto) or permit issued by the Administrator or a
11 State with an approved permit program. For purposes of this sub-
12 section, compliance, as provided in section 235104(f) of this title, with
13 a permit issued under subdivision 6 that complies with this subdivision
14 for sources subject to this subdivision shall be deemed to be compliance
15 with this subsection and with section 235102(a) of this title.

16 (3) RELIABILITY.—To ensure reliability of electric power, nothing in
17 this subdivision or subdivision 6 shall be construed as requiring termi-
18 nation of operations of an electric utility steam generating unit for fail-
19 ure to have an approved permit or compliance plan, except that any
20 such unit may be subject to the applicable enforcement provisions of
21 section 211113 of this title.

22 (i) MULTIPLE OWNERS.—

23 (1) IN GENERAL.—No permit shall be issued under this section to
24 an affected unit until the designated representative of the owner or op-
25 erator has filed a certificate of representation with regard to matters
26 under this subdivision, including the holding and distribution of allow-
27 ances and the proceeds of transactions involving allowances.

28 (2) MULTIPLE HOLDERS OF TITLE OR LEASEHOLD INTEREST; LIFE-
29 OF-THE-UNIT, FIRM POWER CONTRACTUAL ARRANGEMENTS.—

30 (A) IN GENERAL.—Where there are multiple holders of a legal
31 or equitable title to, or a leasehold interest in, an affected unit,
32 or where a utility or industrial customer purchases power from an
33 affected unit (or units) under life-of-the-unit, firm power contrac-
34 tual arrangements, the certificate shall state—

35 (i) that allowances and the proceeds of transactions involv-
36 ing allowances will be deemed to be held or distributed in pro-
37 portion to each holder's legal, equitable, leasehold, or contrac-
38 tual reservation or entitlement; or

39 (ii) if the multiple holders have expressly provided for a dif-
40 ferent distribution of allowances by contract, that allowances
41 and the proceeds of transactions involving allowances will be

1 deemed to be held or distributed in accordance with the con-
2 tract.

3 (B) PASSIVE LESSORS.—A passive lessor, or a person that has
4 an equitable interest through a passive lessor, whose rental pay-
5 ments are not based, either directly or indirectly, on the revenues
6 or income from the affected unit shall not be deemed to be a hold-
7 er of a legal, equitable, leasehold, or contractual interest for the
8 purpose of holding or distributing allowances as provided in this
9 subsection, during the term of the leasehold or thereafter, unless
10 expressly provided for in the leasehold agreement.

11 (C) SINGLE HOLDER.—Except as otherwise provided in this
12 subsection, where all legal or equitable title to or interest in an
13 affected unit is held by a single person, the certification shall state
14 that all allowances received by the unit are deemed to be held for
15 that person.

16 **§ 233109. Election for additional sources**

17 (a) APPLICABILITY.—The owner or operator of any unit that is not, and
18 will not become, an affected unit under section 233103(d) or 233105 of this
19 title, or that is a process source under subsection (d), that emits sulfur diox-
20 ide, may elect to designate that unit or source to become an affected unit
21 and to receive allowances under this subdivision. An election shall be sub-
22 mitted to the Administrator for approval, with a permit application and pro-
23 posed compliance plan in accordance with section 233108 of this title. The
24 Administrator shall approve a designation that meets the requirements of
25 this section, and the designated unit or source shall be allocated allowances
26 and be an affected unit for purposes of this subdivision.

27 (b) ESTABLISHMENT OF BASELINE.—The baseline for a unit designated
28 under this section shall be established by the Administrator by regulation,
29 based on fuel consumption and operating data for the unit for calendar
30 years 1985, 1986, and 1987, or if such data are not available, the Adminis-
31 trator may prescribe a baseline based on alternative representative data.

32 (c) EMISSION LIMITATIONS.—Annual emission limitations for sulfur diox-
33 ide shall be equal to—

34 (1)(A) the baseline; multiplied by

35 (B)(i) the lesser of the unit's actual 1985 sulfur dioxide emission
36 rate or allowable 1985 sulfur dioxide emission rate in pounds per mil-
37 lion British thermal units; or

38 (ii) if the unit did not operate in 1985, the lesser of the unit's actual
39 emission rate or allowable emission rate for a calendar year after 1985
40 (as determined by the Administrator); divided by

41 (2) 2,000.

1 (d) PROCESS SOURCES.—

2 (1) IN GENERAL.—The Administrator shall establish a program
3 under which the owner or operator of a process source that emits sul-
4 fur dioxide may elect to designate that source as an affected unit for
5 the purpose of receiving allowances under this subdivision.

6 (2) REGULATIONS.—The Administrator shall by regulation—

7 (A) define the sources that may be designated;

8 (B) specify the emission limitation;

9 (C) specify the operating, emission baseline, and other data re-
10 quirements;

11 (D) prescribe continuous emission monitoring system or other
12 monitoring requirements; and

13 (E) promulgate permit, reporting, and any other requirements
14 necessary to implement the program under paragraph (1).

15 (e) ALLOWANCES AND PERMITS.—The Administrator shall issue allow-
16 ances to an affected unit under this section in an amount equal to the emis-
17 sion limitation calculated under subsection (c) or (d), in accordance with
18 section 233103 of this title. Such an allowance may be used in accordance
19 with, and shall be subject to, section 233103 of this title. An affected source
20 under this section shall be subject to the requirements of sections 233103,
21 233108, 233110, 233111, 233112, and 233113 of this title.

22 (f) LIMITATION.—

23 (1) IN GENERAL.—Any unit designated under this section shall not
24 transfer or bank allowances produced as a result of reduced utilization
25 or shutdown, except that such allowances may be transferred or carried
26 forward for use in subsequent years to the extent that—

27 (A) the reduced utilization or shutdown results from the re-
28 placement of thermal energy from the unit designated under this
29 section with thermal energy generated by any other unit or units
30 subject to the requirements of this subdivision; and

31 (B) the designated unit's allowances are transferred or carried
32 forward for use at the other replacement unit or units.

33 (2) NO ALLOWANCES IN AN AMOUNT GREATER THAN THE EMISSIONS
34 RESULTING FROM OPERATION OF THE SOURCE IN FULL COMPLI-
35 ANCE.—In no case may the Administrator allocate to a source des-
36 ignated under this section allowances in an amount greater than the
37 emissions resulting from operation of the source in full compliance with
38 the requirements of this division.

39 (3) NO OPERATION OF UNIT IN VIOLATION OF OTHER REQUIRE-
40 MENTS.—No such allowances shall authorize operation of a unit in vio-
41 lation of any other requirements of this division.

1 (g) IMPLEMENTATION.—The Administrator shall issue regulations to im-
2 plement this section.

3 **§ 233110. Excess emission penalty; excess emission offset**

4 (a) EXCESS EMISSIONS PENALTY.—

5 (1) IN GENERAL.—The owner or operator of any unit or process
6 source subject to the requirements of section 233103, 233105, 233106,
7 or 233107 of this title, or designated under section 233109 of this title,
8 that emits sulfur dioxide or nitrogen oxides for any calendar year in
9 excess of the unit's emission limitation requirement or, in the case of
10 sulfur dioxide, of the allowances that the owner or operator holds for
11 use for the unit for that calendar year, shall be liable for the payment
12 of an excess emission penalty, except where the emissions are author-
13 ized pursuant to section 211110(d) of this title.

14 (2) BASIS.—A penalty under paragraph (1) shall be calculated on
15 the basis of the number of tons emitted in excess of the unit's emission
16 limitation requirement or, in the case of sulfur dioxide, of the allow-
17 ances the operator holds for use for the unit for that year, multiplied
18 by \$2,000.

19 (3) PAYMENT.—A penalty under paragraph (1) shall be due and
20 payable without demand to the Administrator as provided in regula-
21 tions issued by the Administrator.

22 (4) LIABILITY UNDER OTHER SECTIONS.—Any penalty under this
23 section shall not diminish the liability of the unit's owner or operator
24 for any fine, penalty, or assessment against a unit for the same viola-
25 tion under any other section of this division.

26 (b) EXCESS EMISSION OFFSET.—

27 (1) IN GENERAL.—The owner or operator of any affected source that
28 emits sulfur dioxide during any calendar year in excess of the unit's
29 emission limitation requirement or of the allowances held for the unit
30 for the calendar year shall be liable to offset the excess emission by
31 an equal tonnage amount in the following calendar year, or such longer
32 period as the Administrator may prescribe.

33 (2) PLAN TO ACHIEVE OFFSETS.—The owner or operator of the
34 source shall, within 60 days after the end of the year in which the ex-
35 cess emission occurred, submit to the Administrator, and to the State
36 in which the source is located, a proposed plan to achieve the required
37 offsets. On approval of the proposed plan by the Administrator, as sub-
38 mitted, modified, or conditioned, the plan shall be deemed to be a con-
39 dition of the operating permit for the unit without further review or
40 revision of the permit.

1 (3) DEDUCTION OF ALLOWANCES.—In addition to requiring a plan
2 under paragraph (2), the Administrator shall deduct allowances equal
3 to the excess tonnage from those allocated for the source for the cal-
4 endar year, or succeeding years during which offsets are required, fol-
5 lowing the year in which the excess emission occurred.

6 (c) PENALTY ADJUSTMENT.—The Administrator shall annually by regu-
7 lation adjust the penalty specified in subsection (a) for inflation, based on
8 the Consumer Price Index as of November 15, 1990.

9 (d) PROHIBITION.—It shall be unlawful for the owner or operator of any
10 source liable for a penalty and offset under this section to fail to—

11 (1) pay a penalty under subsection (a);

12 (2) provide, and thereafter comply with, a compliance plan as re-
13 quired by subsection (b); or

14 (3) offset an excess emission as required by subsection (b).

15 (e) SAVINGS PROVISION.—Nothing in this subdivision shall limit or other-
16 wise affect the application of section 203104, 211113, 211114, or 211119
17 of this title except as otherwise explicitly provided in this subdivision.

18 **§ 233111. Monitoring, reporting, and recordkeeping require-**
19 **ments**

20 (a) APPLICABILITY.—

21 (1) IN GENERAL.—The owner or operator of an affected unit at an
22 affected source shall—

23 (A) install and operate a continuous emission monitoring system
24 on each affected unit at the affected source; and

25 (B) ensure the quality of the data for sulfur dioxide, nitrogen
26 oxides, opacity, and volumetric flow at each affected unit.

27 (2) REGULATIONS.—

28 (A) IN GENERAL.—The Administrator shall by regulation speci-
29 fy the requirements for—

30 (i) continuous emission monitoring systems;

31 (ii) any alternative monitoring system that is demonstrated
32 as providing information with the same precision, reliability,
33 accessibility, and timeliness as that provided by a continuous
34 emission monitoring system; and

35 (iii) recordkeeping and reporting of information from sys-
36 tems described in clauses (i) and (ii).

37 (B) CONTENTS.—The regulations may include limitations or the
38 use of alternative compliance methods by units equipped with an
39 alternative monitoring system as necessary to preserve the orderly
40 functioning of the allowance system and ensure the emissions re-
41 ductions contemplated by this subdivision.

1 (3) SINGLE STACK.—Where 2 or more units utilize a single stack,
2 a separate continuous emission monitoring system shall not be required
3 for each unit, and for such units the regulations shall require that the
4 owner or operator collect sufficient information to permit reliable com-
5 pliance determinations for each unit.

6 (b) REQUIREMENTS.—The owner or operator of each affected unit that
7 has not previously met the requirements of subsection (a) and section
8 412(b) of the Clean Air Act (42 U.S.C. 7651k(b)) (as in effect before the
9 repeal of that section) shall install and operate a continuous emission mon-
10 itoring system, ensure the quality of the data, and keep records and reports
11 in accordance with the regulations issued under subsection (a). On com-
12 mencement of commercial operation of each new utility unit, the unit shall
13 comply with the requirements of subsection (a).

14 (c) UNAVAILABILITY OF EMISSION DATA.—

15 (1) IN GENERAL.—If continuous emission monitoring system data or
16 data from an alternative monitoring system approved by the Adminis-
17 trator under subsection (a) are not available for any affected unit dur-
18 ing any period of a calendar year in which the data are required under
19 this subdivision, and the owner or operator cannot provide information,
20 satisfactory to the Administrator, on emissions during that period, the
21 Administrator—

22 (A) shall deem the unit to be operating in an uncontrolled man-
23 ner during the entire period for which the data were not available;
24 and

25 (B) shall by regulation prescribe means to calculate emissions
26 for that period.

27 (2) EXCESS EMISSION FEES AND OFFSETS.—The owner or operator
28 shall be liable for excess emission fees and offsets under section
29 233110 of this title in accordance with the regulations.

30 (3) LIABILITY UNDER OTHER SECTIONS.—Any fee due and payable
31 under this subsection shall not diminish the liability of the unit's owner
32 or operator for any fine, penalty, fee, or assessment against the unit
33 for the same violation under any other section of this division.

34 (d) PROHIBITION.—It shall be unlawful for the owner or operator of an
35 affected source to operate a source without complying with the requirements
36 of this section (including any regulations implementing this section).

37 **§ 233112. General compliance with other provisions**

38 Except as expressly provided, compliance with the requirements of this
39 subdivision shall not exempt or exclude the owner or operator of an affected
40 source from compliance with any other applicable requirements of this divi-
41 sion.

1 **§ 233113. Enforcement**

2 In addition to the other requirements and prohibitions provided for in this
3 subdivision, the operation of any affected unit to emit sulfur dioxide in ex-
4 cess of allowances held for the unit shall be deemed a violation, with each
5 ton emitted in excess of allowances held constituting a separate violation.

6 **§ 233114. Clean coal technology regulatory incentives**

7 (a) DEFINITIONS.—In this section:

8 (1) CLEAN COAL TECHNOLOGY.—The term “clean coal technology”
9 means any technology (including technology applied at the
10 precombustion, combustion, or post combustion stage) at a new or ex-
11 isting facility that will achieve significant reductions in air emissions
12 of sulfur dioxide or nitrogen oxides associated with the utilization of
13 coal in the generation of electricity, process steam, or industrial prod-
14 ucts, that was not in widespread use as of November 15, 1990.

15 (2) CLEAN COAL TECHNOLOGY DEMONSTRATION PROJECT.—The
16 term “clean coal technology demonstration project” means a project
17 using funds appropriated under the heading “Department of Energy—
18 Clean Coal Technology”, up to a total amount of \$2,500,000,000 for
19 commercial demonstration of clean coal technology, or a similar project
20 funded through appropriations for EPA.

21 (b) REGULATIONS FOR CLEAN COAL TECHNOLOGY DEMONSTRATIONS.—

22 (1) APPLICABILITY.—This subsection applies to physical or oper-
23 ational changes to existing facilities for the sole purpose of installation,
24 operation, cessation, or removal of a temporary or permanent clean coal
25 technology demonstration project.

26 (2) FEDERAL CONTRIBUTION.—The Federal contribution for a clean
27 coal technology demonstration project shall be at least 20 percent of
28 the total cost of the clean coal technology demonstration project.

29 (3) TEMPORARY PROJECTS.—Installation, operation, cessation, or re-
30 moval of a temporary clean coal technology demonstration project that
31 is operated for a period of 5 years or less, and that complies with the
32 State implementation plans for the State in which the project is located
33 and other requirements necessary to attain and maintain the NAAQs
34 during and after the project is terminated, shall not subject the facility
35 to the requirements of section 211111 of this title or chapter 213 or
36 215.

37 (4) PERMANENT PROJECTS.—For permanent clean coal technology
38 demonstration projects that constitute repowering, a clean coal tech-
39 nology demonstration project shall not be subject to standards of per-
40 formance under section 211111 of this title or to the review and per-
41 mitting requirements of chapter 213 for any pollutant the potential

1 emissions of which will not increase as a result of the clean coal tech-
2 nology demonstration project.

3 (5) REGULATIONS.—The Administrator shall promulgate regulations
4 or interpretive rulings to revise requirements under section 211111 of
5 this title and chapters 213 and 215, as appropriate, to facilitate
6 projects consistent with this subsection. With respect to chapters 213
7 and 215, the regulations or rulings shall apply to all areas in which
8 EPA is the permitting authority. In instances in which the State is the
9 permitting authority under chapter 213 or 215, the State may adopt
10 and submit to the Administrator for approval provisions in its imple-
11 mentation plan to apply the regulations or rulings promulgated under
12 this subsection.

13 (e) EXEMPTION FOR REACTIVATION OF VERY CLEAN UNITS.—Physical
14 changes or changes in the method of operation associated with the com-
15 mencement of commercial operations by a coal-fired utility unit after a pe-
16 riod of discontinued operation shall not subject the unit to the requirements
17 of section 211111 of this title or chapter 213 where the unit—

18 (1) was not in operation for the 2-year period prior to November 15,
19 1990, and the emissions from the unit continued to be carried in the
20 permitting authority's emissions inventory as of that date;

21 (2) was equipped prior to shutdown with a continuous system of
22 emission control that achieves a removal efficiency for sulfur dioxide of
23 not less than 85 percent and a removal efficiency for particulates of
24 not less than 98 percent;

25 (3) is equipped with low-nitrogen oxide burners prior to the time of
26 commencement; and

27 (4) is otherwise in compliance with the requirements of this division.

28 **§ 233115. Contingency guarantee; auctions; reserve**

29 (a) DEFINITIONS.—In this section:

30 (1) AUCTION SUBACCOUNT.—The term “auction subaccount” means
31 the subaccount for auctions established under subsection (d).

32 (2) DIRECT SALE SUBACCOUNT.—The term “direct sale subaccount”
33 means the subaccount for direct sales established under subsection (e).

34 (3) INDEPENDENT POWER PRODUCER.—The term “independent
35 power producer” means a person that owns or operates, in whole or
36 in part, 1 or more new independent power production facilities.

37 (4) NEW INDEPENDENT POWER PRODUCTION FACILITY.—The term
38 “new independent power production facility” means a facility that—

39 (A) is used for the generation of electric energy, 80 percent or
40 more of which is sold at wholesale;

1 (B) is nonrecourse project-financed (as defined by the Secretary
2 of Energy within 3 months of November 15, 1990);

3 (C) does not generate electric energy sold to any affiliate (as de-
4 fined in section 2(a) of the Public Utility Holding Company Act
5 of 1935) (15 U.S.C. 79b(a)) (as in effect before the repeal of that
6 section) of the facility's owner or operator unless the owner or op-
7 erator of the facility demonstrates that it cannot obtain allowances
8 from the affiliate; and

9 (D) is a new unit required to hold allowances under this subdivi-
10 sion.

11 (5) REQUIRED ALLOWANCES.—The term “required allowances”
12 means the allowances required to operate a unit for so much of the
13 unit's useful life as occurs after January 1, 2000.

14 (6) SPECIAL ALLOWANCE RESERVE.—The term “special allowance
15 reserve” means the special allowance reserve established under sub-
16 section (b).

17 (b) SPECIAL ALLOWANCE RESERVE.—

18 (1) IN GENERAL.—The Administrator shall promulgate regulations
19 establishing a special allowance reserve containing allowances to be sold
20 under this section.

21 (2) WITHHOLDING.—For purposes of establishing the special allow-
22 ance reserve, the Administrator shall withhold 2.8 percent of the basic
23 Phase II allowance allocation of allowances for each year that would
24 (but for this subsection) be issued for each affected unit at an affected
25 source. The Administrator shall record such withholding for purposes
26 of transferring the proceeds of the allowance sales under this sub-
27 section. The allowances so withheld shall be deposited in the special al-
28 lowance reserve.

29 (c) DIRECT SALE AT \$1,500 PER TON.—

30 (1) DIRECT SALE SUBACCOUNT.—In accordance with regulations
31 under this section, the Administrator shall establish a direct sale sub-
32 account in the special allowance reserve. The direct sale subaccount
33 shall contain allowances in the amount of 50,000 tons per year for each
34 year.

35 (2) SALES.—

36 (A) IN GENERAL.—Allowances in the direct sale subaccount
37 shall be offered for direct sale to any person at the times and in
38 the amounts specified in table 1 at a price of \$1,500 per allow-
39 ance, adjusted by the Consumer Price Index in the same manner
40 as is provided in paragraph (3).

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT \$1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
2000 and thereafter	25,000	25,000

Allowances sold in the spot sale in any year are allowances that may be used only in that year (unless banked for use in a later year). Allowances sold in the advance sale in any year are allowances that may be used only in the 7th year after the year in which the allowances are first offered for sale (unless banked for use in a later year).

1 (B) APPROVAL.—Requests to purchase allowances from the di-
 2 rect sale subaccount shall be approved in the order of receipt until
 3 no allowances remain in the subaccount, except that an oppor-
 4 tunity to purchase such allowances shall be provided to independ-
 5 ent power producers before the allowances are offered to any other
 6 person.

7 (C) PAYMENT.—Each applicant shall be required to pay 50 per-
 8 cent of the total purchase price of the allowances within 6 months
 9 after the approval of the request to purchase. The remainder shall
 10 be paid on or before the transfer of the allowances.

11 (3) ISSUANCE OF GUARANTEED ALLOWANCES FROM DIRECT SALE
 12 SUBACCOUNT.—From the allowances available in the direct sale sub-
 13 account, on payment of the guaranteed price, the Administrator shall
 14 issue to any person exercising the right to purchase allowances pursu-
 15 ant to a guarantee under this subsection the allowances covered by the
 16 guarantee. Persons to which guarantees under this subsection have
 17 been issued shall have the opportunity to purchase allowances pursuant
 18 to the guarantee from the direct sale subaccount before the allowances
 19 in the reserve are offered for sale to any other person.

20 (4) PROCEEDS.—Notwithstanding section 3302 of title 31 or any
 21 other provision of law, the Administrator shall require that the pro-
 22 ceeds of any sale under this subsection be transferred, within 90 days
 23 after the sale, without charge, on a pro rata basis to the owners or
 24 operators of the affected units from which the allowances were withheld
 25 under subsection (b) and that any unsold allowances be transferred to
 26 the auction subaccount. No proceeds of any sale under this subsection
 27 shall be held by any officer or employee of the United States or treated
 28 for any purpose as revenue to the United States or to the Adminis-
 29 trator.

30 (5) TERMINATION OF DIRECT SALE SUBACCOUNT.—If the Adminis-
 31 trator determines that, during any period of 2 consecutive calendar
 32 years, fewer than 20 percent of the allowances available in the direct
 33 sale subaccount have been purchased under this paragraph, the Admin-
 34 istrator shall terminate the direct sale subaccount and transfer the al-
 35 lowances to the auction subaccount.

1 (d) AUCTION SALES.—

2 (1) AUCTION SUBACCOUNT.—The Administrator shall establish in
3 the special allowance reserve an auction subaccount. The auction sub-
4 account shall contain allowances to be sold at auction under this sec-
5 tion in the amount of 250,000 tons per year.

6 (2) ANNUAL AUCTIONS.—

7 (A) IN GENERAL.—In each year, the Administrator shall con-
8 duct auctions at which the allowances described in paragraph (1)
9 shall be offered for sale in accordance with regulations promul-
10 gated by the Administrator, in consultation with the Secretary of
11 the Treasury.

12 (B) AMOUNTS.—The allowances described in paragraph (1)
13 shall be offered for sale at auction in the amounts specified in
14 table 2.

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of Sale	Spot Auction (same year)	Advance Auc- tion
2000 and thereafter	100,000	100,000

Allowances sold in the spot sale in any year are allowances that may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances that may only be used in the 7th year after the year in which the allowances are first offered for sale (unless banked for use in a later year).

15 (C) SUBMISSION OF BIDS.—An auction shall be open to any
16 person. A person wishing to bid for allowances shall submit (by
17 a date set by the Administrator) to the Administrator (on a sealed
18 bid schedule provided by the Administrator) offers to purchase
19 specified numbers of allowances at specified prices.

20 (D) BID PRICE.—The regulations under subparagraph (A) shall
21 specify that the auctioned allowances shall be allocated and sold
22 on the basis of bid price, starting with the highest bid and con-
23 tinuing until all allowances for sale at an auction have been allo-
24 cated. The regulations shall not permit a minimum price to be set
25 for the purchase of withheld allowances.

26 (E) USE OF ALLOWANCES.—Allowances purchased at the auc-
27 tion may be used for any purpose and at any time after the auc-
28 tion, subject to this subdivision.

29 (3) PROCEEDS.—

30 (A) IN GENERAL.—Notwithstanding section 3302 of title 31 or
31 any other provision of law, within 90 days after receipt, the Ad-
32 ministrator shall transfer the proceeds from the auction under this
33 section, on a pro rata basis, to the owners or operators of the af-
34 fected units at an affected source from which allowances were
35 withheld under subsection (b). No funds transferred from a pur-

1 chaser to a seller of allowances under this paragraph shall be held
2 by any officer or employee of the United States or treated for any
3 purpose as revenue to the United States or the Administrator.

4 (B) ALLOWANCES NOT SOLD.—At the end of each year, any al-
5 lowances offered for sale but not sold at the auction shall be re-
6 turned without charge, on a pro rata basis, to the owner or opera-
7 tor of the affected units from whose allocation the allowances were
8 withheld.

9 (4) ADDITIONAL AUCTION PARTICIPANTS.—Any person holding al-
10 lowances or to which allowances are allocated by the Administrator may
11 submit the allowances to the Administrator to be offered for sale at
12 auction under this subsection. The proceeds of any such sale shall be
13 transferred at the time of sale by the purchaser to the person submit-
14 ting the allowances for sale. The holder of allowances offered for sale
15 under this paragraph may specify a minimum sale price. Any person
16 may purchase allowances offered for auction under this paragraph. The
17 allowances shall be allocated and sold to purchasers on the basis of bid
18 price after the auction under paragraph (2) is complete. No funds
19 transferred from a purchaser to a seller of allowances under this para-
20 graph shall be held by any officer or employee of the United States or
21 treated for any purpose as revenue to the United States or the Admin-
22 istrator.

23 (5) RECORDATION BY EPA.—The Administrator shall record and
24 publicly report the nature, prices, and results of each auction under
25 this subsection, including the prices of successful bids, and shall record
26 the transfers of allowances as a result of each auction in accordance
27 with the requirements of this section. The transfer of allowances at the
28 auction shall be recorded in accordance with the regulations promul-
29 gated by the Administrator under this subdivision.

30 (6) TERMINATION OF AUCTIONS.—If the Administrator determines
31 that, during any period of 3 consecutive calendar years, fewer than 20
32 percent of the allowances available in the auction subaccount have been
33 purchased, the Administrator may terminate the withholding of allow-
34 ances and the auction sales under this section.

35 (e) CHANGES IN SALES, AUCTIONS, AND WITHHOLDING.—Pursuant to
36 rulemaking after public notice and comment, the Administrator may at any
37 time decrease the number of allowances withheld and sold under this sec-
38 tion.

39 (f) CONDUCT OF SALES OR AUCTIONS BY OTHER FEDERAL DEPART-
40 MENTS OR AGENCIES OR BY NONGOVERNMENTAL AGENCIES, GROUPS, OR
41 ORGANIZATIONS.—Pursuant to regulations under this section, the Adminis-

1 trator may by delegation or contract provide for the conduct of sales or auc-
 2 tions under the Administrator's supervision by other Federal departments
 3 or agencies or by nongovernmental agencies, groups, or organizations.

4 **Subdivision 6—Permits**
 5 **Chapter 235—Permits**

Sec.

235101. Definitions.

235102. Permit programs.

235103. Permit applications.

235104. Permit requirements and conditions.

235105. Notification to Administrator and contiguous States.

235106. Other authorities.

235107. Small business stationary source technical and environmental compliance assistance
 program.

6 **§ 235101. Definitions**

7 In this subdivision:

8 (1) **AFFECTED SOURCE.**—The term “affected source” shall have the
 9 meaning given the term in section 233102 of this title.

10 (2) **MAJOR SOURCE.**—The term “major source” means any station-
 11 ary source (or any group of stationary sources located within a contig-
 12 uous area and under common control) that is either of the following:

13 (A) A major source (as defined in section 211112 of this title).

14 (B) A major stationary source (as defined in section 201101 of
 15 this title or chapter 215).

16 (3) **PERMITTING AUTHORITY.**—The term “permitting authority”
 17 means—

18 (A) the Administrator; or

19 (B) an air pollution control agency authorized by the Adminis-
 20 trator to carry out a permit program under this subdivision.

21 (4) **SCHEDULE OF COMPLIANCE.**—The term “schedule of compli-
 22 ance” means a schedule of remedial measures (including an enforceable
 23 sequence of actions or operations) leading to compliance with an appli-
 24 cable implementation plan, emission standard, emission limitation, or
 25 emission prohibition.

26 **§ 235102. Permit programs**

27 (a) **PROHIBITION.**—

28 (1) **IN GENERAL.**—It shall be unlawful for any person—

29 (A) to violate any requirement of a permit issued under this
 30 subdivision; or

31 (B) to operate, except in compliance with a permit issued by a
 32 permitting authority under this subdivision—

33 (i) an affected source (as provided in subdivision 5);

34 (ii) a major source;

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1 (iii) any other source (including an area source) subject to
2 standards or regulations under section 211111 or 211112 of
3 this title;

4 (iv) any other source required to have a permit under chap-
5 ter 213 or 215; or

6 (v) any other stationary source in a category designated (in
7 whole or in part) by regulation promulgated by the Adminis-
8 trator.

9 (2) REGULATIONS.—Any regulation under paragraph (1)(B)(v) shall
10 include a finding setting forth the basis for the designation made by
11 the regulation.

12 (3) EFFECT OF SUBSECTION.—Nothing in this subsection shall be
13 construed to alter the applicable requirements of this division that a
14 permit be obtained before construction or modification.

15 (4) EXEMPTIONS.—The Administrator may, consistent with the ap-
16 plicable provisions of this division, promulgate regulations to exempt
17 (in whole or in part) 1 or more categories of sources (except a major
18 source) from the requirements of this subsection if the Administrator
19 finds that compliance with the requirements is impracticable, infeasible,
20 or unnecessarily burdensome on a category.

21 (b) MINIMUM ELEMENTS.—

22 (1) IN GENERAL.—The Administrator shall promulgate regulations
23 establishing the minimum elements of a permit program to be adminis-
24 tered by an air pollution control agency.

25 (2) ELEMENTS TO BE INCLUDED.—The elements shall include each
26 of the following:

27 (A) Requirements for permit applications, including a standard
28 application form and criteria for determining in a timely fashion
29 the completeness of applications.

30 (B) Monitoring and reporting requirements.

31 (C) A requirement under State or local law or interstate com-
32 pact that the owner or operator of all sources subject to the re-
33 quirement to obtain a permit under this subdivision pay an annual
34 or other periodic fee sufficient to cover all reasonable direct and
35 indirect costs required to develop and administer the permit pro-
36 gram requirements of this subdivision, including the reasonable
37 costs of—

38 (i) reviewing and acting on any application for such a per-
39 mit;

40 (ii) if the owner or operator receives a permit for a source,
41 implementing and enforcing the terms and conditions of the

- 1 permit (not including any court costs or other costs associ-
2 ated with any enforcement action);
- 3 (iii) emission monitoring and ambient monitoring;
- 4 (iv) preparing generally applicable regulations or guidance;
- 5 (v) modeling, analyses, and demonstrations; and
- 6 (vi) preparing inventories and tracking emissions.
- 7 (D) Requirements for adequate personnel and funding to ad-
8 minister the program.
- 9 (E) A requirement that the permitting authority have adequate
10 authority to—
- 11 (i) issue permits and ensure compliance by all sources re-
12 quired to have a permit under this subdivision with each ap-
13 plicable standard, regulation, or requirement under this divi-
14 sion;
- 15 (ii) issue permits for a fixed term, not to exceed 5 years;
- 16 (iii) ensure that, on issuance or renewal, permits incor-
17 porate emission limitations and other requirements in an ap-
18 plicable implementation plan;
- 19 (iv) terminate, modify, or revoke and reissue permits for
20 cause;
- 21 (v) enforce permits, permit fee requirements, and the re-
22 quirement to obtain a permit, including authority to recover
23 civil penalties in a maximum amount of not less than \$10,000
24 per day for each violation, and provide appropriate criminal
25 penalties; and
- 26 (vi) ensure that no permit will be issued if the Adminis-
27 trator objects to its issuance in a timely manner under this
28 subdivision.
- 29 (F) Adequate, streamlined, and reasonable procedures for—
- 30 (i) expeditiously determining when applications are com-
31 plete;
- 32 (ii) processing applications;
- 33 (iii) public notice, including offering an opportunity for
34 public comment and a hearing; and
- 35 (iv) expeditious review of permit actions, including applica-
36 tions, renewals, or revisions, and including an opportunity for
37 judicial review in State court of the final permit action by the
38 applicant, any person that participated in the public comment
39 process, and any other person that could obtain judicial re-
40 view of that action under applicable law.

1 (G) To ensure against unreasonable delay by a permitting au-
2 thority, adequate authority and procedures to provide that a fail-
3 ure of the permitting authority to act on a permit application or
4 permit renewal application (in accordance with the time periods
5 specified in section 235103 of this title or, as appropriate, subdivi-
6 sion 5) shall be treated as a final permit action solely for purposes
7 of obtaining judicial review in State court of an action brought by
8 any person described in subparagraph (F)(iv) to require that ac-
9 tion be taken by the permitting authority on the application with-
10 out additional delay.

11 (H) Authority, and reasonable procedures consistent with the
12 need for expeditious action by a permitting authority on permit
13 applications and related matters, to make available to the public
14 any permit application, compliance plan, permit, and monitoring
15 or compliance report under section 235103(e) of this title, subject
16 to section 211114(c) of this title.

17 (I) A requirement that a permitting authority, in the case of a
18 permit with a term of 3 or more years for a major source, shall
19 require revisions to the permit to incorporate applicable standards
20 and regulations promulgated under this division after the issuance
21 of the permit.

22 (J) Provisions to allow changes within a permitted facility (or
23 a facility operating pursuant to section 235103(d) of this title)
24 without requiring a permit revision, if—

25 (i) the changes are not modifications under any provision
26 of subdivision 2;

27 (ii) the changes do not exceed the emissions allowable
28 under the permit (whether expressed in the permit as a rate
29 of emissions or in terms of total emissions); and

30 (iii) the facility provides the Administrator and the permit-
31 ting authority with written notification in advance of the pro-
32 posed changes (which shall be a minimum of 7 days unless
33 the permitting authority provides in its regulations a different
34 timeframe for emergencies).

35 (3) FEE PROGRAM.—

36 (A) DEFINITION OF REGULATED POLLUTANT.—In this para-
37 graph, the term “regulated pollutant” means—

38 (i) a volatile organic compound;

39 (ii) a pollutant regulated under section 211111 or 211112
40 of this title; and

1 (iii) a pollutant for which a primary NAAQS has been pro-
2 mulgated (not including carbon monoxide).

3 (B) AMOUNT COLLECTED.—The total amount of fees collected
4 by a permitting authority under paragraph (2)(C) shall conform
5 to the following requirements:

6 (i) ADEQUATE REFLECTION OF REASONABLE COSTS.—The
7 Administrator shall not approve a program as meeting the re-
8 quirements of this paragraph unless the State demonstrates
9 that, except as otherwise provided in clauses (ii) through (iv),
10 the program will result in the collection, in the aggregate,
11 from all sources subject to paragraph (2)(C), of an amount
12 not less than \$25 per ton of each regulated pollutant, or such
13 other amount as the Administrator may determine adequately
14 reflects the reasonable costs of the permit program.

15 (ii) EXCLUSION OF EMISSIONS IN EXCESS OF 4,000 TONS
16 PER YEAR.—In determining the amount under clause (i), a
17 permitting authority is not required to include any amount of
18 regulated pollutant emitted by any source in excess of 4,000
19 tons per year of the regulated pollutant.

20 (iii) LESSER AMOUNT MEETING REQUIREMENTS.—The re-
21 quirements of clause (i) shall not apply if the permitting au-
22 thority demonstrates that collecting an amount less than the
23 amount specified under clause (i) will meet the requirements
24 of paragraph (2)(C).

25 (iv) ANNUAL INCREASE.—

26 (I) IN GENERAL.—The fee calculated under clause (i)
27 shall be increased (consistent with the need to cover the
28 reasonable costs authorized by paragraph (2)(C)) in each
29 year by the percentage, if any, by which the Consumer
30 Price Index for the most recent calendar year ending be-
31 fore the beginning of the year exceeds the Consumer
32 Price Index for the calendar year 1989.

33 (II) CONSUMER PRICE INDEX.—For purposes of this
34 clause—

35 (aa) the Consumer Price Index for any calendar
36 year is the average of the Consumer Price Index for
37 all-urban consumers published by the Department
38 of Labor, as of the close of the 12-month period
39 ending on August 31 of each calendar year; and

1 (bb) the revision of the Consumer Price Index
2 that is most consistent with the Consumer Price
3 Index for calendar year 1989 shall be used.

4 (C) COLLECTION BY THE ADMINISTRATOR.—

5 (i) IN GENERAL.—If the Administrator determines under
6 subsection (d) that the fee provisions of the operating permit
7 program do not meet the requirements of paragraph (2)(C),
8 or if the Administrator makes a determination under sub-
9 section (i) that a permitting authority is not adequately ad-
10 ministering or enforcing an approved fee program, the Ad-
11 ministrator may, in addition to taking any other action au-
12 thorized under this subdivision, collect reasonable fees from
13 the sources identified under paragraph (2)(C). The fees shall
14 be designed solely to cover the Administrator's costs of ad-
15 ministering the provisions of the permit program promulgated
16 by the Administrator.

17 (ii) PENALTY.—A source that fails to pay a fee lawfully im-
18 posed by the Administrator under this subparagraph shall
19 pay a penalty of 50 percent of the fee amount, plus interest
20 on the fee amount computed in accordance with section
21 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C.
22 6621(a)(2)).

23 (iii) SPECIAL FUND.—Any fees, penalties, and interest col-
24 lected under this subparagraph shall be deposited in the
25 Treasury in a special fund for licensing and other services,
26 which thereafter shall be available for appropriation, to re-
27 main available until expended, subject to appropriation, to
28 carry out EPA's activities for which the fees were collected.

29 (D) FEE REQUIRED TO BE COLLECTED BY A STATE, LOCAL, OR
30 INTERSTATE AGENCY.—Any fee required to be collected by a
31 State, local, or interstate agency under this subsection shall be uti-
32 lized solely to cover all reasonable (direct and indirect) costs re-
33 quired to support the permit program as set forth in paragraph
34 (2)(C).

35 (4) PERMIT REVISIONS.—A revision required by paragraph (2)(I)
36 shall be made as expeditiously as practicable and consistent with the
37 procedures established under paragraph (2)(F) but not later than 18
38 months after the promulgation of standards and regulations described
39 in paragraph (2)(I). No such revision shall be required if the effective
40 date of the standards or regulations is a date after the expiration of
41 the permit term. Such a permit revision shall be treated as a permit

1 renewal if it complies with the requirements of this subdivision regard-
2 ing renewals.

3 (c) SINGLE PERMIT.—A single permit may be issued for a facility with
4 multiple sources.

5 (d) SUBMISSION; APPROVAL OR DISAPPROVAL.—

6 (1) SUBMISSION.—The Governor of each State shall develop and
7 submit to the Administrator—

8 (A) a permit program under State or local law or under an
9 interstate compact meeting the requirements of this subdivision;
10 and

11 (B) a legal opinion from the attorney general (or the attorney
12 for a State air pollution control agency that has independent legal
13 counsel, or from the chief legal officer of an interstate agency),
14 that the laws of the State or locality provide or the interstate com-
15 pact provides adequate authority to carry out the program.

16 (2) APPROVAL OR DISAPPROVAL.—Not later than 1 year after receiv-
17 ing a program, and after notice and opportunity for public comment,
18 the Administrator shall approve or disapprove the program, in whole
19 or in part. The Administrator may approve a program to the extent
20 that the program meets the requirements of this division, including the
21 regulations issued under subsection (b). If the program is disapproved,
22 in whole or in part, the Administrator shall notify the Governor of any
23 revisions or modifications necessary to obtain approval. The Governor
24 shall revise and resubmit the program for review under this section
25 within 180 days after receiving notification.

26 (e) ADMINISTRATION AND ENFORCEMENT.—

27 (1) DISCRETIONARY SANCTIONS.—Whenever the Administrator
28 makes a determination that a permitting authority is not adequately
29 administering and enforcing a program, or portion thereof, in accord-
30 ance with the requirements of this subdivision, the Administrator—

31 (A) shall provide notice to the State; and

32 (B) may, prior to the date that is 18 months after the date of
33 the notice under subparagraph (A), apply any of the sanctions
34 specified in section 215111(b) of this title.

35 (2) MANDATORY SANCTIONS.—Whenever the Administrator makes a
36 determination that a permitting authority is not adequately administer-
37 ing and enforcing a program, or portion thereof, in accordance with the
38 requirements of this subdivision, on the date that is 18 months after
39 the date of the notice under paragraph (1)(A), the Administrator shall
40 apply the sanctions under section 215111(b) of this title in the same
41 manner and subject to the same deadlines and other conditions as are

1 applicable in the case of a determination, disapproval, or finding under
2 section 215111(a) of this title.

3 (3) APPLICABILITY OF SANCTIONS IN NONATTAINMENT AREAS
4 ONLY.—The sanctions under section 215111(b)(3) of this title shall not
5 apply pursuant to this subsection in any area unless the failure to ade-
6 quately enforce and administer the program relates to an air pollutant
7 for which the area has been designated a nonattainment area.

8 (4) PROMULGATION, ADMINISTRATION, AND ENFORCEMENT OF PER-
9 MIT PROGRAM BY THE ADMINISTRATOR.—When the Administrator
10 makes a finding under paragraph (1) with respect to a State, unless
11 the State corrects the deficiency within 18 months after the date of the
12 finding, the Administrator shall, 2 years after the date of the finding,
13 promulgate, administer, and enforce a program under this subdivision
14 for the State. Nothing in this paragraph shall be construed to affect
15 the validity of a program that has been approved under this subdivision
16 or the authority of any permitting authority acting under such a pro-
17 gram until such time as a program is promulgated by the Adminis-
18 trator under this paragraph.

19 **§ 235103. Permit applications**

20 (a) APPLICABLE DATE.—Any source specified in section 235102(a) of
21 this title shall become subject to a permit program, and required to have
22 a permit, on the later of—

23 (1) the effective date of a permit program or partial or interim per-
24 mit program applicable to the source; or

25 (2) the date on which the source becomes subject to section
26 235102(a) of this title.

27 (b) COMPLIANCE PLAN.—

28 (1) IN GENERAL.—The regulations required by section 235102(b) of
29 this title shall include a requirement that the applicant submit with the
30 permit application a compliance plan describing how the source will
31 comply with all applicable requirements under this chapter. The compli-
32 ance plan shall include a schedule of compliance and a schedule under
33 which the permittee will submit progress reports to the permitting au-
34 thority not less frequently than every 6 months.

35 (2) CERTIFICATION; REPORTING.—The regulations required by sec-
36 tion 235102(b) of this title shall require the permittee to—

37 (A) periodically (but not less frequently than annually) certify
38 that the facility is in compliance with any applicable requirements
39 of the permit; and

40 (B) promptly report any deviations from permit requirements to
41 the permitting authority.

1 (c) DEADLINES.—Any person required to have a permit shall, not later
2 than 12 months after the date on which the source becomes subject to a
3 permit program approved or promulgated under this subdivision, or such
4 earlier date as the permitting authority may establish, submit to the permit-
5 ting authority a compliance plan and an application for a permit signed by
6 a responsible official, who shall certify the accuracy of the information sub-
7 mitted. The permitting authority shall approve or disapprove a completed
8 application (consistent with the procedures established under this subdivi-
9 sion for consideration of such applications), and shall issue or deny the per-
10 mit, within 18 months after the date of receipt of the completed application,
11 except that the permitting authority shall establish a phased schedule for
12 acting on permit applications submitted within the 1st full year after the
13 effective date of a permit program (or a partial or interim program). Any
14 such schedule shall ensure that at least $\frac{1}{3}$ of the permits are acted on by
15 the permitting authority annually over a period of not to exceed 3 years
16 after such effective date. The permitting authority shall establish reasonable
17 procedures to prioritize such approval or disapproval actions in the case of
18 applications for construction or modification under the applicable require-
19 ments of this division.

20 (d) TIMELY AND COMPLETE APPLICATIONS.—Except for sources required
21 to have a permit before construction or modification under the applicable
22 requirements of this division, if an applicant has submitted a timely and
23 complete application for a permit required by this subdivision (including re-
24 newals), but final action has not been taken on the application, the source's
25 failure to have a permit shall not be a violation of this division unless the
26 delay in final action was due to the failure of the applicant timely to submit
27 information required or requested to process the application. No source re-
28 quired to have a permit under this subdivision shall be in violation of section
29 235102(a) of this title before the date on which the source is required to
30 submit an application under subsection (c).

31 (e) COPIES; AVAILABILITY.—A copy of each permit application, compli-
32 ance plan (including the schedule of compliance), emission or compliance
33 monitoring report, certification, and permit issued under this subdivision
34 shall be available to the public. If an applicant or permittee is required to
35 submit information entitled to protection from disclosure under section
36 211114(c) of this title, the applicant or permittee may submit the informa-
37 tion separately. The requirements of section 211114(c) of this title shall
38 apply to the information. The contents of a permit shall not be entitled to
39 protection under section 211114(c) of this title.

1 **§ 235104. Permit requirements and conditions**

2 (a) CONDITIONS.—Each permit issued under this subdivision shall in-
3 clude—

4 (1) enforceable emission limitations and standards;

5 (2) a schedule of compliance;

6 (3) a requirement that the permittee submit to the permitting au-
7 thority, not less often than every 6 months, the results of any required
8 monitoring; and

9 (4) such other conditions as are necessary to ensure compliance with
10 applicable requirements of this division, including the requirements of
11 the applicable implementation plan.

12 (b) MONITORING AND ANALYSIS.—The Administrator may by regulation
13 prescribe procedures and methods for determining compliance and for mon-
14 itoring and analysis of pollutants regulated under this division, but contin-
15 uous emission monitoring need not be required if alternative methods are
16 available that provide sufficiently reliable and timely information for deter-
17 mining compliance. Nothing in this subsection shall be construed to affect
18 any continuous emissions monitoring requirement of subdivision 5, or where
19 required elsewhere in this division.

20 (c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORT-
21 ING.—Each permit issued under this subdivision shall set forth inspection,
22 entry, monitoring, compliance certification, and reporting requirements to
23 ensure compliance with the permit terms and conditions. The monitoring
24 and reporting requirements shall conform to any applicable regulation under
25 subsection (b). Any report required to be submitted by a permit issued to
26 a corporation under this subdivision shall be signed by a responsible cor-
27 porate official, who shall certify its accuracy.

28 (d) GENERAL PERMITS.—A permitting authority may, after notice and
29 opportunity for public hearing, issue a general permit covering numerous
30 similar sources. Any general permit shall comply with all requirements ap-
31 plicable to permits under this subdivision. No source covered by a general
32 permit shall thereby be relieved from the obligation to file an application
33 under section 235103 of this title.

34 (e) TEMPORARY SOURCES.—A permitting authority may issue a single
35 permit authorizing emissions from similar operations at multiple temporary
36 locations. No such permit shall be issued unless it includes conditions that
37 will ensure compliance with all the requirements of this division at all au-
38 thorized locations, including ambient standards and compliance with any ap-
39 plicable increment or visibility requirements under chapter 213. Any such
40 permit shall require the owner or operator to notify the permitting authority

1 in advance of each change in location. The permitting authority may require
2 a separate permit fee for operations at each location.

3 (f) PERMIT SHIELD.—

4 (1) IN GENERAL.—Compliance with a permit issued in accordance
5 with this subdivision shall be deemed compliance with section 235102
6 of this title.

7 (2) COMPLIANCE WITH OTHER PROVISIONS.—

8 (A) IN GENERAL.—Except as otherwise provided by the Admin-
9 istrator by regulation, the permit may provide that compliance
10 with the permit shall be deemed compliance with other applicable
11 provisions of this division that relate to the permittee if—

12 (i) the permit includes the applicable requirements of such
13 provisions; or

14 (ii) the permitting authority in acting on the permit appli-
15 cation makes a determination relating to the permittee that
16 such other provisions (which shall be referred to in the deter-
17 mination) are not applicable and the permit includes the deter-
18 mination or a concise summary of the determination.

19 (B) EFFECT OF SUBPARAGRAPH.—Nothing in subparagraph (A)
20 shall alter or affect section 203103 of this title, including the au-
21 thority of the Administrator under that section.

22 **§ 235105. Notification to Administrator and contiguous**
23 **States**

24 (a) TRANSMISSION AND NOTICE.—

25 (1) COPIES OF PERMIT APPLICATION AND PROPOSED PERMIT TO
26 THE ADMINISTRATOR.—A permitting authority shall—

27 (A) transmit to the Administrator a copy of each permit appli-
28 cation (and any application for a permit modification or renewal)
29 or such portion thereof, including any compliance plan, as the Ad-
30 ministrator may require to effectively review the application and
31 otherwise to carry out the Administrator's responsibilities under
32 this division; and

33 (B) provide the Administrator a copy of each permit proposed
34 to be issued and issued as a final permit.

35 (2) NOTIFICATION TO STATES.—

36 (A) NOTIFICATION.—A permitting authority shall notify all
37 States—

38 (i) whose air quality may be affected and that are contig-
39 uous to the State in which the emission originates; or

40 (ii) that are within 50 miles of the source;

1 of each permit application or proposed permit forwarded to the
2 Administrator under this section.

3 (B) RECOMMENDATIONS.—A permitting authority shall provide
4 an opportunity for States described in subparagraph (A) to submit
5 written recommendations respecting the issuance of the permit
6 and its terms and conditions. If any part of those recommenda-
7 tions is not accepted by the permitting authority, the permitting
8 authority shall notify the State submitting the recommendations
9 and the Administrator in writing of its decision not to accept that
10 part of the recommendation and the reasons for the decision.

11 (b) PERMIT PROVISION NOT IN COMPLIANCE.—

12 (1) OBJECTION BY THE ADMINISTRATOR.—

13 (A) IN GENERAL.—If a permit contains provisions that are de-
14 termined by the Administrator to be not in compliance with the
15 applicable requirements of this division (including the require-
16 ments of an applicable implementation plan), the Administrator
17 shall, in accordance with this subsection, object to issuance of the
18 permit.

19 (B) RESPONSE.—The permitting authority shall respond in
20 writing if the Administrator—

21 (i) within 45 days after receiving a copy of the proposed
22 permit under subsection (a)(1); or

23 (ii) within 45 days after receiving notification under sub-
24 section (a)(2);

25 objects in writing to issuance of a permit as not in compliance
26 with the requirements.

27 (C) REASONS.—With the objection, the Administrator shall pro-
28 vide a statement of the reasons for the objection.

29 (D) COPIES TO APPLICANT.—A copy of the objection and state-
30 ment shall be provided to the applicant.

31 (2) NO OBJECTION BY THE ADMINISTRATOR.—

32 (A) PETITION.—If the Administrator does not object in writing
33 to the issuance of a permit pursuant to paragraph (1), any person
34 may petition the Administrator within 60 days after the expiration
35 of the 45-day review period specified in paragraph (1) to make an
36 objection. A copy of the petition shall be provided to the permit-
37 ting authority and the applicant by the petitioner. The petition
38 shall be based only on objections to the permit that were raised
39 with reasonable specificity during the public comment period pro-
40 vided by the permitting agency (unless the petitioner demonstrates
41 in the petition to the Administrator that it was impracticable to

1 raise the objections within that period or unless the grounds for
2 the objection arose after that period). The petition shall identify
3 all such objections. If the permit has been issued by the permitting
4 agency, the petition shall not postpone the effectiveness of the per-
5 mit.

6 (B) GRANT OR DENIAL.—The Administrator shall grant or deny
7 a petition under subparagraph (A) within 60 days after the peti-
8 tion is filed. The Administrator shall issue an objection within that
9 period if the petitioner demonstrates to the Administrator that the
10 permit is not in compliance with the requirements of this division
11 (including the requirements of an applicable implementation plan).
12 Any denial of such a petition shall be subject to judicial review
13 under section 211113 of this title.

14 (C) REGULATIONS.—The Administrator shall include in regula-
15 tions under this subdivision provisions to implement this para-
16 graph.

17 (D) NONDELEGABILITY.—The Administrator may not delegate
18 the requirements of this paragraph.

19 (3) REVISION OF PERMIT.—

20 (A) IN GENERAL.—On receipt of an objection by the Adminis-
21 trator under this subsection, a permitting authority may not issue
22 a permit unless the permit is revised and issued in accordance
23 with subsection (c).

24 (B) OBJECTION ON PETITION.—If the permitting authority has
25 issued a permit prior to receipt of an objection by the Adminis-
26 trator under paragraph (2)—

27 (i) the Administrator shall modify, terminate, or revoke the
28 permit; and

29 (ii) the permitting authority may thereafter issue a revised
30 permit only in accordance with subsection (c).

31 (c) ISSUANCE OR DENIAL.—If the permitting authority fails, within 90
32 days after the date of an objection under subsection (b), to submit a permit
33 revised to meet the objection, the Administrator shall issue or deny the per-
34 mit in accordance with the requirements of this subdivision. No objection
35 shall be subject to judicial review until the Administrator takes final action
36 to issue or deny a permit under this subsection.

37 (d) WAIVER OF NOTIFICATION REQUIREMENTS.—

38 (1) WAIVER.—The Administrator may waive the requirements of
39 subsections (a) and (b) at the time of approval of a permit program
40 under this subdivision for any category (including any class, type, or

1 size within such category) of sources covered by the program other
2 than major sources.

3 (2) CATEGORIES OF SOURCES.—The Administrator may by regula-
4 tion establish categories of sources (other than major sources), includ-
5 ing establishment of any class, type, or size within a category, to which
6 the requirements of subsections (a) and (b) shall not apply.

7 (3) EXCLUSION FROM WAIVER.—The Administrator may exclude
8 from any waiver under this subsection the notification requirement
9 under subsection (a)(2).

10 (4) REVOCATION OR MODIFICATION.—Any waiver granted under this
11 subsection may be revoked or modified by the Administrator by regula-
12 tion.

13 (e) TERMINATION, MODIFICATION, OR REVOCATION AND REISSUANCE OF
14 PERMIT.—

15 (1) NOTIFICATION TO PERMITTING AUTHORITY AND SOURCE.—If the
16 Administrator finds that cause exists to terminate, modify, or revoke
17 and reissue a permit under this subdivision, the Administrator shall no-
18 tify the permitting authority and the source of the Administrator's
19 finding.

20 (2) PROPOSED DETERMINATION.—The permitting authority shall,
21 within 90 days after receipt of notification under paragraph (1), submit
22 to the Administrator a proposed determination of termination, modi-
23 fication, or revocation and reissuance, as appropriate. The Adminis-
24 trator may extend the 90-day period for an additional 90 days if the
25 Administrator finds that a new or revised permit application is nec-
26 essary or that the permitting authority must require the permittee to
27 submit additional information. The Administrator may review the pro-
28 posed determination in accordance with subsections (a) and (b).

29 (3) ACTION BY THE ADMINISTRATOR.—If the permitting authority
30 fails to submit the required proposed determination, or if the Adminis-
31 trator objects and the permitting authority fails to resolve the objection
32 within 90 days, the Administrator may, after notice and in accordance
33 with fair and reasonable procedures, terminate, modify, or revoke and
34 reissue the permit.

35 **§ 235106. Other authorities**

36 (a) IN GENERAL.—Nothing in this subdivision shall preclude a State or
37 interstate permitting authority from establishing additional permitting re-
38 quirements not inconsistent with this division.

39 (b) PERMITS IMPLEMENTING ACID RAIN PROVISIONS.—This subdivision
40 (including provisions regarding schedules for submission and approval or

1 disapproval of permit applications) shall apply to permits implementing the
2 requirements of subdivision 5 except as modified by that subdivision.

3 **§ 235107. Small business stationary source technical and en-**
4 **vironmental compliance assistance program**

5 (a) DEFINITIONS.—In this section:

6 (1) OMBUDSMAN.—The term “Ombudsman” means the Small Busi-
7 ness Ombudsman.

8 (2) SMALL BUSINESS STATIONARY SOURCE.—

9 (A) IN GENERAL.—The term “small business stationary source”
10 means a stationary source that—

11 (i) is owned or operated by a person that employs 100 or
12 fewer individuals;

13 (ii) is a small business concern (as defined in the Small
14 Business Act (15 U.S.C. 631 et seq.);

15 (iii) is not a major stationary source;

16 (iv) does not emit 50 tons or more per year of any regu-
17 lated pollutant; and

18 (v) emits less than 75 tons per year of all regulated pollut-
19 ants.

20 (B) INCLUSION OF OTHER SOURCES.—On petition by a source,
21 a State may, after notice and opportunity for public comment, in-
22 clude as a small business stationary source for purposes of this
23 section any stationary source that does not meet the criteria of
24 clause (iii), (iv), or (v) of subparagraph (A) but that does not emit
25 more than 100 tons per year of all regulated pollutants.

26 (C) EXCLUSION OF CERTAIN CATEGORIES OR SUBCATEGORIES
27 OF SOURCES.—

28 (i) BY THE ADMINISTRATOR.—The Administrator, in con-
29 sultation with the Administrator of the Small Business Ad-
30 ministration and after providing notice and opportunity for
31 public comment, may exclude from the small business station-
32 ary source definition under subparagraph (A) any category or
33 subcategory of sources that the Administrator determines to
34 have sufficient technical and financial capabilities to meet the
35 requirements of this division without the application of this
36 section.

37 (ii) BY A STATE.—A State, in consultation with the Admin-
38 istrator and the Administrator of the Small Business Admin-
39 istration and after providing notice and opportunity for public
40 hearing, may exclude from the small business stationary
41 source definition under subparagraph (A) any category or

1 subcategory of sources that the State determines to have suf-
2 ficient technical and financial capabilities to meet the require-
3 ments of this division without the application of this section.

4 (b) STATE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND EN-
5 VIRONMENTAL COMPLIANCE ASSISTANCE PROGRAMS.—

6 (1) IN GENERAL.—Consistent with sections 211110 and 211112 of
7 this title, each State shall, after reasonable notice and public hearings,
8 adopt and submit to the Administrator as part of the State implemen-
9 tation plan for the State plans for establishing a small business station-
10 ary source technical and environmental compliance assistance program.

11 (2) ELEMENTS REQUIRED FOR APPROVAL.—The Administrator shall
12 approve such a program if it includes each of the following:

13 (A) Adequate mechanisms for developing, collecting, and coordi-
14 nating information concerning compliance methods and tech-
15 nologies for small business stationary sources, and programs to
16 encourage lawful cooperation among such sources and other per-
17 sons to further compliance with this division.

18 (B) Adequate mechanisms for assisting small business station-
19 ary sources with pollution prevention and accidental release detec-
20 tion and prevention, including providing information concerning al-
21 ternative technologies, process changes, products, and methods of
22 operation that help reduce air pollution.

23 (C) A designated State office within the relevant State agency
24 to serve as ombudsman for small business stationary sources in
25 connection with the implementation of this division.

26 (D) A compliance assistance program for small business station-
27 ary sources that assists small business stationary sources in deter-
28 mining applicable requirements and in receiving permits under this
29 division in a timely and efficient manner.

30 (E) Adequate mechanisms to ensure that small business station-
31 ary sources receive notice of their rights under this division in
32 such manner and form as to ensure reasonably adequate time for
33 such sources to evaluate compliance methods and any relevant or
34 applicable proposed or final regulation or standard issued under
35 this division.

36 (F) Adequate mechanisms for informing small business station-
37 ary sources of their obligations under this division, including
38 mechanisms for referring such sources to qualified auditors or, at
39 the option of the State, for providing audits of the operations of
40 such sources to determine compliance with this division.

1 (G) Procedures for consideration of requests from a small busi-
2 ness stationary source for modification of—

3 (i) any work practice or technological method of compli-
4 ance; or

5 (ii) the schedule of milestones for implementing such a
6 work practice or method of compliance preceding any applica-
7 ble compliance date;

8 based on the technological and financial capability of any such
9 small business stationary source.

10 (3) MODIFICATION OF WORK PRACTICES, TECHNOLOGICAL METHODS
11 OF COMPLIANCE, AND SCHEDULES OF MILESTONES.—No modification
12 of a work practice, technological method of compliance, or the schedule
13 of milestones may be granted under paragraph (2)(G) unless it is in
14 compliance with the applicable requirements of this division (including
15 the requirements of the applicable implementation plan). Where such
16 applicable requirements are set forth in Federal regulations, only modi-
17 fications authorized in those regulations may be allowed.

18 (c) FEDERAL SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
19 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.—

20 (1) IN GENERAL.—The Administrator shall establish a small busi-
21 ness stationary source technical and environmental compliance assist-
22 ance program.

23 (2) ACTIVITIES.—The program shall—

24 (A) assist the States in the development of a State small busi-
25 ness stationary source technical and environmental compliance as-
26 sistance program required under subsection (b);

27 (B) issue guidance for the use of the States in the implementa-
28 tion of such programs that includes alternative control tech-
29 nologies and pollution prevention methods applicable to small busi-
30 ness stationary sources; and

31 (C) provide for implementation of the program provisions re-
32 quired under subsection (b)(2)(D) in any State that fails to sub-
33 mit such a program under that subsection.

34 (d) MONITORING.—

35 (1) IN GENERAL.—The Administrator shall direct the EPA Office of
36 Small and Disadvantaged Business Utilization through the Ombuds-
37 man to monitor the small business stationary source technical and envi-
38 ronmental compliance assistance program under this section.

39 (2) ACTIVITIES.—In carrying out monitoring activities, the Ombuds-
40 man shall—

1 (A) render advisory opinions on the overall effectiveness of the
2 small business stationary source technical and environmental com-
3 pliance assistance program, difficulties encountered, and degree
4 and severity of enforcement;

5 (B) make periodic reports to Congress on the compliance of the
6 small business stationary source technical and environmental com-
7 pliance assistance program with the requirements of chapter 35 of
8 title 44, chapter 6 of title 5, and section 504 of title 5;

9 (C) review information to be issued by the small business sta-
10 tionary source technical and environmental compliance assistance
11 program for small business stationary sources to ensure that the
12 information is understandable by the layperson; and

13 (D) have the small business stationary source technical and en-
14 vironmental compliance assistance program serve as the secretar-
15 iat for the development and dissemination of such reports and ad-
16 visory opinions.

17 (e) COMPLIANCE ADVISORY PANEL.—

18 (1) ESTABLISHMENT.—There shall be established in each State a
19 compliance advisory panel (referred to in this subsection as a “Panel”).

20 (2) MEMBERSHIP.—A Panel shall consist of at least—

21 (A) 2 members, who are not owners, or representatives of own-
22 ers, of small business stationary sources, selected by the Governor
23 to represent the general public;

24 (B) 2 members selected by the State legislature who are owners,
25 or who represent owners, of small business stationary sources (1
26 member each selected by the majority and minority leadership of
27 the lower house (or in the case of a State with a unicameral legis-
28 lature, 2 members each selected by the majority leadership and the
29 minority leadership));

30 (C) except in the case of a State with a unicameral legislature,
31 2 members selected by the State legislature who are owners, or
32 who represent owners, of small business stationary sources (1
33 member each selected by the majority and minority leadership of
34 the upper house, or the equivalent State entity); and

35 (D) 1 member selected by the head of the department or agency
36 of the State responsible for air pollution permit programs, to rep-
37 resent that agency.

38 (3) ACTIVITIES.—A Panel shall—

39 (A) render advisory opinions concerning—

40 (i) the effectiveness of the small business stationary source
41 technical and environmental compliance assistance program;

- 1 (ii) difficulties encountered; and
 2 (iii) the degree and severity of enforcement;
 3 (B) make periodic reports to the Administrator concerning the
 4 compliance of the State small business stationary source technical
 5 and environmental compliance assistance program with the re-
 6 quirements of chapter 35 of title 44, chapter 6 of title 5, and sec-
 7 tion 504 of title 5;
 8 (C) review information for small business stationary sources to
 9 ensure that the information is understandable by the layperson;
 10 and
 11 (D) have the small business stationary source technical and en-
 12 vironmental compliance assistance program serve as the secretar-
 13 iat for the development and dissemination of such reports and ad-
 14 visory opinions.
 15 (f) FEES.—A State (or the Administrator) may reduce any fee required
 16 under this division to take into account the financial resources of small busi-
 17 ness stationary sources.
 18 (g) CONTINUOUS EMISSION MONITORS.—In developing regulations and
 19 control technique guidelines under this division that contain continuous
 20 emission monitoring requirements, the Administrator, consistent with the
 21 requirements of this division, before applying the requirements to small
 22 business stationary sources, shall consider the necessity and appropriateness
 23 of the requirements for such sources. Nothing in this subsection shall affect
 24 the applicability of subdivision 5 provisions relating to continuous emissions
 25 monitoring.
 26 (h) CONTROL TECHNIQUE GUIDELINES.—The Administrator shall con-
 27 sider, consistent with the requirements of this division, the size, type, and
 28 technical capabilities of small business stationary sources (and sources that
 29 are eligible under subsection (a)(2)(B) to be treated as small business sta-
 30 tionary sources) in developing control technique guidelines applicable to
 31 such sources under this division.

32 **Subdivision 7—Stratospheric Ozone**
 33 **Reduction**
 34 **Chapter 237—Stratospheric Ozone**
 35 **Reduction**

- Sec.
 237101. Definitions.
 237102. Listing of class I substances and class II substances.
 237103. Monitoring and reporting requirements.
 237104. Prohibition of production and consumption of class I substances.
 237105. Phaseout of production and consumption of class II substances.
 237106. Accelerated schedule.
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 237108. National recycling and emission reduction program.
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237110. Nonessential products containing chlorofluorocarbons.
237111. Labeling.
237112. Safe alternatives policy.
237113. Federal procurement.
237114. Relationship to other laws.
237115. Control of substances, practices, processes, and activities that may reasonably be anticipated to affect the stratosphere.
237116. Transfers among parties to Montreal Protocol.
237117. International cooperation.
237118. Miscellaneous provisions.

1 **§ 237101. Definitions**

2 In this subdivision:

3 (1) APPLIANCE.—

4 (A) IN GENERAL.—The term “appliance” means any device
5 that—

6 (i) contains and uses a class I substance or class II sub-
7 stance as a refrigerant; and

8 (ii) is used for a household or commercial purpose.

9 (B) INCLUSIONS.—The term “appliance” includes any air condi-
10 tioner, refrigerator, chiller, or freezer.

11 (2) BASELINE YEAR.—The term “baseline year” means—

12 (A) calendar year 1986, in the case of any class I substance list-
13 ed in Group I or II under section 237102(a) of this title;

14 (B) calendar year 1989, in the case of any class I substance
15 listed in Group III, IV, or V under section 237102(a) of this title;
16 and

17 (C) a representative calendar year selected by the Adminis-
18 trator, in the case of—

19 (i) any substance added to the list of class I substances
20 after the publication of the initial list under section
21 237102(a) of this title; and

22 (ii) any class II substance.

23 (3) CLASS I SUBSTANCE.—The term “class I substance” means a
24 substance listed as provided in section 237102(a) of this title.

25 (4) CLASS II SUBSTANCE.—The term “class II substance” means a
26 substance listed as provided in section 237102(b) of this title.

27 (5) COMMISSIONER.—The term “Commissioner” means the Commis-
28 sioner of Food and Drugs.

29 (6) CONSUMPTION.—

30 (A) IN GENERAL.—The term “consumption” means, with re-
31 spect to any substance—

32 (i) the amount of that substance produced in the United
33 States; plus

34 (ii) the amount imported; minus

1 (iii) the amount exported to parties to the Montreal Proto-
2 col.

3 (B) CONSTRUCTION.—The term “consumption” shall be con-
4 strued in a manner that is consistent with the Montreal Protocol.

5 (7) IMPORT.—The term “import” means to land on, bring into, or
6 introduce into, or attempt to land on, bring into, or introduce into, any
7 place subject to the jurisdiction of the United States, whether or not
8 the landing, bringing, or introduction constitutes an importation within
9 the meaning of the customs laws of the United States.

10 (8) MEDICAL DEVICE.—The term “medical device” means any device
11 (as defined in section 201 of the Federal Food, Drug, and Cosmetic
12 Act (21 U.S.C. 321)), diagnostic product, drug (as defined in that sec-
13 tion), or drug delivery system that—

14 (A) utilizes a class I substance or class II substance for which
15 no safe and effective alternative has been developed, and where
16 necessary, approved by the Commissioner; and

17 (B) after notice and opportunity for public comment, is ap-
18 proved and determined to be essential by the Commissioner in con-
19 sultation with the Administrator.

20 (9) MONTREAL PROTOCOL.—

21 (A) IN GENERAL.—The term “Montreal Protocol” means the
22 Montreal Protocol on Substances That Deplete the Ozone Layer,
23 done at Montreal September 16, 1987 (26 I.L.M. 1541; 1522
24 U.N.T.S. 29), a protocol to the Vienna Convention for the Protec-
25 tion of the Ozone Layer, done at Vienna March 22, 1985 (T.I.A.S.
26 11097).

27 (B) INCLUSIONS.—The term “Montreal Protocol” includes ad-
28 justments adopted by parties to the Montreal Protocol and amend-
29 ments that enter into force.

30 (10) OZONE-DEPLETION POTENTIAL.—

31 (A) IN GENERAL.—The term “ozone-depletion potential” means
32 a factor established by the Administrator to reflect the ozone-de-
33pletion potential of a substance, on a mass per kilogram basis, as
34 compared with chlorofluorocarbon-11.

35 (B) CRITERIA.—The factor shall be based on—

36 (i) the substance’s atmospheric lifetime;

37 (ii) the molecular weight of bromine and chlorine;

38 (iii) the substance’s ability to be photolytically disasso-
39ciated; and

40 (iv) other factors determined to be an accurate measure of
41 relative ozone-depletion potential.

1 (11) PRODUCE.—

2 (A) IN GENERAL.—The term “produce” means to manufacture
3 a substance from any raw material or feedstock chemical.

4 (B) EXCLUSIONS.—The term “produce” does not include—

5 (i) manufacture of a substance that is used and entirely
6 consumed (except for trace quantities) in the manufacture of
7 another chemical; or

8 (ii) reuse or recycling of a substance.

9 **§ 237102. Listing of class I substances and class II sub-**
10 **stances**

11 (a) LIST OF CLASS I SUBSTANCES.—

12 (1) INITIAL LIST.—The Administrator shall publish an initial list of
13 class I substances that contains the following substances:

Group I
chlorofluorocarbon-11 (CFC-11)
chlorofluorocarbon-12 (CFC-12)
chlorofluorocarbon-113 (CFC-113)
chlorofluorocarbon-114 (CFC-114)
chlorofluorocarbon-115 (CFC-115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC-13)
chlorofluorocarbon-111 (CFC-111)
chlorofluorocarbon-112 (CFC-112)
chlorofluorocarbon-211 (CFC-211)
chlorofluorocarbon-212 (CFC-212)
chlorofluorocarbon-213 (CFC-213)
chlorofluorocarbon-214 (CFC-214)
chlorofluorocarbon-215 (CFC-215)
chlorofluorocarbon-216 (CFC-216)
chlorofluorocarbon-217 (CFC-217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

14 (2) ISOMERS.—The initial list under this subsection includes the iso-
15 mers of the substances described in paragraph (1), other than 1,1,2-
16 trichloroethane (an isomer of methyl chloroform).

17 (3) ADDITIONS TO LIST.—Pursuant to subsection (c), the Adminis-
18 trator shall add to the list of class I substances any other substance
19 that the Administrator finds causes or contributes significantly to
20 harmful effects on the stratospheric ozone layer. The Administrator
21 shall, pursuant to subsection (c), add to the list all substances that the
22 Administrator determines have an ozone depletion potential of 0.2 or
23 greater.

24 (b) LIST OF CLASS II SUBSTANCES.—

25 (1) INITIAL LIST.—Simultaneously with publication of the initial list
26 of class I substances, the Administrator shall publish an initial list of
27 class II substances that contains the following substances:

hydrochlorofluorocarbon-21 (HCFC-21)
hydrochlorofluorocarbon-22 (HCFC-22)
hydrochlorofluorocarbon-31 (HCFC-31)
hydrochlorofluorocarbon-121 (HCFC-121)
hydrochlorofluorocarbon-122 (HCFC-122)
hydrochlorofluorocarbon-123 (HCFC-123)
hydrochlorofluorocarbon-124 (HCFC-124)
hydrochlorofluorocarbon-131 (HCFC-131)
hydrochlorofluorocarbon-132 (HCFC-132)
hydrochlorofluorocarbon-133 (HCFC-133)
hydrochlorofluorocarbon-141 (HCFC-141)
hydrochlorofluorocarbon-142 (HCFC-142)
hydrochlorofluorocarbon-221 (HCFC-221)
hydrochlorofluorocarbon-222 (HCFC-222)
hydrochlorofluorocarbon-223 (HCFC-223)
hydrochlorofluorocarbon-224 (HCFC-224)
hydrochlorofluorocarbon-225 (HCFC-225)
hydrochlorofluorocarbon-226 (HCFC-226)
hydrochlorofluorocarbon-231 (HCFC-231)
hydrochlorofluorocarbon-232 (HCFC-232)
hydrochlorofluorocarbon-233 (HCFC-233)
hydrochlorofluorocarbon-234 (HCFC-234)
hydrochlorofluorocarbon-235 (HCFC-235)
hydrochlorofluorocarbon-241 (HCFC-241)
hydrochlorofluorocarbon-242 (HCFC-242)
hydrochlorofluorocarbon-243 (HCFC-243)
hydrochlorofluorocarbon-244 (HCFC-244)
hydrochlorofluorocarbon-251 (HCFC-251)
hydrochlorofluorocarbon-252 (HCFC-252)
hydrochlorofluorocarbon-253 (HCFC-253)
hydrochlorofluorocarbon-261 (HCFC-261)
hydrochlorofluorocarbon-262 (HCFC-262)
hydrochlorofluorocarbon-271 (HCFC-271)

1 (2) ISOMERS.—The initial list under this subsection includes the iso-
2 mers of the substances described in paragraph (1).

3 (3) ADDITIONS TO LIST.—Pursuant to subsection (c), the Adminis-
4 trator shall add to the list of class II substances any other substance
5 that the Administrator finds is known or may reasonably be anticipated
6 to cause or contribute to harmful effects on the stratospheric ozone
7 layer.

8 (c) ADDITIONS TO LISTS.—

9 (1) IN GENERAL.—The Administrator may add, by regulation, in ac-
10 cordance with the criteria set forth in subsection (a) or (b), as the case
11 may be, any substance to the list of class I substances or class II sub-
12 stances under subsection (a) or (b). For purposes of exchanges under
13 section 237107 of this title, whenever a substance is added to the list
14 of class I substances the Administrator shall, to the extent consistent
15 with the Montreal Protocol, assign the substance to existing Group I,
16 II, III, IV, or V or place the substance in a new Group.

17 (2) PERIODIC LISTING.—Periodically, but not less frequently than
18 every 3 years, the Administrator shall list, by regulation, as additional
19 class I substances or class II substances the substances that the Ad-
20 ministrator finds meet the criteria of subsection (a) or (b), as the case
21 may be.

22 (3) PETITIONS.—

23 (A) IN GENERAL.—Any person may petition the Administrator
24 to add a substance to the list of class I substances or class II sub-

1 stances. Pursuant to the criteria set forth in subsection (a) or (b),
2 as the case may be, within 180 days after receiving such a peti-
3 tion, the Administrator shall propose to add the substance to the
4 list or publish an explanation of the petition denial. In any case
5 where the Administrator proposes to add a substance to the list,
6 the Administrator shall add by regulation, or make a final deter-
7 mination not to add, the substance to the list within 1 year after
8 receiving the petition.

9 (B) SHOWING.—Any petition under this paragraph shall include
10 a showing by the petitioner that there are data on the substance
11 adequate to support the petition.

12 (C) FURTHER INFORMATION.—If the Administrator determines
13 that information on the substance is not sufficient to make a de-
14 termination under this paragraph, the Administrator shall use any
15 authority available to the Administrator, under any law adminis-
16 tered by the Administrator, to acquire the information.

17 (4) REMOVAL FROM LIST.—Only a class II substance that is added
18 to the list of class I substances may be removed from the list of class
19 II substances. No substance described in subsection (a), including
20 methyl chloroform, may be removed from the list of class I substances.

21 (d) NEW LISTED SUBSTANCES.—

22 (1) EXTENSION.—In the case of any substance added to the list of
23 class I substances or class II substances after publication of the initial
24 lists of class I substances and class II substances under this section,
25 the Administrator may extend any schedule or compliance deadline con-
26 tained in section 237105 of this title to a later date than is specified
27 in that section if the schedule or deadline is unattainable, considering
28 when the substance is added to the list.

29 (2) LIMITATIONS.—

30 (A) CLASS I SUBSTANCES.—No extension under this subsection
31 may extend the date for termination of production of any class I
32 substance to a date that is more than 7 years after January 1 of
33 the year after the year in which the substance is added to the list
34 of class I substances.

35 (B) CLASS II SUBSTANCES.—No extension under this subsection
36 may extend the date for termination of production of any class II
37 substance to a date more than 10 years after January 1 of the
38 year after the year in which the substance is added to the list of
39 class II substances.

40 (e) OZONE-DEPLETION AND GLOBAL WARMING POTENTIAL.—

1 (1) ASSIGNMENT OF NUMERICAL VALUE AND PUBLICATION OF
 2 CHLORINE AND BROMINE LOADING POTENTIAL AND ATMOSPHERIC
 3 LIFETIME.—Simultaneously with any addition to either of the lists, the
 4 Administrator shall—

5 (A) assign to each listed substance a numerical value represent-
 6 ing the substance’s ozone-depletion potential; and

7 (B) publish the chlorine and bromine loading potential and the
 8 atmospheric lifetime of each listed substance.

9 (2) PUBLICATION OF GLOBAL WARMING POTENTIAL.—

10 (A) IN GENERAL.—One year after the addition of a substance
 11 to either of the lists, after notice and opportunity for public com-
 12 ment, the Administrator shall publish the global warming potential
 13 of each listed substance.

14 (B) NO BASIS FOR ADDITIONAL REGULATION.—Subparagraph
 15 (A) shall not be construed to be the basis of any additional regula-
 16 tion under this division.

17 (3) OZONE-DEPLETION POTENTIAL.—

18 (A) IN GENERAL.—In the case of the substances described in
 19 table 1, the ozone-depletion potential shall be as specified in table
 20 1, unless the Administrator adjusts the substance’s ozone-deple-
 21 tion potential based on criteria described in section 237101(10) of
 22 this title:

TABLE 1

Substance	Ozone- deple- tion po- tential
chlorofluorocarbon-11 (CFC-11)	1.0
chlorofluorocarbon-12 (CFC-12)	1.0
chlorofluorocarbon-13 (CFC-13)	1.0
chlorofluorocarbon-111 (CFC-111)	1.0
chlorofluorocarbon-112 (CFC-112)	1.0
chlorofluorocarbon-113 (CFC-113)	0.8
chlorofluorocarbon-114 (CFC-114)	1.0
chlorofluorocarbon-115 (CFC-115)	0.6
chlorofluorocarbon-211 (CFC-211)	1.0
chlorofluorocarbon-212 (CFC-212)	1.0
chlorofluorocarbon-213 (CFC-213)	1.0
chlorofluorocarbon-214 (CFC-214)	1.0
chlorofluorocarbon-215 (CFC-215)	1.0
chlorofluorocarbon-216 (CFC-216)	1.0
chlorofluorocarbon-217 (CFC-217)	1.0
halon-1211	3.0
halon-1301	10.0
halon-2402	6.0
carbon tetrachloride	1.1
methyl chloroform	0.1
hydrochlorofluorocarbon-22 (HCFC-22)	0.05
hydrochlorofluorocarbon-123 (HCFC-123)	0.02
hydrochlorofluorocarbon-124 (HCFC-124)	0.02
hydrochlorofluorocarbon-141(b) (HCFC-141(b))	0.1
hydrochlorofluorocarbon-142(b) (HCFC-142(b))	0.06

23 (B) SPECIFICATION IN MONTREAL PROTOCOL.—Where the
 24 ozone-depletion potential of a substance is specified in the Mon-
 25 treal Protocol, the ozone-depletion potential specified for that sub-

1 stance under this section shall be consistent with the Montreal
2 Protocol.

3 **§ 237103. Monitoring and reporting requirements**

4 (a) REGULATIONS.—The regulations of the Administrator regarding mon-
5 itoring and reporting of class I substances and class II substances shall con-
6 form to the requirements of this section. The regulations shall include re-
7 quirements with respect to the time and manner of monitoring and report-
8 ing as required under this section.

9 (b) PRODUCTION, IMPORT, AND EXPORT LEVEL REPORTS.—On a quar-
10 terly basis, or such other basis (not less than annually) as the Administrator
11 may determine, each person that produces, imports, or exports a class I sub-
12 stance or class II substance shall file a report with the Administrator set-
13 ting forth the amount of the substance that the person produced, imported,
14 and exported during the preceding reporting period. Each such report shall
15 be signed and attested by a responsible officer. No such report shall be re-
16 quired from a person after April 1 of the calendar year after the person
17 permanently ceases production, importation, and exportation of the sub-
18 stance and so notifies the Administrator in writing.

19 (c) BASELINE REPORTS FOR CLASS I SUBSTANCES.—Unless such infor-
20 mation has previously been reported to the Administrator, on the date on
21 which the 1st report under subsection (b) is required to be filed, each per-
22 son that produces, imports, or exports a class I substance (other than a sub-
23 stance added to the list of class I substances after the publication of the
24 initial list of class I substances under this section) shall file a report with
25 the Administrator setting forth the amount of the class I substance that the
26 person produced, imported, and exported during the baseline year. In the
27 case of a substance added to the list of class I substances after publication
28 of the initial list of class I substances under this section, the regulations
29 shall require that each person that produced, imported, or exported the class
30 I substance shall file a report with the Administrator within 180 days after
31 the date on which the class I substance is added to the list, setting forth
32 the amount of the class I substance that the person produced, imported, and
33 exported in the baseline year.

34 (d) MONITORING AND REPORTS TO CONGRESS.—

35 (1) PRODUCTION, USE, AND CONSUMPTION OF CLASS I SUBSTANCES
36 AND CLASS II SUBSTANCES.—The Administrator shall monitor the pro-
37 duction, use, and consumption of class I substances and class II sub-
38 stances. Not less frequently than every 6 years, the Administrator shall
39 report to Congress on the environmental and economic effects of any
40 stratospheric ozone depletion.

1 (2) TROPOSPHERIC CONCENTRATION OF CHLORINE AND BROMINE
2 AND LEVEL OF STRATOSPHERIC OZONE DEPLETION.—

3 (A) IN GENERAL.—The Administrator of the National Aero-
4 nautics and Space Administration and the Administrator of the
5 National Oceanic and Atmospheric Administration shall monitor,
6 and not less often than every 3 years submit to Congress a report
7 on, the current average tropospheric concentration of chlorine and
8 bromine and the level of stratospheric ozone depletion.

9 (B) CONTENTS.—A report under subparagraph (A) shall in-
10 clude updated projections of—

11 (i) peak chlorine loading;

12 (ii) the rate at which the atmospheric abundance of chlo-
13 rine is projected to decrease; and

14 (iii) the date by which the atmospheric abundance of chlo-
15 rine is projected to return to a level of 2 parts per billion.

16 (C) BASIS OF PROJECTIONS.—Updated projections under sub-
17 paragraph (B) shall be made on the basis of—

18 (i) current international and domestic controls on sub-
19 stances covered by this subdivision; and

20 (ii) controls described in clause (i) supplemented by a year
21 2000 global phaseout of all halocarbon emissions (the base
22 case).

23 (D) PURPOSE.—It is the purpose of Congress through this sec-
24 tion to monitor closely the production and consumption of class II
25 substances to ensure that the production and consumption of class
26 II substances will not—

27 (i) increase significantly the peak chlorine loading that is
28 projected to occur under the base case established for pur-
29 poses of this section;

30 (ii) reduce significantly the rate at which the atmospheric
31 abundance of chlorine is projected to decrease under the base
32 case; or

33 (iii) delay the date by which the average atmospheric con-
34 centration of chlorine is projected under the base case to re-
35 turn to a level of 2 parts per billion.

36 (e) TECHNOLOGY STATUS REPORT IN 2015.—The Administrator shall re-
37 view, on a periodic basis, the progress being made in the development of
38 alternative systems or products necessary to manufacture and operate appli-
39 ances without class II substances. If the Administrator finds, after notice
40 and opportunity for public comment, that as a result of technological devel-
41 opment problems, the development of such alternative systems or products

1 will not occur within the time necessary to provide for the manufacture of
2 such equipment without class II substances prior to the applicable deadlines
3 under section 237105 of this title, the Administrator shall, not later than
4 January 1, 2015, so inform Congress.

5 (f) EMERGENCY REPORT.—

6 (1) IN GENERAL.—If, in consultation with the Administrator of the
7 National Aeronautics and Space Administration and the Administrator
8 of the National Oceanic and Atmospheric Administration, and after no-
9 tice and opportunity for public comment, the Administrator determines
10 that the global production, consumption, and use of class II substances
11 are projected to contribute to an atmospheric chlorine loading in excess
12 of the base case projections by more than $\frac{5}{10}$ ths part per billion, the
13 Administrator shall so inform Congress immediately.

14 (2) DETERMINATION.—A determination under paragraph (2) shall
15 be—

16 (A) based on the monitoring under subsection (d); and

17 (B) updated not less often than every 3 years.

18 **§ 237104. Prohibition of production and consumption of**
19 **class I substances**

20 (a) PROHIBITION OF PRODUCTION OF CLASS I SUBSTANCES.—It shall be
21 unlawful for any person to produce any amount of a class I substance ex-
22 cept as provided in this section.

23 (b) EXCEPTIONS FOR MEDICAL DEVICES AND AVIATION SAFETY.—

24 (1) MEDICAL DEVICES.—The Administrator, after notice and oppor-
25 tunity for public comment, shall, to the extent that such action is con-
26 sistent with the Montreal Protocol, authorize the production of limited
27 quantities of class I substances solely for use in medical devices if the
28 authorization is determined by the Commissioner, in consultation with
29 the Administrator, to be necessary for use in medical devices.

30 (2) AVIATION SAFETY.—

31 (A) IN GENERAL.—The Administrator, after notice and oppor-
32 tunity for public comment, may, to the extent such action is con-
33 sistent with the Montreal Protocol, authorize the production of
34 limited quantities of halon-1211 (bromochlorodifluoromethane),
35 halon-1301 (bromotrifluoromethane), and halon-2402
36 (dibromotetrafluoroethane) solely for purposes of aviation safety if
37 the Administrator of the Federal Aviation Administration, in con-
38 sultation with the Administrator, determines that no safe and ef-
39 fective substitute has been developed and that the authorization is
40 necessary for aviation safety purposes.

1 (B) EXAMINATION.—The Administrator of the Federal Aviation
2 Administration shall, in consultation with the Administrator, ex-
3 amine whether safe and effective substitutes for methyl chloroform
4 or alternative techniques will be available for nondestructive test-
5 ing for metal fatigue and corrosion of existing airplane engines
6 and airplane parts susceptible to metal fatigue and whether an ex-
7 ception for such uses of methyl chloroform under this paragraph
8 is necessary for purposes of airline safety.

9 (3) CAP ON EXCEPTIONS.—Under no circumstances may the author-
10 ity set forth in paragraphs (1) and (2) be applied to authorize any per-
11 son to produce a class I substance in annual quantities greater than
12 10 percent of that produced by the person during the baseline year.

13 (c) METHYL BROMIDE.—

14 (1) SANITATION AND FOOD PROTECTION.—To the extent consistent
15 with the Montreal Protocol's quarantine and preshipment provisions,
16 the Administrator shall exempt the production, importation, and con-
17 sumption of methyl bromide to fumigate commodities entering or leav-
18 ing the United States or any State (or political subdivision thereof) for
19 purposes of compliance with Animal and Plant Health Inspection Serv-
20 ice requirements or with any international, Federal, State, or local
21 sanitation or food protection standard.

22 (2) CRITICAL USES.—To the extent consistent with the Montreal
23 Protocol, the Administrator, after notice and the opportunity for public
24 comment, and after consultation with other departments or instrumen-
25 talities of the Federal Government having regulatory authority related
26 to methyl bromide, including the Secretary of Agriculture, may exempt
27 the production, importation, and consumption of methyl bromide for
28 critical uses.

29 (3) SCHEDULE.—Notwithstanding subsections (a) and (b), the Ad-
30 ministrator shall promulgate regulations for reductions in, and termi-
31 nate the production, importation, and consumption of, methyl bromide
32 under a schedule that is in accordance with, but not more stringent
33 than, the phaseout schedule of the Montreal Protocol as in effect on
34 October 21, 1998.

35 (d) DEVELOPING COUNTRIES.—

36 (1) EXCEPTION.—The Administrator, after notice and opportunity
37 for public comment, may, consistent with the Montreal Protocol, au-
38 thorize the production of limited quantities of a class I substance solely
39 for export to, and use in, developing countries that are parties to the
40 Montreal Protocol and are operating under article 5 of the Montreal

1 Protocol. Any production authorized under this paragraph shall be sole-
2 ly for purposes of satisfying the basic domestic needs of such countries.

3 (2) CAP ON EXCEPTION.—

4 (A) IN GENERAL.—Under no circumstances may the authority
5 set forth in paragraph (1) be applied to authorize any person to
6 produce a class I substance in any year in an annual quantity
7 greater than 15 percent of the baseline quantity of that class I
8 substance produced by that person.

9 (B) TERMINATION OF EXCEPTION.—An exception authorized
10 under this subsection shall terminate not later than January 1,
11 2010 (2012 in the case of methyl chloroform).

12 (3) METHYL BROMIDE.—Notwithstanding the phaseout and termi-
13 nation of production of methyl bromide pursuant to subsection (e)(3),
14 the Administrator may, consistent with the Montreal Protocol, author-
15 ize the production of limited quantities of methyl bromide, solely for
16 use in developing countries that are parties to the Copenhagen Amend-
17 ment to the Montreal Protocol (32 I.L.M. 874).

18 (e) NATIONAL SECURITY.—

19 (1) IN GENERAL.—The President may, to the extent that such action
20 is consistent with the Montreal Protocol, issue such orders regarding
21 production and use of chlorofluorocarbon-114, halon-1211, halon-1301,
22 and halon-2402, at any specified site or facility or on any vessel as may
23 be necessary to protect the national security interests of the United
24 States if the President finds that adequate substitutes are not available
25 and that the production and use of the substance are necessary to pro-
26 tect the national security interests of the United States.

27 (2) EXEMPTIONS.—

28 (A) IN GENERAL.—An order under paragraph (1) may include,
29 where necessary to protect the national security interests of the
30 United States, an exemption from any prohibition or requirement
31 contained in this subdivision.

32 (B) NOTIFICATION OF CONGRESS.—The President shall notify
33 Congress within 30 days of the issuance of an order under para-
34 graph (1) providing for an exemption under subparagraph (A).
35 The notification shall include a statement of the reasons for the
36 granting of the exemption.

37 (C) TIME PERIOD.—An exemption under this paragraph shall
38 be for a specified period, which may not exceed 1 year.

39 (D) ADDITIONAL EXEMPTIONS.—Additional exemptions may be
40 granted, each on the President's issuance of a new order under

1 paragraph (1). Each additional exemption shall be for a specified
2 period, which may not exceed 1 year.

3 (E) LACK OF APPROPRIATION.—No exemption shall be granted
4 under this paragraph due to lack of appropriation unless the
5 President specifically requests an appropriation as a part of the
6 budgetary process and Congress fails to make available the re-
7 quested appropriation.

8 **§ 237105. Phaseout of production and consumption of class**
9 **II substances**

10 (a) RESTRICTION ON USE OF CLASS II SUBSTANCES.—

11 (1) DEFINITION OF REFRIGERANT.—In this subsection, the term
12 “refrigerant” means any class II substance used for heat transfer in
13 a refrigerating system.

14 (2) PROHIBITION.—Effective January 1, 2015, it shall be unlawful
15 for any person to introduce into interstate commerce or use any class
16 II substance unless the class II substance—

17 (A) has been used, recovered, and recycled;

18 (B) is used and entirely consumed (except for trace quantities)
19 in the production of other chemicals;

20 (C) is used as a refrigerant in an appliance manufactured prior
21 to January 1, 2020; or

22 (D) is listed as acceptable for use as a fire suppression agent
23 for nonresidential applications in accordance with section
24 237112(c)(2) of this title.

25 (b) PRODUCTION PHASEOUT.—

26 (1) PRODUCTION IN QUANTITY GREATER THAN THE QUANTITY PRO-
27 DUCED DURING THE BASELINE YEAR.—Effective January 1, 2015, it
28 shall be unlawful for any person to produce any class II substance in
29 an annual quantity greater than the quantity of that class II substance
30 produced by that person during the baseline year.

31 (2) PRODUCTION IN ANY QUANTITY.—Effective January 1, 2030, it
32 shall be unlawful for any person to produce any class II substance.

33 (c) REGULATIONS REGARDING PRODUCTION AND CONSUMPTION OF
34 CLASS II SUBSTANCES.—The Administrator shall promulgate regulations
35 to—

36 (1) phase out the production, and restrict the use, of class II sub-
37 stances in accordance with this section, subject to any acceleration of
38 the phaseout of production under section 237106 of this title; and

39 (2) ensure that the consumption of class II substances in the United
40 States is phased out and terminated in accordance with the same
41 schedule (subject to the same exceptions and other provisions) as is ap-

1 plicable to the phaseout and termination of production of class II sub-
2 stances under this subdivision.

3 (d) EXCEPTIONS.—

4 (1) MEDICAL DEVICES.—

5 (A) IN GENERAL.—Notwithstanding the termination of produc-
6 tion required under subsection (b)(2) and the restriction on use
7 described in subsection (a), the Administrator, after notice and op-
8 portunity for public comment, shall, to the extent that such action
9 is consistent with the Montreal Protocol, authorize the production
10 and use of limited quantities of class II substances solely for pur-
11 poses of use in medical devices if the authorization is determined
12 by the Commissioner, in consultation with the Administrator, to
13 be necessary for use in medical devices.

14 (B) CAP ON EXCEPTION.—Under no circumstances may the au-
15 thority set forth in subparagraph (A) be applied to authorize any
16 person to produce a class II substance in annual quantities greater
17 than 10 percent of that class II substance produced by that person
18 during the baseline year.

19 (2) DEVELOPING COUNTRIES.—

20 (A) IN GENERAL.—Notwithstanding subsection (a) or (b), the
21 Administrator, after notice and opportunity for public comment,
22 may authorize the production of limited quantities of a class II
23 substance in excess of the quantities otherwise permitted under
24 subsections (a) and (b) solely for export to and use in developing
25 countries that are parties to the Montreal Protocol, as determined
26 by the Administrator. Any production authorized under this sub-
27 section shall be solely for purposes of satisfying the basic domestic
28 needs of developing countries.

29 (B) CAP ON EXCEPTION.—

30 (i) BEFORE 2030.—Under no circumstances may the au-
31 thority set forth in subparagraph (A) be applied to authorize
32 any person to produce a class II substance in any year follow-
33 ing the effective date of subsection (b)(1) and before the year
34 2030 in an annual quantity that is greater than 110 percent
35 of the quantity of that class II substance produced by that
36 person during the baseline year.

37 (ii) 2030 AND THEREAFTER.—Under no circumstances
38 may the authority set forth in subparagraph (A) be applied
39 to authorize any person to produce a class II substance in the
40 year 2030 or any year thereafter in an annual quantity that

1 is greater than 15 percent of the quantity of that class II
2 substance produced by that person during the baseline year.

3 (iii) TERMINATION OF EXCEPTIONS.—Each exception au-
4 thorized under this paragraph shall terminate not later than
5 January 1, 2040.

6 **§ 237106. Accelerated schedule**

7 (a) IN GENERAL.—The Administrator shall promulgate regulations that
8 establish a schedule for phasing out the production, consumption, or use of
9 class II substance that is more stringent than set forth in section 237105
10 of this title if—

11 (1) based on an assessment of credible current scientific information
12 (including any assessment under the Montreal Protocol) regarding
13 harmful effects on the stratospheric ozone layer associated with the
14 class II substance, the Administrator determines that a more stringent
15 schedule may be necessary to protect human health and the environ-
16 ment against those effects;

17 (2) based on the availability of substitutes for the class II substance,
18 the Administrator determines that a more stringent schedule is prac-
19 ticable, taking into account technological achievability, safety, and
20 other relevant factors; or

21 (3) the Montreal Protocol is modified to include a schedule to control
22 or reduce production, consumption, or use of the class II substance
23 more rapidly than the applicable schedule under this subdivision.

24 (b) CONSIDERATION OF STATUS OF REMAINING PERIOD.—In making any
25 determination under paragraph (1) or (2) of subsection (a), the Adminis-
26 trator shall consider the status of the period remaining under the applicable
27 schedule under this subdivision.

28 (c) PETITION.—

29 (1) IN GENERAL.—Any person may petition the Administrator to
30 promulgate regulations under this section. The Administrator shall
31 grant or deny such a petition within 180 days after receipt of any such
32 petition.

33 (2) SHOWING.—A petition under this subsection shall include a
34 showing by the petitioner that there are data adequate to support the
35 petition.

36 (3) FURTHER INFORMATION.—If the Administrator determines that
37 information is not sufficient to make a determination under this sub-
38 section, the Administrator shall use any authority available to the Ad-
39 ministrator, under any law administered by the Administrator, to ac-
40 quire the information.

1 (4) DENIAL OF PETITION.—If the Administrator denies the petition,
2 the Administrator shall publish an explanation of why the petition was
3 denied.

4 (5) GRANT OF PETITION.—If the Administrator grants the petition,
5 the final regulations shall be promulgated within 1 year.

6 **§ 237107. Exchange authority**

7 (a) TRANSFERS.—The Administrator shall promulgate regulations under
8 this subdivision providing for the issuance of allowances for the production
9 of class I substances and class II substances in accordance with the require-
10 ments of this subdivision and governing the transfer of such allowances. The
11 regulations shall ensure that the transactions under the authority of this
12 section will result in greater total reductions in the production in each year
13 of class I substances and class II substances than would occur in that year
14 in the absence of such transactions.

15 (b) INTERPOLLUTANT TRANSFERS.—

16 (1) PRODUCTION ALLOWANCE.—The regulations under this section
17 shall permit a production allowance for a substance for any year to be
18 transferred for a production allowance for another substance for the
19 same year on an ozone depletion weighted basis.

20 (2) GROUPS OF CLASS I SUBSTANCES.—Allowances for substances in
21 each group of class I substances (as listed pursuant to section 237102
22 of this title) may be transferred only for allowances for other class I
23 substances in the same group.

24 (3) GROUPS OF CLASS II SUBSTANCES.—The Administrator shall, as
25 appropriate, establish groups of class II substances for trading pur-
26 poses and assign class II substances to such groups. In the case of
27 class II substances, allowances may be transferred only for allowances
28 for other class II substances that are in the same group.

29 (c) TRADES WITH OTHER PERSONS.—The regulations under this section
30 shall permit 2 or more persons to transfer production allowances (including
31 interpollutant transfers that meet the requirements of subsections (a) and
32 (b)) if the transferor of the allowances will be subject, under the regulations,
33 to an enforceable and quantifiable reduction in annual production that—

34 (1) exceeds the reduction otherwise applicable to the transferor
35 under this subdivision;

36 (2) exceeds the production allowances transferred to the transferee;
37 and

38 (3) would not have occurred in the absence of the transaction.

39 (d) CONSUMPTION.—The regulations under this section shall provide for
40 the issuance of consumption allowances in accordance with the requirements
41 of this subdivision and for the trading of such allowances in the same man-

1 ner as is applicable under this section to the trading of production allow-
2 ances under this section.

3 **§ 237108. National recycling and emission reduction pro-**
4 **gram**

5 (a) IN GENERAL.—

6 (1) USE AND DISPOSAL OF CLASS I SUBSTANCES AND CLASS II SUB-
7 STANCES.—The Administrator shall promulgate regulations establish-
8 ing standards and requirements regarding use and disposal of class I
9 substances and class II substances, including the use and disposal of
10 class I substances and class II substances during service, repair, or dis-
11 posal of appliances and industrial process refrigeration.

12 (2) CONTENTS.—The regulations under this subsection—

13 (A) shall include requirements that—

14 (i) reduce the use and emission of class I substances and
15 class II substances to the lowest achievable level; and

16 (ii) maximize the recapture and recycling of class I sub-
17 stances and class II substances; and

18 (B) may include requirements—

19 (i) to use alternative substances (including substances that
20 are not class I substances or class II substances) or to mini-
21 mize use of class I substances or class II substances; or

22 (ii) to promote the use of safe alternatives pursuant to sec-
23 tion 237112 of this title.

24 (b) SAFE DISPOSAL.—

25 (1) IN GENERAL.—The regulations under subsection (a) shall estab-
26 lish standards and requirements for the safe disposal of class I sub-
27 stances and class II substances.

28 (2) CONTENTS.—The regulations shall require that—

29 (A) a class I substance or class II substance contained in bulk
30 in appliances, machines, or other goods shall be removed from
31 each appliance, machine, or other good prior to disposal of, or de-
32 livery for recycling of, the appliance, machine, or good;

33 (B) any appliance, machine, or other good containing a class I
34 substance or class II substance in bulk shall not be manufactured,
35 sold, or distributed in interstate commerce or offered for sale or
36 distribution in interstate commerce unless it is equipped with a
37 servicing aperture or an equally effective design feature that will
38 facilitate the recapture of the class I substance or class II sub-
39 stance during service and repair or disposal of the appliance, ma-
40 chine, or good; and

1 (C) any product in which a class I substance or class II sub-
2 stance is incorporated so as to constitute an inherent element of
3 the product shall be disposed of in a manner that reduces, to the
4 maximum extent practicable, the release of the class I substance
5 or class II substance into the environment.

6 (3) EXCEPTION.—If the Administrator determines that the applica-
7 tion of this paragraph to any product would result in producing only
8 insignificant environmental benefits, the Administrator shall include in
9 the regulations an exception for that product.

10 (e) PROHIBITIONS.—

11 (1) RELEASE OR DISPOSAL OF CLASS I SUBSTANCE OR CLASS II SUB-
12 STANCE.—

13 (A) IN GENERAL.—It shall be unlawful for any person, in the
14 course of maintaining, servicing, repairing, or disposing of an ap-
15pliance or industrial process refrigeration, to knowingly vent or
16 otherwise knowingly release or dispose of any class I substance or
17 class II substance used as a refrigerant in the appliance or indus-
18trial process refrigeration in a manner that permits the class I
19 substance or class II substance to enter the environment.

20 (B) DE MINIMIS RELEASE.—A de minimis release associated
21 with a good faith attempt to recapture and recycle or safely dis-
22 pose of a class I substance or class II substance shall not be sub-
23 ject to the prohibition set forth in subparagraph (A).

24 (2) RELEASE OR DISPOSAL OF SUBSTITUTE SUBSTANCE FOR A
25 CLASS I SUBSTANCE OR CLASS II SUBSTANCE.—

26 (A) DEFINITION OF APPLIANCE.—In this paragraph, the term
27 “appliance” includes any device that contains and uses as a refriger-
28 erant a substitute substance and that is used for household or
29 commercial purposes, including any air conditioner, refrigerator,
30 chiller, or freezer.

31 (B) PROHIBITION.—It shall be unlawful for any person, in the
32 course of maintaining, servicing, repairing, or disposing of an ap-
33pliance or industrial process refrigeration, to knowingly vent or
34 otherwise knowingly release or dispose of any substitute substance
35 for a class I substance or class II substance that contains and uses
36 as a refrigerant any such substitute substance, unless the Admin-
37 istrator determines that venting, releasing, or disposing of that
38 substitute substance does not pose a threat to the environment.

39 **§ 237109. Servicing of motor vehicle air conditioners**

40 (a) DEFINITIONS.—In this section:

41 (1) APPROVED REFRIGERANT RECYCLING EQUIPMENT.—

551

1 (A) IN GENERAL.—The term “approved refrigerant recycling
2 equipment” means equipment certified by the Administrator (or
3 an independent standards testing organization approved by the
4 Administrator) to meet the standards established by the Adminis-
5 trator and applicable to equipment for the extraction and reclama-
6 tion of refrigerant from motor vehicle air conditioners.

7 (B) STRINGENCY.—The standards under subparagraph (A)
8 shall, at a minimum, be at least as stringent as the standards of
9 the Society of Automotive Engineers in effect as of November 15,
10 1990, and applicable to equipment described in subparagraph (A)
11 (SAE standard J-1990).

12 (C) EQUIPMENT PURCHASED BEFORE THE PROPOSAL OF REGU-
13 LATIONS.—Equipment purchased before the proposal of regula-
14 tions under this section shall be considered certified if it is sub-
15 stantially identical to equipment certified as provided in subpara-
16 graph (A).

17 (2) PROPERLY TRAINED AND CERTIFIED.—

18 (A) IN GENERAL.—The term “properly trained and certified”
19 means having training and certification in the proper use of ap-
20 proved refrigerant recycling equipment for motor vehicle air condi-
21 tioners in conformity with standards established by the Adminis-
22 trator and applicable to the performance of service on motor vehi-
23 cle air conditioners.

24 (B) STRINGENCY.—The standards under subparagraph (A)
25 shall, at a minimum, be at least as stringent as specified, as of
26 November 15, 1990, in SAE standard J-1989 under the certifi-
27 cation program of the National Institute for Automotive Service
28 Excellence or under a similar program such as the training and
29 certification program of the Mobile Air Conditioning Society.

30 (3) PROPERLY USE.—

31 (A) IN GENERAL.—The term “properly use”, with respect to the
32 use of approved refrigerant recycling equipment, means to use in
33 conformity with standards established by the Administrator and
34 applicable to the use of the equipment.

35 (B) STRINGENCY.—The standards under subparagraph (A)
36 shall, at a minimum, be at least as stringent as the standards of
37 the Society of Automotive Engineers in effect as of November 15,
38 1990, and applicable to the use of equipment described in sub-
39 paragraph (A) (SAE standard J-1989).

1 (4) REFRIGERANT.—The term “refrigerant” means any class I sub-
2 stance, class II substance, or substitute substance for a class I sub-
3 stance or class II substance used in a motor vehicle air conditioner.

4 (b) REGULATIONS.—The Administrator shall promulgate regulations es-
5 tablishing standards and requirements regarding the servicing of motor ve-
6 hicle air conditioners.

7 (c) PROHIBITIONS.—

8 (1) PROPER USE.—No person repairing or servicing motor vehicles
9 for consideration may perform any service on a motor vehicle air condi-
10 tioner involving the refrigerant for the air conditioner without properly
11 using approved refrigerant recycling equipment;

12 (2) PROPER TRAINING AND CERTIFICATION.—No person repairing or
13 servicing motor vehicles for consideration may perform the service un-
14 less the person has been properly trained and certified.

15 (d) CERTIFICATION.—

16 (1) IN GENERAL.—Each person performing service on motor vehicle
17 air conditioners for consideration shall certify to the Administrator that
18 the person has acquired, and is properly using, approved refrigerant re-
19 cycling equipment in service on motor vehicle air conditioners involving
20 refrigerant and that each individual authorized by the person to per-
21 form that service is properly trained and certified.

22 (2) CONTENTS.—A certification under this subsection shall con-
23 tain—

24 (A) the name and address of the person certifying; and

25 (B) the serial number of each unit of approved recycling equip-
26 ment acquired by the person.

27 (3) MANNER OF CERTIFICATION.—A certification under this sub-
28 section—

29 (A) shall be signed and attested by the owner or another re-
30 sponsible officer; and

31 (B) may be made by submitting the required information to the
32 Administrator on a standard form provided by the manufacturer
33 of certified refrigerant recycling equipment.

34 (e) SMALL CONTAINERS OF CLASS I SUBSTANCES OR CLASS II SUB-
35 STANCES.—It shall be unlawful for any person to sell or distribute, or offer
36 for sale or distribution, in interstate commerce to any person (other than
37 a person performing service for consideration on motor vehicle air condi-
38 tioning systems in compliance with this section) any class I substance or
39 class II substance that is suitable for use as a refrigerant in a motor vehicle
40 air conditioning system and that is in a container that contains less than
41 20 pounds of the refrigerant.

1 **§ 237110. Nonessential products containing chlorofluoro-**
2 **carbons**

3 (a) NONESSENTIAL PRODUCTS.—

4 (1) IN GENERAL.—The Administrator shall promulgate regulations
5 that—

6 (A) identify nonessential products that release class I sub-
7 stances into the environment (including any release occurring dur-
8 ing manufacture, use, storage, or disposal); and

9 (B) prohibit any person from selling or distributing any such
10 product, or offering any such product for sale or distribution, in
11 interstate commerce.

12 (2) APPLICABILITY.—At a minimum, the prohibition shall apply to—

13 (A) chlorofluorocarbon-propelled plastic party streamers and
14 noise horns;

15 (B) chlorofluorocarbon-containing cleaning fluids for non-
16 commercial electronic and photographic equipment; and

17 (C) other consumer products that are determined by the Admin-
18 istrator—

19 (i) to release class I substances into the environment (in-
20 cluding any release occurring during manufacture, use, stor-
21 age, or disposal); and

22 (ii) to be nonessential.

23 (3) DETERMINATION.—In determining whether a product is non-
24 essential, the Administrator shall consider—

25 (A) the purpose or intended use of the product;

26 (B) the technological availability of substitutes for the product
27 and for the class I substance;

28 (C) safety;

29 (D) health; and

30 (E) other relevant factors.

31 (b) PROHIBITIONS.—

32 (1) IN GENERAL.—It shall be unlawful for any person to sell or dis-
33 tribute, or offer for sale or distribution, in interstate commerce any
34 nonessential product to which regulations under subsection (a) are ap-
35 plicable.

36 (2) OTHER PRODUCTS.—

37 (A) PROHIBITION.—It shall be unlawful for any person to sell
38 or distribute, or offer for sale or distribution, in interstate com-
39 merce—

40 (i) any aerosol product or other pressurized dispenser that
41 contains a class II substance; or

1 (ii) any plastic foam product that contains, or is manufac-
2 tured with, a class II substance.

3 (B) EXCEPTIONS.—The Administrator may grant exceptions
4 from the prohibition under subparagraph (A)(i) where—

5 (i) the use of the aerosol product or pressurized dispenser
6 is determined by the Administrator to be essential as a result
7 of flammability or worker safety concerns; and

8 (ii) the only available alternative to use of a class II sub-
9 stance is use of a class I substance that legally could be sub-
10 stituted for the class II substance.

11 (C) NONAPPLICABILITY.—Subparagraph (A)(ii) shall not apply
12 to—

13 (i) a foam insulation product; or

14 (ii) an integral skin, rigid, or semi-rigid foam utilized to
15 provide for motor vehicle safety in accordance with Federal
16 Motor Vehicle Safety Standards where no adequate substitute
17 substance (other than a class I substance or class II sub-
18 stance) is practicable for effectively meeting those standards.

19 (e) MEDICAL DEVICES.—Nothing in this section applies to a medical de-
20 vice.

21 **§ 237111. Labeling**

22 (a) CONTAINERS CONTAINING A CLASS I SUBSTANCE OR CLASS II SUB-
23 STANCE; PRODUCTS CONTAINING A CLASS I SUBSTANCE.—No container in
24 which a class I substance or class II substance is stored or transported, and
25 no product containing a class I substance, shall be introduced into interstate
26 commerce unless it bears a clearly legible and conspicuous label stating:

27 “Warning: Contains [insert name of substance], a substance
28 that harms public health and environment by destroying ozone in
29 the upper atmosphere”.

30 (b) PRODUCTS CONTAINING A CLASS II SUBSTANCE.—

31 (1) BEFORE JANUARY 1, 2015.—Before January 1, 2015, no product
32 containing a class II substance shall be introduced into interstate com-
33 merce unless it bears the label described in subsection (a) if the Admin-
34 istrator determines, after notice and opportunity for public comment,
35 that there is a substitute product or manufacturing process—

36 (A) that does not rely on the use of the class II substance;

37 (B) that reduces the overall risk to human health and the envi-
38 ronment; and

39 (C) that is currently or potentially available.

40 (2) ON AND AFTER JANUARY 1, 2015.—Effective January 1, 2015,
41 no product containing a class II substance shall be introduced into

1 interstate commerce unless it bears the label described in subsection
2 (a).

3 (c) PRODUCTS MANUFACTURED WITH A CLASS I SUBSTANCE OR CLASS
4 II SUBSTANCE.—

5 (1) BEFORE JANUARY 1, 2015.—

6 (A) CLASS II SUBSTANCES.—Before January 1, 2015, if the Ad-
7 ministrator, after notice and opportunity for public comment,
8 makes the determination described in subsection (b)(1) with re-
9 spect to a product manufactured with a process that uses a class
10 II substance, no such product shall be introduced into interstate
11 commerce unless it bears a clearly legible and conspicuous label
12 stating the following:

13 “Warning: Manufactured with [insert name of substance],
14 a substance that harms public health and environment by de-
15 stroying ozone in the upper atmosphere”.

16 (B) CLASS I SUBSTANCES.—Before January 1, 2015, no prod-
17 uct manufactured with a process that uses a class I substance
18 shall be introduced into interstate commerce unless it bears a label
19 described in subparagraph (A) unless the Administrator deter-
20 mines that there is no substitute product or manufacturing proc-
21 ess that—

- 22 (i) does not rely on the use of the class I substance;
23 (ii) reduces the overall risk to human health and the envi-
24 ronment; and
25 (iii) is currently or potentially available.

26 (2) ON AND AFTER JANUARY 1, 2015.—Effective January 1, 2015,
27 no product manufactured with a process that uses a class I substance
28 or class II substance shall be introduced into commerce unless it bears
29 a label described in paragraph (1)(A).

30 (d) PETITIONS.—

31 (1) IN GENERAL.—Any person may petition the Administrator to
32 apply the requirements of this section to a product containing a class
33 II substance or a product manufactured with a class I substance or
34 class II substance that is not otherwise subject to the requirements.
35 Within 180 days after receiving such a petition, the Administrator
36 shall, pursuant to the criteria set forth in subsection (b), propose to
37 apply the requirements of this section to the product or publish an ex-
38 planation of the petition denial. If the Administrator proposes to apply
39 the requirements to the product, the Administrator shall, by regulation,
40 render a final determination pursuant to those criteria within 1 year
41 after receiving the petition.

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1 (2) SHOWING.—Any petition under this paragraph shall include a
2 showing by the petitioner that there are data on the product adequate
3 to support the petition.

4 (3) FURTHER INFORMATION.—If the Administrator determines that
5 information on the product is not sufficient to make the required deter-
6 mination, the Administrator shall use any authority available to the
7 Administrator under any law administered by the Administrator to ac-
8 quire the information.

9 (4) EFFECTIVE DATE.—In the case of a product determined by the
10 Administrator, on petition or on the Administrator's own motion, to be
11 subject to the requirements of this section, the effective date for the
12 requirements shall be 1 year after the date of the determination.

13 (e) RELATIONSHIP TO OTHER LAW.—

14 (1) NO DEFENSE.—The labeling requirements of this section shall
15 not constitute, in whole or part, a defense to liability or a cause for
16 reduction in damages in any civil or criminal action brought under any
17 Federal or State law other than an action for failure to comply with
18 the labeling requirements of this section.

19 (2) NO OTHER APPROVAL.—No other approval of a label by the Ad-
20 ministrator under any other law administered by the Administrator
21 shall be required with respect to the labeling requirements of this sec-
22 tion.

23 (f) REGULATIONS.—The Administrator shall promulgate regulations to
24 implement the labeling requirements of this section.

25 **§ 237112. Safe alternatives policy**

26 (a) POLICY.—To the maximum extent practicable, class I substances and
27 class II substances shall be replaced by chemicals, product substitutes, or
28 alternative manufacturing processes that reduce overall risks to human
29 health and the environment.

30 (b) REVIEWS AND REPORTS.—The Administrator shall—

31 (1) in consultation and coordination with interested members of the
32 public and the heads of relevant Federal agencies and departments—

33 (A) recommend Federal research programs and other activities
34 to assist in—

35 (i) identifying alternatives to the use of class I substances
36 and class II substances as refrigerants, solvents, fire
37 retardants, foam blowing agents, and other commercial appli-
38 cations; and

39 (ii) achieving a transition to the alternatives; and

40 (B) where appropriate, seek to maximize the use of Federal re-
41 search facilities and resources to assist users of class I substances

1 and class II substances in identifying and developing alternatives
2 to the uses described in subparagraph (A)(i);

3 (2)(A) in consultation and coordination with the Secretary of De-
4 fense and the heads of other relevant Federal agencies and depart-
5 ments, including the General Services Administration, examine Federal
6 procurement practices with respect to class I substances and class II
7 substances; and

8 (B) recommend measures to promote the transition by the Federal
9 Government, as expeditiously as possible, to the use of safe substitutes;

10 (3) specify initiatives, including appropriate intergovernmental, inter-
11 national, and commercial information and technology transfers, to pro-
12 mote the development and use of safe substitutes for class I substances
13 and class II substances, including alternative chemicals, product sub-
14 stitutes, and alternative manufacturing processes; and

15 (4) maintain a public clearinghouse of alternative chemicals, product
16 substitutes, and alternative manufacturing processes that are available
17 for products and manufacturing processes that use class I substances
18 and class II substances.

19 (e) ALTERNATIVES FOR CLASS I SUBSTANCES OR CLASS II SUB-
20 STANCES.—

21 (1) IN GENERAL.—The Administrator shall promulgate regulations
22 under this section providing that it shall be unlawful to replace any
23 class I substance or class II substance with any substitute substance
24 that the Administrator determines may present adverse effects on
25 human health or the environment, where the Administrator has identi-
26 fied an alternative to the replacement that—

27 (A) reduces the overall risk to human health and the environ-
28 ment; and

29 (B) is currently or potentially available.

30 (2) LISTS.—The Administrator shall publish lists of—

31 (A) the substitutes prohibited under this subsection for specific
32 uses; and

33 (B) the safe alternatives identified under this subsection for
34 specific uses.

35 (d) PETITIONS.—

36 (1) IN GENERAL.—Any person may petition the Administrator to
37 add a substance to the lists under subsection (e) or to remove a sub-
38 stance from either list. The Administrator shall grant or deny the peti-
39 tion within 90 days after receipt of the petition. If the Administrator
40 denies the petition, the Administrator shall publish an explanation of
41 why the petition was denied. If the Administrator grants the petition,

1 the Administrator shall publish a revised list within 6 months there-
2 after.

3 (2) SHOWING.—Any petition under this subsection shall include a
4 showing by the petitioner that there are data on the substance ade-
5 quate to support the petition.

6 (3) FURTHER INFORMATION.—If the Administrator determines that
7 information on the substance is not sufficient to make a determination
8 under paragraph (1), the Administrator shall use any authority avail-
9 able to the Administrator under any law administered by the Adminis-
10 trator to acquire the information.

11 (e) STUDIES AND NOTIFICATION.—

12 (1) IN GENERAL.—The Administrator shall—

13 (A) require any person that produces a chemical substitute for
14 a class I substance to provide the Administrator with the person's
15 unpublished health and safety studies on the substitute; and

16 (B) require producers to notify the Administrator not less than
17 90 days before new or existing chemicals are introduced into inter-
18 state commerce for significant new uses as substitutes for a class
19 I substance.

20 (2) PUBLIC AVAILABILITY OF RECORDS, REPORTS, AND INFORMA-
21 TION.—This subsection shall be subject to section 211114(c) of this
22 title.

23 **§ 237113. Federal procurement**

24 (a) REGULATIONS.—The Administrator, in consultation with the Admin-
25 istrator of General Services and the Secretary of Defense, shall promulgate
26 regulations requiring each department, agency, and instrumentality of the
27 United States to—

28 (1) conform its procurement regulations to the policies and require-
29 ments of this subdivision; and

30 (2) maximize the substitution of safe alternatives identified under
31 section 237112 of this title for class I substances and class II sub-
32 stances.

33 (b) CONFORMITY; CERTIFICATION.—Each department, agency, and in-
34 strumentality of the United States shall—

35 (1) conform its procurement regulations to the policies and require-
36 ments of this subdivision; and

37 (2) certify to the President that its regulations have been modified
38 in accordance with this section.

39 **§ 237114. Relationship to other laws**

40 (a) MONTREAL PROTOCOL.—This subdivision shall be construed, inter-
41 preted, and applied as a supplement to the terms and conditions of the

1 Montreal Protocol, as provided in paragraph 11 of article 2 of the Montreal
2 Protocol, and shall not be construed, interpreted, or applied to abrogate the
3 responsibilities or obligations of the United States to implement fully the
4 provisions of the Montreal Protocol. In the case of conflict between any pro-
5 vision of this subdivision and any provision of the Montreal Protocol, the
6 more stringent provision shall govern. Nothing in this subdivision shall be
7 construed, interpreted, or applied to affect the authority or responsibility of
8 the Administrator to implement article 4 of the Montreal Protocol with
9 other appropriate agencies.

10 (b) TECHNOLOGY EXPORT AND OVERSEAS INVESTMENT.—The President
11 shall—

12 (1) prohibit the export of technologies used to produce a class I sub-
13 stance;

14 (2) prohibit direct or indirect investments by any person in facilities
15 designed to produce a class I substance or class II substance in nations
16 that are not parties to the Montreal Protocol; and

17 (3) direct that no Federal agency provide bilateral or multilateral
18 subsidies, aids, credits, guarantees, or insurance programs for the pur-
19 pose of producing any class I substance.

20 **§ 237115. Control of substances, practices, processes, and ac-**
21 **tivities that may reasonably be anticipated to af-**
22 **fect the stratosphere**

23 If, in the Administrator's judgment, any substance, practice, process, or
24 activity may reasonably be anticipated to affect the stratosphere, especially
25 ozone in the stratosphere, and the effect may reasonably be anticipated to
26 endanger public health or welfare, the Administrator shall—

27 (1) promptly promulgate regulations respecting the control of the
28 substance, practice, process, or activity; and

29 (2) submit notice of the proposal and promulgation of the regulation
30 to Congress.

31 **§ 237116. Transfers among parties to Montreal Protocol**

32 (a) DEFINITION OF APPLICABLE DOMESTIC LAW.—In this section, the
33 term “applicable domestic law”, with respect to the United States, means
34 this division.

35 (b) IN GENERAL.—Consistent with the Montreal Protocol, the United
36 States may engage in transfers with other parties to the Montreal Protocol
37 under the following conditions:

38 (1) TRANSFERS OF PRODUCTION ALLOWANCES.—The United States
39 may transfer production allowances to another party if, at the time of
40 the transfer, the Administrator establishes revised production limits for
41 the United States such that the aggregate national United States pro-

1 duction permitted under the revised production limits equals the least
2 of—

3 (A) the maximum production level permitted for the substance
4 or substances concerned in the transfer year under the Montreal
5 Protocol minus the production allowances transferred;

6 (B) the maximum production level permitted for the substance
7 or substances concerned in the transfer year under applicable do-
8 mestic law minus the production allowances transferred; or

9 (C) the average of the actual national production level of the
10 substance or substances concerned for the 3 years prior to the
11 transfer minus the production allowances transferred.

12 (2) ACQUISITION OF PRODUCTION ALLOWANCES.—The United States
13 may acquire production allowances from another party if, at the time
14 of the transfer, the Administrator finds that the other party has re-
15 vised its domestic production limits in the same manner as provided
16 with respect to transfers by the United States in this subsection.

17 (e) EFFECT OF TRANSFERS ON PRODUCTION LIMITS.—The Adminis-
18 trator may—

19 (1) reduce the production limits established under this division as re-
20 quired as a prerequisite to transfers under subsection (b)(1); or

21 (2) increase production limits established under this division to re-
22 flect production allowances acquired under a transfer under subsection
23 (b)(2).

24 (d) REGULATIONS.—The Administrator shall promulgate regulations to
25 implement this section.

26 **§ 237117. International cooperation**

27 (a) IN GENERAL.—

28 (1) IN GENERAL.—The President shall undertake to enter into inter-
29 national agreements to—

30 (A) foster cooperative research that complements studies and
31 research authorized by this subdivision; and

32 (B) develop standards and regulations that protect the strato-
33 sphere consistent with regulations applicable within the United
34 States.

35 (2) NEGOTIATION OF AGREEMENTS; PROPOSALS.—For the purposes
36 described in paragraph (1), the President, through the Secretary of
37 State and the Assistant Secretary of State for Oceans and Inter-
38 national Environmental and Scientific Affairs, shall—

39 (A) negotiate multilateral treaties, conventions, resolutions, or
40 other agreements;

1 (B) formulate, present, or support proposals at the United Na-
 2 tions and other appropriate international forums; and

3 (C) report to Congress periodically on efforts to arrive at such
 4 agreements.

5 (b) ASSISTANCE TO DEVELOPING COUNTRIES.—The Administrator, in
 6 consultation with the Secretary of State, shall support global participation
 7 in the Montreal Protocol by providing technical and financial assistance to
 8 developing countries that are parties to the Montreal Protocol and operating
 9 under article 5 of the Montreal Protocol.

10 **§ 237118. Miscellaneous provisions**

11 (a) RETENTION OF STATE AUTHORITY.—For purposes of section 211116
 12 of this title, requirements concerning the areas addressed by this subdivision
 13 for the protection of the stratosphere against ozone layer depletion shall be
 14 treated as requirements for the control and abatement of air pollution.

15 (b) CONTROL OF POLLUTION FROM FEDERAL FACILITIES.—For pur-
 16 poses of section 211118 of this title, the requirements of this subdivision
 17 and corresponding State, interstate, and local requirements, administrative
 18 authority, process, and sanctions respecting the protection of the strato-
 19 spheric ozone layer shall be treated as requirements for the control and
 20 abatement of air pollution within the meaning of section 211118 of this
 21 title.

22 **Divisions B through Y—Reserved**
 23 **Division Z—Miscellaneous**
 24 **Chapter 299—Miscellaneous**

Sec.

299101. Provision enacted by the Clean Air Act Amendments of 1977.

299102. Provision enacted by the Energy Security Act.

299103. Provisions enacted by Public Law 101–549 (commonly known as the Clean Air Act
 Amendments of 1990).

299104. Provision enacted by the National Highway System Designation Act of 1995.

299105. Provision enacted by the Transportation Equity Act for the 21st Century.

299106. Provision enacted by the Departments of Veterans Affairs and Housing and Urban
 Development, and Independent Agencies Appropriations Act, 2004.

299107. Provisions enacted by the Energy Policy Act of 2005.

25 **§ 299101. Provision enacted by the Clean Air Act Amend-**
 26 **ments of 1977**

27 The Administrator shall undertake to enter into appropriate arrange-
 28 ments with the National Academy of Sciences to conduct continuing com-
 29 prehensive studies and investigations of the effects on public health and wel-
 30 fare of emissions subject to section 221102(a) of this title and the techno-
 31 logical feasibility of meeting emission standards required to be prescribed
 32 by the Administrator by section 221102(b) of this title.

33 **§ 299102. Provision enacted by the Energy Security Act**

34 (a) CARBON DIOXIDE STUDY.—

1 (1) AGREEMENT.—The Director of the Office of Science and Tech-
2 nology Policy (referred to in this section as the “Director”) shall enter
3 into an agreement with the National Academy of Sciences (referred to
4 in this section as the “Academy”) to carry out a comprehensive study
5 of the projected impacts, on the level of carbon dioxide in the atmos-
6 phere, of—

7 (A) fossil fuel combustion;

8 (B) coal-conversion and related synthetic fuels activities author-
9 ized by the Energy Security Act (94 Stat. 611); and

10 (C) other sources.

11 (2) ASSESSMENT.—The study should include an assessment of the
12 economic, physical, climatic, and social effects of the impacts described
13 in paragraph (1).

14 (3) INTERNATIONAL WORLDWIDE ASSESSMENT.—In conducting the
15 study, the Director and the Academy are encouraged to work with do-
16 mestic and foreign governmental and nongovernmental entities and
17 international entities to—

18 (A) develop an international, worldwide assessment of the prob-
19 lems involved; and

20 (B) suggest such original research on any aspect of those prob-
21 lems as the Academy considers necessary.

22 (b) REPORT.—

23 (1) IN GENERAL.—The Director and the Academy shall submit to
24 Congress a report that includes the major findings and recommenda-
25 tions resulting from the study required under this section.

26 (2) ACADEMY CONTRIBUTION.—The Academy’s contribution to the
27 report shall not be subject to any prior clearance or review, nor shall
28 any prior clearance or conditions be imposed on the Academy as part
29 of the agreement made by the Director with the Academy under this
30 section.

31 (3) CONTENTS.—The report shall in any event include recommenda-
32 tions regarding—

33 (A) how a long-term program of domestic and international re-
34 search, monitoring, modeling, and assessment of the causes and
35 effects of varying levels of atmospheric carbon dioxide should be
36 structured, including comments by the Director on the interagency
37 requirements of such a program and comments by the Secretary
38 of State on the international agreements required to carry out
39 such a program;

40 (B) how the United States can best play a role in the develop-
41 ment of such a long-term program on an international basis;

1 (C) what domestic resources should be made available to such
2 a program;

3 (D) how the ongoing United States Government carbon dioxide
4 assessment program should be modified to be of increased utility
5 in providing information and recommendations of the highest possible
6 value to government policymakers; and

7 (E) the need for periodic reports to Congress in conjunction
8 with any long-term program that the Director and the Academy
9 may recommend under this section.

10 (e) INFORMATION.—The Secretary of Energy, the Secretary of Commerce,
11 the Administrator, and the Director of the National Science Foundation
12 shall furnish to the Director or the Academy on request any information
13 that the Director or the Academy determines to be necessary for purposes
14 of conducting the study required by this section.

15 (d) SEPARATE ASSESSMENT OF INTERAGENCY IMPLEMENTATION REQUIREMENTS.—The
16 Director shall provide a separate assessment of the interagency requirements
17 to implement a comprehensive program of the type described in subsection
18 (b)(3).

19 (e) AUTHORIZATION OF APPROPRIATIONS.—

20 (1) IN GENERAL.—For the expenses of carrying out the carbon dioxide
21 study authorized by this section (as determined by the Office),
22 there are authorized to be appropriated such sums as are necessary,
23 not exceeding \$3,000,000 in the aggregate.

24 (2) PROVISION OF AMOUNTS TO THE ACADEMY.—At least 80 percent
25 of any amounts appropriated pursuant to paragraph (1) shall be provided
26 to the Academy.

27 **§ 299103. Provisions enacted by Public Law 101-549 (commonly known as the Clean Air Act Amendments of**
28 **1990)**
29

30 (a) STATE STANDARDS FOR EMISSION OF NITROGEN OXIDES FROM
31 UNINSTALLED AIRCRAFT ENGINE TEST CELLS.—

32 (1) STUDY.—The Administrator and the Secretary of Transportation,
33 in consultation with the Secretary of Defense, shall commence
34 a study and investigation of the testing of uninstalled aircraft engines
35 in enclosed test cells that addresses at a minimum the following issues
36 and such other issues as the Administrator and the Secretary of Transportation,
37 in consultation with the Secretary of Defense, consider appropriate:
38

39 (A) Whether technologies exist to control some or all emissions
40 of nitrogen oxides from test cells.

41 (B) The effectiveness of such technologies.

1 (C) The cost of implementing such technologies.

2 (D) Whether such technologies affect the safety, design, struc-
3 ture, operation, or performance of aircraft engines.

4 (E) Whether such technologies impair the effectiveness and ac-
5 curacy of aircraft engine safety design, and performance tests con-
6 ducted in test cells.

7 (F) The impact of not controlling nitrogen oxides from test cells
8 in the applicable nonattainment areas and on other sources, sta-
9 tionary and mobile, on nitrogen oxides in the applicable nonattain-
10 ment areas.

11 (2) REPORT.—The Administrator and the Secretary of Transpor-
12 tation shall submit to Congress a report of the study conducted under
13 this subsection.

14 (3) AUTHORITY TO REGULATE.—After completion of the study under
15 paragraph (1), a State may adopt and enforce any standard for emis-
16 sion of nitrogen oxides from test cells only after issuing a public notice
17 stating whether the standard is in accordance with the findings of the
18 study.

19 (b) REVIEW OF ACID GAS SCRUBBING REQUIREMENTS.—Prior to the
20 promulgation of any performance standard for solid waste incineration units
21 combusting municipal waste under section 211111 or 211128 of this title,
22 the Administrator shall review the availability of acid gas scrubbers as a
23 pollution control technology for small new units and for existing units (as
24 defined in 54 Fed. Reg. 52190 (December 20, 1989)), taking into account
25 section 211128(b)(2) of this title.

26 (c) NATIONAL ACID LAKES REGISTRY.—The Administrator shall publish
27 a national acid lakes registry that shall list, to the extent practical, all lakes
28 that are known to be acidified due to acid deposition. Lakes shall be added
29 to the registry as they become acidic or as data become available to show
30 they are acidic. Lakes shall be deleted from the registry as they become
31 nonacidic.

32 (d) INDUSTRIAL SULFUR DIOXIDE EMISSIONS.—

33 (1) REPORT.—

34 (A) IN GENERAL.—Every 5 years, the Administrator shall sub-
35 mit to Congress a report that contains—

36 (i) an inventory of national annual sulfur dioxide emissions
37 from industrial sources (as defined in subdivision 5 of division
38 A), including units subject to section 233105(g)(6) of this
39 title, for all years for which data are available, and a forecast
40 of the likely trend in sulfur dioxide emissions over the follow-
41 ing 20-year period; and

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1 (ii) estimates of the actual emission reduction in each year
2 resulting from promulgation of diesel fuel desulfurization reg-
3 ulations.

4 (B) CESSATION OF EFFECTIVENESS.—On May 15, 2000, sub-
5 paragraph (A) ceases to be effective with respect to the require-
6 ment to submit a report to Congress.

7 (2) 5.60 MILLION TON CAP.—

8 (A) IN GENERAL.—When the inventory required by this sub-
9 section indicates that sulfur dioxide emissions from industrial
10 sources, including units subject to section 233105(g)(5) of this
11 title, may reasonably be expected to reach levels greater than 5.60
12 million tons per year, the Administrator shall take such actions
13 under division A as may be appropriate to ensure that sulfur diox-
14 ide emissions do not exceed 5.60 million tons per year.

15 (B) ACTIONS.—Those actions may include—

16 (i) the promulgation of new and revised standards of per-
17 formance for new sources, including units subject to section
18 233105(g)(5) of this title, under section 211111(b) of this
19 title; and

20 (ii) promulgation of standards of performance for existing
21 sources, including units subject to section 233105(g)(5) of
22 this title, under authority of this subsection.

23 (C) STANDARD OF PERFORMANCE.—With respect to an existing
24 source regulated under this subsection, the term “standard of per-
25 formance” means a standard that the Administrator determines is
26 applicable to that source and that reflects the degree of emission
27 reduction achievable through the application of the best system of
28 continuous emission reduction that, taking into consideration the
29 cost of achieving that degree of emission reduction and any nonair
30 quality health and environmental impact and energy requirements,
31 the Administrator determines has been adequately demonstrated
32 for that category of sources.

33 (3) ELECTION TO BECOME AFFECTED UNIT.—Regulations promul-
34 gated under section 233105(b) of this title shall not prohibit a source
35 from electing to become an affected unit under section 233109 of this
36 title.

37 (e) IMPACT ON SMALL COMMUNITIES.—Before implementing a provision
38 of this section or Public Law 101–549 (commonly known as the Clean Air
39 Act Amendments of 1990) (104 Stat. 2399), the Administrator shall consult
40 with the EPA regional small communities coordinators to determine the im-

1 part of the provision on small communities, including the estimated cost of
2 compliance with the provision.

3 (f) INFORMATION GATHERING ON GREENHOUSE GASES CONTRIBUTING
4 TO GLOBAL CLIMATE CHANGE.—

5 (1) MONITORING.—The Administrator shall promulgate regulations
6 to require that all affected sources subject to subdivision 5 of division
7 A shall monitor carbon dioxide emissions. The regulations shall require
8 that the data be reported to the Administrator. Subsection (d) of sec-
9 tion 233111 of this title shall apply for purposes of this subsection in
10 the same manner and to the same extent as that subsection applies to
11 the monitoring and data described in section 233111 of this title.

12 (2) PUBLIC AVAILABILITY OF CARBON DIOXIDE INFORMATION.—For
13 each unit required to monitor and provide carbon dioxide data under
14 paragraph (1), the Administrator shall—

15 (A) compute the unit's aggregate annual total carbon dioxide
16 emissions;

17 (B) incorporate the data into a computer database; and

18 (C) make the aggregate annual data available to the public.

19 (g) WESTERN STATES ACID DEPOSITION RESEARCH.—

20 (1) MONITORING AND RESEARCH.—The Administrator shall sponsor
21 monitoring and research and submit to Congress annual and periodic
22 assessment reports on—

23 (A) the occurrence and effects of acid deposition on surface
24 water located in the part of the United States west of the Mis-
25 sissippi River;

26 (B) the occurrence and effects of acid deposition on high ele-
27 vation ecosystems (including forests and surface water); and

28 (C) the occurrence and effects of episodic acidification, particu-
29 larly with respect to high elevation watersheds.

30 (2) ANALYSIS OF DATA.—The Administrator shall analyze data gen-
31 erated from the studies conducted under paragraph (1), data from the
32 Western Lakes Survey, and other appropriate research and utilize pre-
33 dictive modeling techniques that take into account the unique geo-
34 graphic, climatological, and atmospheric conditions that exist in the
35 western United States to determine the potential occurrence and effects
36 of acid deposition due to any projected increases in the emission of sul-
37 fur dioxide and nitrogen oxides in the part of the United States located
38 west of the Mississippi River. The Administrator shall include the re-
39 sults of the project conducted under this paragraph in the reports sub-
40 mitted to Congress under paragraph (1).

41 (h) DISADVANTAGED BUSINESS CONCERNS.—

1 (1) DEFINITION OF DISADVANTAGED BUSINESS CONCERN.—

2 (A) IN GENERAL.—In this subsection, the term “disadvantaged
3 business concern” means a concern—

4 (i)(I) that is at least 51 percent owned by 1 or more so-
5 cially and economically disadvantaged individuals; or

6 (II) in the case of a publicly traded company, at least 51
7 percent of the stock of which is owned by 1 or more socially
8 and economically disadvantaged individuals; and

9 (ii) the management and daily business operations of which
10 are controlled by socially and economically disadvantaged in-
11 dividuals.

12 (B) FOR-PROFIT BUSINESS CONCERNS.—

13 (i) PRESUMPTION.—A for-profit business concern is pre-
14 sumed to be a disadvantaged business concern for purposes
15 of this subsection if it is at least 51 percent owned by, or in
16 the case of a concern that is a publicly traded company at
17 least 51 percent of the stock of the company is owned by, 1
18 or more individuals who are members of the following groups:

19 (I) Black Americans.

20 (II) Hispanic Americans.

21 (III) Native Americans.

22 (IV) Asian Americans.

23 (V) Women.

24 (VI) Disabled Americans.

25 (ii) REBUTTAL.—The presumption established by clause (i)
26 may be rebutted with respect to a particular business concern
27 if it is reasonably established that the individual or individ-
28 uals described in that clause with respect to that business
29 concern are not experiencing impediments to establishing or
30 developing the concern as a result of the individual’s identi-
31 fication as a member of a group described in that clause.

32 (C) CERTAIN INSTITUTIONS.—The following institutions are
33 presumed to be disadvantaged business concerns for purposes of
34 this subsection:

35 (i) Historically black colleges and universities, and colleges
36 and universities having a student body in which 40 percent
37 of the students are Hispanic.

38 (ii) Minority institutions (as defined by the Secretary of
39 Education pursuant to the General Education Provisions Act
40 (20 U.S.C. 1221 et seq.)).

1 (iii) Private and voluntary organizations controlled by indi-
2 viduals who are socially and economically disadvantaged.

3 (D) JOINT VENTURES.—

4 (i) IN GENERAL.—A joint venture may be considered to be
5 a disadvantaged business concern under this subsection, not-
6 withstanding the size of the joint venture, if—

7 (I) a party to the joint venture is a disadvantaged
8 business concern; and

9 (II) that party owns at least 51 percent of the joint
10 venture.

11 (ii) LIMITATION.—A person who is not an economically dis-
12 advantaged individual or a disadvantaged business concern,
13 as a party to a joint venture, may not be a party to more
14 than 2 awarded contracts in a fiscal year solely by reason of
15 this subparagraph.

16 (E) EFFECT OF PARAGRAPH.—Nothing in this paragraph pro-
17 hibits any member of a racial or ethnic group not described in
18 subparagraph (B)(i) from establishing that the member has been
19 impeded in establishing or developing a business concern as a re-
20 sult of racial or ethnic discrimination.

21 (2) IN GENERAL.—In providing for any research relating to the re-
22 quirements of the amendments made by Public Law 101–549 (com-
23 monly known as the Clean Air Act Amendments of 1990) (104 Stat.
24 2399) that uses EPA funds, the Administrator shall, to the extent
25 practicable, require that not less than 10 percent of total Federal fund-
26 ing for the research will be made available to disadvantaged business
27 concerns.

28 (3) PROHIBITION OF USE OF QUOTAS.—Nothing in this subsection
29 permits or requires the use of quotas or a requirement that has the
30 effect of a quota in determining eligibility under this subsection.

31 **§ 299104. Provision enacted by the National Highway Sys-**
32 **tem Designation Act of 1995**

33 (a) IN GENERAL.—The Administrator shall not require adoption or im-
34 plementation by a State of a test-only I/M240 enhanced vehicle inspection
35 and maintenance program as a means of compliance with section 215203
36 or 215303 of this title, but the Administrator may approve such a program
37 if a State chooses to adopt the program as a means of compliance with ei-
38 ther section.

39 (b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not
40 disapprove or apply an automatic discount to a State implementation plan
41 provision under section 215203 or 215303 of this title on the basis of a

1 policy, regulation, or guidance providing for a discount of emission credits
2 because the inspection and maintenance program in the plan provision is
3 decentralized or is a test-and-repair program.

4 (c) EMISSION REDUCTION CREDITS.—

5 (1) STATE PLAN PROVISION.—Not later than 120 days after Novem-
6 ber 28, 1995, a State may submit an implementation plan provision
7 proposing an interim inspection and maintenance program under sec-
8 tion 215203 or 215303 of this title. The Administrator shall approve
9 the program based on the full amount of credits proposed by the State
10 for each element of the program if the proposed credits reflected good
11 faith estimates by the State and the provision was otherwise in compli-
12 ance with division A. If, within the 120-day period, the State submits
13 to the Administrator proposed provisions of the implementation plan,
14 has all of the statutory authority necessary to implement the provi-
15 sions, and has proposed a regulation to adopt the provisions, the Ad-
16 ministrator may approve the provisions without regard to whether or
17 not the regulation had been issued as a final regulation by the State.

18 (2) EXPIRATION OF INTERIM APPROVAL.—

19 (A) IN GENERAL.—An interim approval under paragraph (1)
20 shall expire on the earlier of—

21 (i) the last day of the 18-month period beginning on the
22 date of the interim approval; or

23 (ii) the date of final approval.

24 (B) NO EXTENSION.—An interim approval may not be ex-
25 tended.

26 (3) FINAL APPROVAL.—The Administrator shall grant final approval
27 of a provision submitted under paragraph (1) based on the credits pro-
28 posed by the State during or after the period of interim approval if
29 data collected on the operation of the State program demonstrates that
30 the credits were appropriate and the provision is otherwise in compli-
31 ance with division A.

32 (4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any deter-
33 mination with respect to interim or full approval shall be based on the
34 elements of the program and shall not apply any automatic discount
35 because the program is decentralized or is a test-and-repair program.

36 **§299105. Provision enacted by the Transportation Equity**
37 **Act for the 21st Century**

38 (a) GRANTS.—Through grants under section 211103 of this title, the Ad-
39 ministrator shall use appropriated funds not later than fiscal year 2000 to
40 fund 100 percent of the cost of the establishment, purchase, operation, and
41 maintenance of a PM_{2.5} monitoring network necessary to implement the

1 NAAQSEs for PM_{2.5} under section 211109 of this title. Implementation
2 shall not result in a diversion or reprogramming of funds from other Fed-
3 eral, State, or local Clean Air Act activities.

4 (b) ESTABLISHMENT OF NETWORK.—EPA and the States, consistent
5 with their respective authorities under division A, shall ensure that the na-
6 tional network (designated in subsection (a)), which consists of the PM_{2.5}
7 monitors necessary to implement the NAAQSEs, is established.

8 **§ 299106. Provision enacted by the Departments of Veterans**
9 **Affairs and Housing and Urban Development, and**
10 **Independent Agencies Appropriations Act, 2004**

11 (a) CONSIDERATION OF SAFETY FACTORS.—In considering any request
12 from California to authorize California to adopt or enforce standards of
13 other requirements relating to the control of emissions from new nonroad
14 spark-ignition engines smaller than 50 horsepower, the Administrator shall
15 give appropriate consideration to safety factors (including the potential in-
16 creased risk of burn or fire) associated with compliance with the California
17 standard.

18 (b) REGULATION.—The Administrator shall promulgate regulations under
19 division A that contain standards to reduce emissions from new nonroad
20 spark-ignition engines smaller than 50 horsepower.

21 (c) PREEMPTION.—

22 (1) PROHIBITION.—No State or any political subdivision thereof may
23 adopt or attempt to enforce any standard or other requirement applica-
24 ble to spark-ignition engines smaller than 50 horsepower.

25 (2) EXCEPTION FOR CALIFORNIA.—The prohibition under paragraph
26 (1) does not apply to or restrict the authority granted to California
27 under section 221109(e) of this title.

28 (3) EXCEPTION FOR OTHER STATES.—The prohibition under para-
29 graph (1) does not apply to or restrict the authority of any State under
30 section 221109(e)(2)(B) of this title to enforce standards or other re-
31 quirements that were adopted by that State before September 1, 2003.

32 **§ 299107. Provisions enacted by the Energy Policy Act of**
33 **2005**

34 (a) SURVEY OF RENEWABLE FUEL MARKET.—

35 (1) SURVEY AND REPORT.—The Administrator, in consultation with
36 the Secretary of Energy acting through the Administrator of the En-
37 ergy Information Administration, shall annually—

38 (A) conduct, with respect to each conventional gasoline use area
39 and each reformulated gasoline use area in each State, a survey
40 to determine the market shares of—

41 (i) conventional gasoline containing ethanol;

1 (ii) reformulated gasoline containing ethanol;
 2 (iii) conventional gasoline containing renewable fuel; and
 3 (iv) reformulated gasoline containing renewable fuel; and
 4 (B) submit to Congress, and make publicly available, a report
 5 on the results of the survey under subparagraph (A).

6 (2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Ad-
 7 ministrator may require any refiner, blender, or importer to keep such
 8 records and make such reports as are necessary to ensure that the sur-
 9 vey conducted under paragraph (1) is accurate. The Administrator, to
 10 avoid duplicative requirements, shall rely, to the extent practicable, on
 11 existing reporting and recordkeeping requirements and other informa-
 12 tion available to the Administrator including gasoline distribution pat-
 13 terns that include multistate use areas.

14 (3) APPLICABLE LAW.—Activities carried out under this subsection
 15 shall be conducted in a manner designed to protect confidentiality of
 16 individual responses.

17 (b) MTBE CONTAMINATION CLAIMS FILED AFTER AUGUST 8, 2005.—
 18 Claims and legal actions filed after August 8, 2005, related to allegations
 19 involving actual or threatened contamination of methyl tertiary butyl ether
 20 may be removed to the appropriate United States district court.

21 (b) TITLE 18.—

22 (1) IN GENERAL.—Part I of title 18, United States Code, is amend-
 23 ed by inserting after chapter 33 the following:

24 **“CHAPTER 34—ENVIRONMENT**

“Sec.

“731. General provisions (subtitle I of title 55).

“732. Air (subtitle II of title 55).

25 **“§ 731. General provisions (subtitle I of title 55)**

26 “An officer or employee of the Environmental Protection Agency who is
 27 subject to, and knowingly violates, section 109104 of title 55 shall be im-
 28 prisoned not more than 1 year, fined under this title, or both.

29 **“§ 732. Air (subtitle II of title 55)**

30 “(a) OFFENSES UNDER SUBTITLE II OF TITLE 55 GENERALLY.—

31 “(1) DEFINITIONS.—In this subsection:

32 “(A) AIR POLLUTANT.—The term ‘air pollutant’ has the mean-
 33 ing given the term in section 201101 of title 55.

34 “(B) APPLICABLE IMPLEMENTATION PLAN.—The term ‘applica-
 35 ble implementation plan’ has the meaning given the term in sec-
 36 tion 201101 of title 55.

37 “(C) ORGANIZATION.—

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1 “(i) IN GENERAL.—The term ‘organization’ means a legal
2 entity, other than a government, established or organized for
3 any purpose.

4 “(ii) INCLUSIONS.—The term ‘organization’ includes a cor-
5 poration, company, association, firm, partnership, joint stock
6 company, foundation, institution, trust, society, union, or any
7 other association of persons.

8 “(D) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—The
9 term ‘period of federally assumed enforcement’ has the meaning
10 given the term in section 211113(a) of title 55.

11 “(E) PERSON.—

12 “(i) IN GENERAL.—The term ‘person’ includes, in addition
13 to the entities described in section 201101(19) of title 55, any
14 responsible corporate officer.

15 “(ii) FOR PURPOSES OF PARAGRAPHS (2), (3), (4), AND
16 (6).—Except in the case of knowing and willful violations, for
17 purposes of paragraphs (2), (3), (4), and (6), the term ‘per-
18 son’ does not include an employee who is carrying out the
19 normal activities of the employee and who is acting under or-
20 ders from the employer of the employee.

21 “(iii) FOR PURPOSES OF PARAGRAPH (5).—Except in the
22 case of knowing and willful violations, for purposes of para-
23 graph (5), the term ‘person’ does not include an employee
24 who is carrying out the normal activities of the employee and
25 who is not a part of senior management personnel or a cor-
26 porate officer.

27 “(F) SERIOUS BODILY INJURY.—The term ‘serious bodily in-
28 jury’ means bodily injury that involves—

29 “(i) a substantial risk of death;

30 “(ii) unconsciousness;

31 “(iii) extreme physical pain;

32 “(iv) protracted and obvious disfigurement; or

33 “(v) protracted loss or impairment of the function of a bod-
34 ily member, organ, or mental faculty.

35 “(2) OFFENSES.—

36 “(A) IN GENERAL.—A person that knowingly violates—

37 “(i) a requirement or prohibition of an applicable imple-
38 mentation plan—

39 “(I) during any period of federally assumed enforce-
40 ment; or

1 “(II) more than 30 days after having been notified by
2 the Administrator under section 211113(b)(1) of title 55
3 that the person is violating the requirement or prohibi-
4 tion;

5 “(ii)(I) section 203103, 211111(j), 211112, 211113(b)(1),
6 211114, 211128, 213107(a), 213109, 235102(a), or
7 235103(e) of title 55; or

8 “(II) subdivision 5 or 7 of division A of subtitle II of title
9 55;

10 “(iii) a requirement of a regulation, order, waiver, or per-
11 mit promulgated or approved under a section or subdivision
12 specified in clause (ii); or

13 “(iv) a requirement for the payment of a fee owed the
14 United States under division A of subtitle II of title 55 (other
15 than subdivision 3);

16 shall be imprisoned not more than 5 years, fined under this title,
17 or both.

18 “(B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFEND-
19 ERS.—If a conviction of any person under this paragraph is for
20 a violation committed after a 1st conviction of the person under
21 this paragraph, the maximum penalty shall be doubled with re-
22 spect to both the imprisonment and the fine.

23 “(3) NOTICES, APPLICATIONS, RECORDS, REPORTS, PLANS, OR
24 OTHER DOCUMENTS; REQUIRED NOTIFICATIONS AND REPORTS; RE-
25 QUIRED MONITORING DEVICES AND METHOD.—

26 “(A) IN GENERAL.—Any person that knowingly—

27 “(i) makes any false material statement, representation, or
28 certification in, or omits material information from, or alters,
29 conceals, or fails to file or maintain any notice, application,
30 record, report, plan, or other document required pursuant to
31 division A of subtitle II of title 55 to be filed or maintained
32 (whether with respect to the requirements imposed by the Ad-
33 ministrator or with respect to the requirements imposed by a
34 State);

35 “(ii) fails to notify or report as required under division A
36 of subtitle II of title 55; or

37 “(iii) falsifies, tampers with, renders inaccurate, or fails to
38 install any monitoring device or method required to be main-
39 tained or followed under division A of subtitle II of title 55;
40 shall be imprisoned not more than 2 years, fined under this title,
41 or both.

1 “(B) DOUBLING OF MAXIMUM PENALTY.—If a conviction of any
2 person under this paragraph is for a violation committed after a
3 1st conviction of the person under this paragraph, the maximum
4 penalty shall be doubled with respect to both the imprisonment
5 and the fine.

6 “(4) FEES.—

7 “(A) IN GENERAL.—Any person that knowingly fails to pay any
8 fee owed the United States under subdivision 1, 2, 5, 6, or 7 of
9 division A of subtitle II of title 55 shall be imprisoned not more
10 than 1 year, fined under this title, or both.

11 “(B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFEND-
12 ERS.—If a conviction of any person under this paragraph is for
13 a violation committed after a 1st conviction of the person under
14 this paragraph, the maximum penalty shall be doubled with re-
15 spect to both the imprisonment and the fine.

16 “(5) NEGLIGENT RELEASE.—

17 “(A) IN GENERAL.—Any person that—

18 “(i) negligently releases into the ambient air any hazardous
19 air pollutant listed pursuant to section 211112 of title 55 or
20 any extremely hazardous substance listed pursuant to section
21 302(a)(2) of the Emergency Planning and Community Right-
22 To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not
23 listed in section 211112 of title 55; and

24 “(ii) at the time negligently places another person in immi-
25 nent danger of death or serious bodily injury;

26 shall be imprisoned not more than 1 year, fined under this title,
27 or both.

28 “(B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFEND-
29 ERS.—If a conviction of any person under this paragraph is for
30 a violation committed after a 1st conviction of the person under
31 this paragraph, the maximum penalty shall be doubled with re-
32 spect to both the imprisonment and the fine.

33 “(C) RELEASE IN ACCORDANCE WITH STANDARD OR PERMIT.—

34 For any air pollutant for which the Administrator has set an emis-
35 sion standard or for any source for which a permit has been issued
36 under subdivision 6 of division A of subtitle II of title 55, a release
37 of the pollutant in accordance with that standard or permit shall
38 not constitute a violation of this paragraph.

39 “(6) KNOWING RELEASE.—

40 “(A) IN GENERAL.—Any person that—

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1 “(i) knowingly releases into the ambient air any hazardous
2 air pollutant listed pursuant to section 211112 of title 55 or
3 any extremely hazardous substance listed pursuant to section
4 302(a)(2) of the Emergency Planning and Community Right-
5 To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not
6 listed in section 211112 of title 55; and

7 “(ii) knows at the time that the person thereby places an-
8 other person in imminent danger of death or serious bodily
9 injury;

10 shall be imprisoned not more than 15 years, fined under this title,
11 or both.

12 “(B) ORGANIZATIONS.—Any organization that commits a viola-
13 tion under subparagraph (A) shall be subject to a fine of not more
14 than \$1,000,000 for each violation.

15 “(C) DOUBLING OF MAXIMUM PENALTY.—If a conviction of any
16 person under this paragraph is for a violation committed after a
17 1st conviction of the person under this paragraph, the maximum
18 penalty shall be doubled with respect to both the imprisonment
19 and the fine.

20 “(D) RELEASE IN ACCORDANCE WITH STANDARD OR PERMIT.—
21 For any air pollutant for which the Administrator has set an emis-
22 sion standard or for any source for which a permit has been issued
23 under subdivision 6 of division A of subtitle II of title 55, a release
24 of the pollutant in accordance with that standard or permit shall
25 not constitute a violation of this paragraph.

26 “(E) KNOWLEDGE.—

27 “(i) IN GENERAL.—Except as provided in clause (ii), in de-
28 termining whether a defendant that is an individual knew
29 that the violation placed another person in imminent danger
30 of death or serious bodily injury—

31 “(I) the defendant is responsible only for actual
32 awareness or actual belief possessed; and

33 “(II) knowledge possessed by a person other than the
34 defendant, but not by the defendant, may not be attrib-
35 uted to the defendant.

36 “(ii) CIRCUMSTANTIAL EVIDENCE.—In proving a defend-
37 ant’s possession of actual knowledge, circumstantial evidence
38 may be used, including evidence that the defendant took af-
39 firmative steps to be shielded from relevant information.

40 “(F) AFFIRMATIVE DEFENSE.—

1 “(i) IN GENERAL.—It is an affirmative defense to a pros-
2 ecution under this paragraph that—

3 “ (I) the conduct charged was freely consented to by
4 the person endangered;

5 “ (II) the danger and conduct charged were reasonably
6 foreseeable hazards of—

7 “ (aa) an occupation, a business, or a profession;
8 or

9 “ (bb) medical treatment or medical or scientific
10 experimentation conducted by professionally ap-
11 proved methods; and

12 “ (III) the person endangered had been made aware of
13 the risks involved prior to giving consent.

14 “(ii) PREPONDERANCE OF THE EVIDENCE.—The defendant
15 may establish an affirmative defense under this subparagraph
16 by a preponderance of the evidence.

17 “(G) OTHER DEFENSES AND BARS TO PROSECUTION; CONCEPTS
18 OF JUSTIFICATION AND EXCUSE.—All general defenses, affirma-
19 tive defenses, and bars to prosecution that may apply with respect
20 to other Federal criminal offenses may apply under subparagraph
21 (A) and shall be determined by the courts of the United States
22 according to the principles of common law as they may be inter-
23 preted in the light of reason and experience. Concepts of justifica-
24 tion and excuse applicable under this section may be developed in
25 the light of reason and experience.

26 “(b) UNAUTHORIZED DISCLOSURE OF INFORMATION.—

27 “(1) DEFINITIONS.—In this subsection:

28 “ (A) COVERED PERSON.—The term ‘covered person’ has the
29 meaning given the term in section 211112(q)(7)(D)(i) of title 55.

30 “ (B) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The
31 term ‘off-site consequence analysis information’ has the meaning
32 given the term in section 211112(q)(7)(D)(i) of title 55).

33 “ (C) STATIONARY SOURCE.—The term ‘stationary source’ has
34 the meaning given the term in section 211112(q)(1) of title 55.

35 “(2) OFFENSE.—Notwithstanding section 211113 of title 55 and
36 subsection (a) of this section, a covered person that willfully violates
37 a restriction or prohibition established by subparagraph (D) of section
38 211112(q)(7) of title 55 (including the regulations promulgated under
39 clause (ii) of that subparagraph) shall be fined for an infraction under
40 section 3571 of this title (but shall not be subject to imprisonment) for
41 each unauthorized disclosure of off-site consequence analysis informa-

1 tion, except that section 3571(d) of this title shall not apply to a case
 2 in which the offense results in pecuniary loss unless the defendant
 3 knew that the loss would occur. The disclosure of off-site consequence
 4 analysis information for each specific stationary source shall be consid-
 5 ered a separate offense. The total of all penalties that may be imposed
 6 on a single person or organization under this subsection shall not ex-
 7 ceed \$1,000,000 for violations committed during any 1 calendar year.”.

8 (2) CONFORMING AMENDMENT.—The table of contents of part I of
 9 title 18, United States Code, is amended by inserting after the item
 10 relating to chapter 33 the following:

“**34. Environment** **731**.”

11 **SEC. 4. CONFORMING AMENDMENTS.**

12 (a) TITLE 16.—The 1st section of the Act of August 1, 1958 (16 U.S.C.
 13 742d–1), is amended by striking “Secretary of the Interior” and inserting
 14 “Administrator of the Environmental Protection Agency”.

15 (b) TITLE 21.—

16 (1) Section 406 of the Federal Food, Drug, and Cosmetic Act (21
 17 U.S.C. 346) is amended—

18 (A) by striking “Any poisonous” and inserting “(a) IN GEN-
 19 ERAL.—Any poisonous”; and

20 (B) by adding at the end the following:

21 “(b) TOLERANCES FOR PESTICIDE CHEMICALS.—

22 “(1) IN GENERAL.—The function of establishing tolerances for pes-
 23 ticide chemicals for purposes of subsection (a) shall be carried out by
 24 the Administrator.

25 “(2) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the
 26 function of the Administrator under paragraph (1), the Administrator
 27 has authority to—

28 “(A) monitor compliance with the tolerances and the effective-
 29 ness of surveillance and enforcement; and

30 “(B) provide technical assistance to the States and conduct re-
 31 search under this Act and the Public Health Service Act (42
 32 U.S.C. 201 et seq.).

33 “(3) INCIDENTAL FUNCTIONS.—The function of the Administrator
 34 under paragraph (1) includes such functions as are incidental to or
 35 necessary for the performance by or under the Administrator of the
 36 function described in paragraph (1), including authority provided by
 37 law to prescribe regulations relating primarily to the function.”.

38 (2) Section 408 of the Federal Food, Drug, and Cosmetic Act (21
 39 U.S.C. 346a) is amended—

1 (A) in subsection (p)(2), by striking “section 8 of the Environ-
2 mental Research, Development, and Demonstration Act of 1978
3 (42 U.S.C. 4365),” and inserting “section 109102 of title 55,
4 United States Code,”;

5 (B) by redesignating subsection (s) as subsection (t); and

6 (C) by inserting after subsection (r) the following:

7 “(s) AUTHORITY OF THE ADMINISTRATOR.—

8 “(1) IN GENERAL.—In carrying out the function of establishing tol-
9 erances for pesticide chemicals for purposes of this section, the Admin-
10 istrator has authority to—

11 “(A) monitor compliance with the tolerances and the effective-
12 ness of surveillance and enforcement; and

13 “(B) provide technical assistance to the States and conduct re-
14 search under this Act and the Public Health Service Act (42
15 U.S.C. 201 et seq.).

16 “(2) INCIDENTAL FUNCTIONS.—The function of the Administrator
17 described in paragraph (1) includes such functions as are incidental to
18 or necessary for the performance by or under the Administrator of the
19 function, including authority provided by law to prescribe regulations
20 relating primarily to the function.”.

21 (e) TITLE 26.—Section 169(d) of the Internal Revenue Code of 1986 (26
22 U.S.C. 169(d)) is amended—

23 (1) in paragraph (1)(B), by striking “the Clean Air Act, as amended
24 (42 U.S.C. 1857 et seq.);” and inserting “division A of subtitle II of
25 title 55, United States Code;”;

26 (2) in paragraph (2), by striking “section 302(b) of the Clean Air
27 Act.” and inserting “section 201101 of title 55, United States Code.”;
28 and

29 (3) in paragraph (3), by striking “means, in the case of water pollu-
30 tion, the Secretary of the Interior and, in the case of air pollution, the
31 Secretary of Health and Human Services” and inserting “means the
32 Administrator of the Environmental Protection Agency”.

33 (d) TITLE 42.—Section 274h of the Atomic Energy Act of 1954 (42
34 U.S.C. 2021(h)) is amended—

35 (1) by striking the 1st and 4th sentences;

36 (2) in the 2d sentence, by striking “Council” and inserting “Admin-
37 istrator of the Environmental Protection Agency (referred to in this
38 subsection as the ‘Administrator’)”; and

39 (3) by striking “Council” each place it appears and inserting “Ad-
40 ministrator”.

1 **SEC. 5. TRANSITIONAL AND SAVINGS PROVISIONS.**

2 (a) DEFINITIONS.—In this section:

3 (1) RESTATED PROVISION.—The term “restated provision” means a
4 provision of title 18 or 55, United States Code, that is enacted by sec-
5 tion 3.

6 (2) SOURCE PROVISION.—The term “source provision” means a pro-
7 vision of law that is replaced by a restated provision.

8 (b) CUTOFF DATE.—The restated provisions replace certain provisions of
9 law enacted on or before June 14, 2017. If a law enacted after that date
10 amends or repeals a source provision, that law is deemed to amend or re-
11 peal, as the case may be, the corresponding restated provision. If a law en-
12 acted after that date is otherwise inconsistent with a restated provision or
13 a provision of this Act, that law supersedes the restated provision or provi-
14 sion of this Act to the extent of the inconsistency.

15 (c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—A restated provision
16 is deemed to have been enacted on the date of enactment of the correspond-
17 ing source provision.

18 (d) REFERENCES TO RESTATED PROVISIONS.—A reference to a restated
19 provision is deemed to refer to the corresponding source provision.

20 (e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source pro-
21 vision, including a reference in a regulation, order, or other law, is deemed
22 to refer to the corresponding restated provision.

23 (f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A
24 regulation, order, or other administrative action in effect under a source
25 provision continues in effect under the corresponding restated provision.

26 (g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or
27 an offense committed under a source provision is deemed to have been taken
28 or committed under the corresponding restated provision.

29 **SEC. 6. REPEALS.**

30 The following provisions of law are repealed, except with respect to rights
31 and duties that matured, penalties that were incurred, or proceedings that
32 were begun before the date of enactment of this Act:

Schedule of Laws Repealed

Act	Section	United States Code Former Classification
Clean Air Act (Act of July 14, 1955, ch. 360)	101	42 U.S.C. 7401.
	102	42 U.S.C. 7402.
	103	42 U.S.C. 7403.
	104	42 U.S.C. 7404.
	105	42 U.S.C. 7405.
	106	42 U.S.C. 7406.
	107	42 U.S.C. 7407.
	108	42 U.S.C. 7408.
	109	42 U.S.C. 7409.
	110	42 U.S.C. 7410.
	111	42 U.S.C. 7411.
	112	42 U.S.C. 7412.

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Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	113	42 U.S.C. 7413.
	114	42 U.S.C. 7414.
	115	42 U.S.C. 7415.
	116	42 U.S.C. 7416.
	117	42 U.S.C. 7417.
	118	42 U.S.C. 7418.
	119	42 U.S.C. 7419.
	120	42 U.S.C. 7420.
	121	42 U.S.C. 7421.
	122	42 U.S.C. 7422.
	123	42 U.S.C. 7423.
	124	42 U.S.C. 7424.
	125	42 U.S.C. 7425.
	126	42 U.S.C. 7426.
	127	42 U.S.C. 7427.
	128	42 U.S.C. 7428.
	129	42 U.S.C. 7429.
	130	42 U.S.C. 7430.
	131	42 U.S.C. 7431.
	160	42 U.S.C. 7470.
	161	42 U.S.C. 7471.
	162	42 U.S.C. 7472.
	163	42 U.S.C. 7473.
	164	42 U.S.C. 7474.
	165	42 U.S.C. 7475.
	166	42 U.S.C. 7476.
	167	42 U.S.C. 7477.
	168	42 U.S.C. 7478.
	169	42 U.S.C. 7479.
	169A	42 U.S.C. 7491.
	169B	42 U.S.C. 7492.
	171	42 U.S.C. 7501.
	172	42 U.S.C. 7502.
	173	42 U.S.C. 7503.
	174	42 U.S.C. 7504.
	175	42 U.S.C. 7505.
	175A	42 U.S.C. 7505a.
	176	42 U.S.C. 7506.
	176A	42 U.S.C. 7506a.
	177	42 U.S.C. 7507.
	178	42 U.S.C. 7508.
	179	42 U.S.C. 7509.
	179B	42 U.S.C. 7509a.
	181	42 U.S.C. 7511.
	182	42 U.S.C. 7511a.
	183	42 U.S.C. 7511b.
	184	42 U.S.C. 7511c.
	185	42 U.S.C. 7511d.
	185A	42 U.S.C. 7511e.
	185B	42 U.S.C. 7511f.
	186	42 U.S.C. 7512.
	187	42 U.S.C. 7512a.
	188	42 U.S.C. 7513.
	189	42 U.S.C. 7513a.
	190	42 U.S.C. 7513b.
	191	42 U.S.C. 7514.
	192	42 U.S.C. 7514a.
	193	42 U.S.C. 7515.
	202	42 U.S.C. 7521.
	203	42 U.S.C. 7522.
	204	42 U.S.C. 7523.
	205	42 U.S.C. 7524.
	206	42 U.S.C. 7525.
	207	42 U.S.C. 7541.
	208	42 U.S.C. 7542.
	209	42 U.S.C. 7543.
	210	42 U.S.C. 7544.
	211	42 U.S.C. 7545.
	212	42 U.S.C. 7546.
	213	42 U.S.C. 7547.
	214	42 U.S.C. 7548.
	215	42 U.S.C. 7549.
	216	42 U.S.C. 7550.
	217	42 U.S.C. 7552.
	218	42 U.S.C. 7553.
	219	42 U.S.C. 7554.
	231	42 U.S.C. 7571.
	232	42 U.S.C. 7572.
	233	42 U.S.C. 7573.
	234	42 U.S.C. 7574.
	241	42 U.S.C. 7581.
	242	42 U.S.C. 7582.
	243	42 U.S.C. 7583.
	244	42 U.S.C. 7584.
	245	42 U.S.C. 7585.
	246	42 U.S.C. 7586.
	247	42 U.S.C. 7587.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	248	42 U.S.C. 7588.
	249	42 U.S.C. 7589.
	250	42 U.S.C. 7590.
	301	42 U.S.C. 7601.
	302	42 U.S.C. 7602.
	303	42 U.S.C. 7603.
	304	42 U.S.C. 7604.
	305	42 U.S.C. 7605.
	306	42 U.S.C. 7606.
	307	42 U.S.C. 7607.
	308	42 U.S.C. 7608.
	309	42 U.S.C. 7609.
	310	42 U.S.C. 7610.
	311	42 U.S.C. 7611.
	312	42 U.S.C. 7612.
	314	42 U.S.C. 7614.
	315	42 U.S.C. 7615.
	316	42 U.S.C. 7616.
	317	42 U.S.C. 7617.
	319	42 U.S.C. 7619.
	320	42 U.S.C. 7620.
	321	42 U.S.C. 7621.
	322	42 U.S.C. 7622.
	323	42 U.S.C. 7624.
	324	42 U.S.C. 7625.
	325	42 U.S.C. 7625-1.
	326	42 U.S.C. 7625a.
	327	42 U.S.C. 7626.
	328	42 U.S.C. 7627.
	329	42 U.S.C. 7628.
	402 (as added by Pub. L. 91-604)	42 U.S.C. 7641.
	403 (as added by Pub. L. 91-604)	42 U.S.C. 7642.
	401 (as added by Pub. L. 101-549)	42 U.S.C. 7651.
	402 (as added by Pub. L. 101-549)	42 U.S.C. 7651a.
	403 (as added by Pub. L. 101-549)	42 U.S.C. 7651b.
	404	42 U.S.C. 7651e.
	405	42 U.S.C. 7651d.
	406	42 U.S.C. 7651e.
	407	42 U.S.C. 7651f.
	408	42 U.S.C. 7651g.
	409	42 U.S.C. 7651h.
	410	42 U.S.C. 7651i.
	411	42 U.S.C. 7651j.
	412	42 U.S.C. 7651k.
	413	42 U.S.C. 7651l.
	414	42 U.S.C. 7651m.
	415	42 U.S.C. 7651n.
	416	42 U.S.C. 7651o.
	501	42 U.S.C. 7661.
	502	42 U.S.C. 7661a.
	503	42 U.S.C. 7661b.
	504	42 U.S.C. 7661e.
	505	42 U.S.C. 7661d.
	506	42 U.S.C. 7661e.
	507	42 U.S.C. 7661f.
	601	42 U.S.C. 7671.
	602	42 U.S.C. 7671a.
	603	42 U.S.C. 7671b.
	604	42 U.S.C. 7671e.
	605	42 U.S.C. 7671d.
	606	42 U.S.C. 7671e.
	607	42 U.S.C. 7671f.
	608	42 U.S.C. 7671g.
	609	42 U.S.C. 7671h.
	610	42 U.S.C. 7671i.
	611	42 U.S.C. 7671j.
	612	42 U.S.C. 7671k.
	613	42 U.S.C. 7671l.
	614	42 U.S.C. 7671m.
	615	42 U.S.C. 7671n.
	616	42 U.S.C. 7671o.
	617	42 U.S.C. 7671p.
	618	42 U.S.C. 7671q.
National Environmental Policy Act of 1969 (Public Law 91-190)	2	42 U.S.C. 4321.
	101	42 U.S.C. 4331.
	102	42 U.S.C. 4332.
	103	42 U.S.C. 4333.
	104	42 U.S.C. 4334.
	105	42 U.S.C. 4335.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	201	42 U.S.C. 4341.
	202	42 U.S.C. 4342.
	203	42 U.S.C. 4343.
	204	42 U.S.C. 4344.
	205	42 U.S.C. 4345.
	206	42 U.S.C. 4346.
	207	42 U.S.C. 4346a.
	208	42 U.S.C. 4346b.
	209	42 U.S.C. 4347.
Environmental Quality Improvement Act of 1970 (Public Law 91-224)	202	42 U.S.C. 4371.
	203	42 U.S.C. 4372.
	204	42 U.S.C. 4373.
	205	42 U.S.C. 4374.
	206	42 U.S.C. 4375.
Reorganization Plan No. 3 of 1970	1	42 U.S.C. 4321 note; 5 U.S.C. App.
	2	42 U.S.C. 4321; 5 U.S.C. App.
	3	42 U.S.C. 4321; 5 U.S.C. App.
	4	42 U.S.C. 4321; 5 U.S.C. App.
	5	42 U.S.C. 4321; 5 U.S.C. App.
	6	42 U.S.C. 4321; 5 U.S.C. App.
	7	42 U.S.C. 4321; 5 U.S.C. App.
Public Law 95-95	203	42 U.S.C. 7551.
	402	42 U.S.C. 4362.
	403(b)	42 U.S.C. 7401 note.
	403(c)	42 U.S.C. 7401 note.
	403(d)	42 U.S.C. 7501 note.
	403(f)	42 U.S.C. 7421 note.
	404	42 U.S.C. 7401 note.
	405	42 U.S.C. 7401 note.
	406	42 U.S.C. 7401 note.
Public Law 95-134	502	42 U.S.C. 4368b.
Public Law 95-155	6	42 U.S.C. 4363 note.
	7	42 U.S.C. 4364.
	8	42 U.S.C. 4365.
	9	42 U.S.C. 4366.
	10	42 U.S.C. 4361b.
	12	42 U.S.C. 4367.
Public Law 95-477	3(d)	42 U.S.C. 4368.
	5	42 U.S.C. 4369.
	6	42 U.S.C. 4361e.
Public Law 95-623	9	42 U.S.C. 4362a.
Public Law 96-229	2(d)	42 U.S.C. 4363a.
	2(e)	42 U.S.C. 4363 note.
	4	42 U.S.C. 4369a.
	5	42 U.S.C. 4370.
Acid Precipitation Act of 1980 (Public Law 96-294)	702	42 U.S.C. 8901.
	703	42 U.S.C. 8902.
	704	42 U.S.C. 8903.
	705	42 U.S.C. 8904.
	706	42 U.S.C. 8905.
	711	42 U.S.C. 8911.
	712	42 U.S.C. 8912.
Public Law 96-569	2(f)	42 U.S.C. 4363.
Public Law 98-80	1	42 U.S.C. 4370a.
Public Law 98-313	2	42 U.S.C. 4368a.
Public Law 99-499	118(k)	42 U.S.C. 7401 note.
	118(n)	42 U.S.C. 7401 note.
	401	42 U.S.C. 7401 note.

Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	402	42 U.S.C. 7401 note.
	403	42 U.S.C. 7401 note.
	404	42 U.S.C. 7401 note.
	405	42 U.S.C. 7401 note.
Public Law 101-144	title III, 1st paragraph under heading "ADMINISTRATIVE PROVISIONS", at 103 Stat. 858.	42 U.S.C. 4370b.
Public Law 101-508	6501	42 U.S.C. 4370e.
Public Law 101-549	233	42 U.S.C. 7571 note.
	305(c)	42 U.S.C. 7429 note.
	405	42 U.S.C. 7403 note.
	406	42 U.S.C. 7651 note.
	711(a)	42 U.S.C. 7401 note.
	711(b)	42 U.S.C. 7401 note.
	810	42 U.S.C. 7401 note.
	821	42 U.S.C. 7651k note.
	901(g)	42 U.S.C. 7403 note.
	1001	42 U.S.C. 7601 note.
	1002	42 U.S.C. 7601 note.
Public Law 101-593	201	42 U.S.C. 4321 note.
	202	42 U.S.C. 4321 note.
	203	42 U.S.C. 4321 note.
	204	42 U.S.C. 4321 note.
	205	42 U.S.C. 4321 note.
Public Law 101-617	4	42 U.S.C. 4366a.
Public Law 102-389	title III, 1st paragraph under heading "ADMINISTRATIVE PROVISIONS", at 106 Stat. 1602.	42 U.S.C. 4370d.
Public Law 104-59	348	42 U.S.C. 7511a note.
Public Law 104-88	401	42 U.S.C. 4332 note.
Public Law 104-204	title III, paragraph under heading "WORKING CAPITAL FUND (INCLUDING TRANSFER OF FUNDS)", at 110 Stat. 2912.	42 U.S.C. 4370e.
Public Law 105-178	6101	42 U.S.C. 7407 note.
	6102	42 U.S.C. 7407 note.
	6103	42 U.S.C. 7407 note.
Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2001 (Public Law 106-377)	title III, 1st paragraph under heading "ADMINISTRATIVE PROVISIONS", at 114 Stat. 1441-A.	42 U.S.C. 4370f.
Public Law 106-398	317	42 U.S.C. 4321 note.
Public Law 108-199	425(b)	42 U.S.C. 7407 note.
	428(a)	not classified.
	428(b)	42 U.S.C. 7547 note.
	428(c) through (c)	not classified.
Public Law 109-58	1501(d)	42 U.S.C. 7545 note.
	1503	42 U.S.C. 7545 note.

