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(Original Signature of Member)

113TH 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

, 2013

\_\_\_\_\_ 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; conformity with original intent.
- 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) IN GENERAL.—The restatement of existing law enacted by this Act does not change the meaning or effect of the existing law. The restatement consolidates various provisions that were enacted separately over a period of many years, reorganizing them, conforming style and terminology, modernizing obsolete language, and correcting drafting errors. These changes serve to remove ambiguities, contradictions, and other imperfections, but they do not change the meaning or effect of the existing law or impair the precedential value of earlier judicial decisions or other interpretations.

(2) RULE OF CONSTRUCTION.—

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

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

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

Title 55, United States Code, “Environment”, is enacted as follows:

**TITLE 55—ENVIRONMENT**

**Subtitle I—General Provisions**

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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.

20           **§ 103103. Deputy Administrator**

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

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

3 (c) FUNCTIONS.—The Deputy Administrator shall—

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

6 (2) act as Administrator during the absence or disability of the Ad-  
7 ministrator or in the event of a vacancy in the office of Administrator.

#### 8 **§ 103104. Assistant Administrators**

9 (a) IN GENERAL.—

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

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

15 (3) FUNCTIONS.—An Assistant Administrator shall perform such  
16 functions as the Administrator shall from time to time assign or dele-  
17 gate to the Assistant Administrator.

18 (b) ADDITIONAL ASSISTANT ADMINISTRATORS.—

19 (1) IN GENERAL.—The President, by and with the advice and con-  
20 sent of the Senate, may appoint 3 Assistant Administrators of the En-  
21 vironmental Protection Agency in addition to—

22 (A) the 5 Assistant Administrators provided for in subsection

23 (a);

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

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

29 (2) DUTIES.—An Assistant Administrator appointed under para-  
30 graph (1) shall perform such duties as the Administrator may pre-  
31 scribe.

#### 32 **§ 103105. Functions**

33 (a) IN GENERAL.—In addition to any function assigned specifically to the  
34 Administrator under any other provision of law, the Administrator shall per-  
35 form the following functions:

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

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

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

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

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

### 13 **§ 103106. Office of Criminal Investigations**

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

16 (1) shall be a position in the competitive service (as defined in sec-  
17 tion 2102 of title 5) or a career reserved position (as defined in section  
18 3132(a) of that title); and

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

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

### 23 **§ 103107. Civil investigators**

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

### 28 **§ 103108. National Enforcement Training Institute**

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

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

### 34 **§ 103109. Availability of certain accounts**

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

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

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

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

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

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

## 16 **Chapter 105—National Environmental** 17 **Policy** 18 **Subchapter I—Purposes**

Sec.

105101. Purposes.

## **Subchapter II—Policies and Goals**

105201. Declaration of national environmental policy.

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

## **Subchapter III—Council on Environmental** **Quality**

105301. Definition of Council.

105302. Establishment.

105303. Employment of personnel, experts, and consultants.

105304. Duties and functions.

105305. Consultation with Citizens’ Advisory Committee on Environmental Quality and other  
representatives.

105306. Full-time service; compensation.

105307. Acceptance of travel reimbursement.

105308. Expenditures for international activities.

105309. Authorization of appropriations.

## 19 **Subchapter I—Purposes**

### 20 **§ 105101. Purposes**

21 The purposes of this chapter are—

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

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

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

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

## 2 **Subchapter II—Policies and Goals**

### 3 **§ 105201. Declaration of national environmental policy**

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

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

23 (1) fulfill the responsibilities of each generation as trustee of the en-  
24 vironment for succeeding generations;

25 (2) ensure for all Americans safe, healthful, productive, and esthet-  
26 ically and culturally pleasing surroundings;

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

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

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

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

38 (c) HEALTHFUL ENVIRONMENT; RESPONSIBILITY OF EACH PERSON.—  
39 Congress recognizes that each person should enjoy a healthful environment  
40 and that each person has a responsibility to contribute to the preservation  
41 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.

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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 (e) 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) ACCELERATED DECISIONMAKING.—

24 (1) IN GENERAL.—In preparing a final environmental impact state-  
25 ment under this section, if the lead agency modifies the statement in  
26 response to comments that are minor and are confined to factual cor-  
27 rections or explanations of why the comments do not warrant addi-  
28 tional agency response, the lead agency may write on an errata sheet  
29 attached to the statement, instead of rewriting the draft statement, if  
30 the errata sheet—

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

33 (B) if appropriate, indicates the circumstances that would trig-  
34 ger a reappraisal or further response by the lead agency.

35 (2) SINGLE DOCUMENT.—To the maximum extent practicable, the  
36 lead agency shall expeditiously develop a single document that consists  
37 of a final environmental impact statement and a record of decision, un-  
38 less—

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

1 (B) there are significant new circumstances or information rel-  
2 evant to environmental concerns and that bear on the proposed ac-  
3 tion or the impacts of the proposed action.

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

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

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

8 or

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

### 11 **Subchapter III—Council on Environmental** 12 **Policy**

#### 13 **§ 105301. Definition of Council**

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

#### 16 **§ 105302. Establishment**

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

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

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

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

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

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

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

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

#### 35 **§ 105303. Employment of personnel, experts, and consult-** 36 **ants**

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

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

## 12

1 carrying out of its functions under this chapter, in accordance with section  
2 3109 of title 5 (but without regard to the last sentence of subsection (b)  
3 of that section).

4 (e) VOLUNTARY AND UNCOMPENSATED SERVICES.—Notwithstanding sec-  
5 tion 1342 of title 31, the Council may accept and employ voluntary and un-  
6 compensated services in furtherance of the purposes of the Council.

7 **§ 105304. Duties and functions**

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

9 (1) to—

10 (A) gather timely and authoritative information concerning the  
11 conditions and trends in the quality of the environment, both cur-  
12 rent and prospective;

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

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

19 (2) to—

20 (A) review and appraise the various programs and activities of  
21 the Federal Government in light of the policy set forth in sub-  
22 chapter II for the purpose of determining the extent to which  
23 those programs and activities are contributing to the achievement  
24 of that policy; and

25 (B) make recommendations to the President with respect there-  
26 to;

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

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

33 (5) to—

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

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

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

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

4 **§ 105305. Consultation with Citizens' Advisory Committee**  
5 **on Environmental Quality and other representa-**  
6 **tives**

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

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

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

18 **§ 105306. Full-time service; compensation**

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

20 (b) COMPENSATION.—

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

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

27 **§ 105307. Acceptance of travel reimbursement**

28 The Council may accept reimbursement from any private nonprofit orga-  
29 nization or from any Federal, State, or local government agency for the rea-  
30 sonable travel expenses incurred by an officer or employee of the Council  
31 in connection with the officer or employee's attendance at any conference,  
32 seminar, or similar meeting conducted for the benefit of the Council.

33 **§ 105308. Expenditures for international activities**

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

36 (1) international travel;

37 (2) activities in implementation of international agreements; and

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

1    **§ 105309. Authorization of appropriations**

2       There is authorized to be appropriated to carry out this chapter  
3    \$1,000,000 for each fiscal year.

4                   **Chapter 107—Environmental Quality**  
5                   **Improvement**

Sec.

107101. Definitions.

107102. Findings, declarations, and purposes.

107103. Office of Environmental Quality.

107104. Office of Environmental Quality Management Fund.

6    **§ 107101. Definitions**

7       In this chapter:

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

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

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

15    **§ 107102. Findings, declarations, and purposes**

16       (a) FINDINGS.—Congress finds that—

17           (1) man has caused changes in the environment;

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

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

22       (b) DECLARATIONS.—

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

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

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

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

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

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

4 **§ 107103. Office of Environmental Quality**

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

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

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

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

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

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

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

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

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

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

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

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

7 (6) assisting Federal agencies in the development and interrelation-  
8 ship of environmental quality criteria and standards established  
9 through the Federal Government; and

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

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

16 **§ 107104. Office of Environmental Quality Management**  
17 **Fund**

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

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

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

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

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

31 **Chapter 109—Environmental Research,**  
32 **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.

1 **Subchapter I—Provisions Enacted by the**  
2 **Environmental Research, Development,**  
3 **and Demonstration Authorization Act of**  
4 **1978**

5 **§ 109101. Expenditure of funds for research and develop-**  
6 **ment related to regulatory program activities**

7 (a) DEFINITION OF PROGRAM OFFICE.—In this section, the term “pro-

8 gram office” means—

- 9 (1) the Office of Air and Waste Management, for air quality activi-
- 10 ties;
- 11 (2) the Office of Water and Hazardous Materials, for water quality
- 12 activities and water supply activities;
- 13 (3) the Office of Pesticides, for environmental effects of pesticides;
- 14 (4) the Office of Solid Waste, for solid waste activities;
- 15 (5) the Office of Toxic Substances, for toxic substance activities;
- 16 (6) the Office of Radiation Programs, for radiation activities; and
- 17 (7) the Office of Noise Abatement and Control, for noise activities.

18 (b) REQUIREMENT.—The Administrator shall ensure that the expenditure

19 of any funds appropriated under this subchapter or any other provision of

20 law for environmental research and development related to regulatory pro-

21 gram activities shall be coordinated with, and reflect the research needs and

22 priorities of, the program offices and the overall research needs and prior-

23 ities of EPA.

1     **§ 109102. Science Advisory Board**

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

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

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

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

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

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

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

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

39      (e) MEMBER COMMITTEES AND INVESTIGATIVE PANELS.—The Board  
40    may constitute such member committees and investigative panels as the Ad-  
41    ministrator and the Board find necessary to carry out this section. Each

1 such member committee or investigative panel shall be chaired by a member  
2 of the Board.

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

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

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

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

20 **§ 109103. Identification and coordination of research, devel-**  
21 **opment, and demonstration activities**

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

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

27 (A) to identify environmental research, development, and dem-  
28 onstration activities, within and outside the Federal Government,  
29 that may need to be more effectively coordinated to minimize un-  
30 necessary duplication of programs, projects, and research facilities;

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

35 (C) to determine the additional legislative actions that would be  
36 needed to ensure such coordination to the maximum extent pos-  
37 sible.

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

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

5 **§ 109104. Reporting of financial interests of EPA officers**  
6 **and employees**

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

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

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

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

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

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

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

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

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

30 (e) VIOLATIONS; PENALTIES.—An officer or employee who is subject to,  
31 and knowingly violates, this section, shall be fined not more than \$2,500,  
32 imprisoned not more than 1 year, or both.

33 **Subchapter II—Provisions Enacted by the**  
34 **Environmental Research, Development,**  
35 **and Demonstration Authorization Act of**  
36 **1979**

37 **§ 109201. Grants to qualified citizens groups**

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

41 (1) has an area-based focus;

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

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

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

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

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

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

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

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

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

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

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

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

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

1     **§ 109202. Miscellaneous reports**

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

8         (b) INFORMATION WITH RESPECT TO MATTERS FALLING WITHIN OR  
9     RELATED TO COMMITTEE JURISDICTION.—The Administrator shall keep  
10    the Committee on Science and Technology of the House of Representatives  
11    and the Committee on Environment and Public Works of the Senate fully  
12    and currently informed with respect to matters falling within or related to  
13    the jurisdiction of the committees.

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

20     **§ 109203. Staff management**

21        (a) APPOINTMENTS FOR EDUCATIONAL PROGRAMS.—

22            (1) IN GENERAL.—The Administrator may select and appoint up to  
23            75 full-time permanent staff members in the Office of Research and  
24            Development to pursue full-time educational programs for the purpose  
25            of—

26                    (A) securing an advanced degree; or

27                    (B) securing academic training;

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

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

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

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

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

1 (b) POST-DOCTORAL RESEARCH FELLOWS.—

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

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

8 (c) NON-GOVERNMENT RESEARCH ASSOCIATES.—

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

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

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

19 **Subchapter III—Provisions Enacted by the**  
20 **Environmental Research, Development,**  
21 **and Demonstration Authorization Act of**  
22 **1980**

23 **§ 109301. Energy-related pollution control technologies and**  
24 **environmental protection projects**

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

29 (1) division A of subtitle II;

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

32 (3) other pertinent pollution control statutes.

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

1    **§ 109302. Information about environmental research and de-**  
2                                    **velopment activities**

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

6    **§ 109303. Reimbursement for use of facilities**

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

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

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

19    **Subchapter IV—Provision Enacted by the**  
20                                    **Environmental Research, Development,**  
21                                    **and Demonstration Authorization Act of**  
22                                    **1981**

23    **§ 109401. Continuing and long-term environmental research**  
24                                    **and development**

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

- 28           (1) air quality activities under division A of subtitle II;
- 29           (2) water quality activities under the Federal Water Pollution Con-  
30 trol Act (33 U.S.C. 1251 et seq.);
- 31           (3) water supply activities under the Safe Drinking Water Act (42  
32 U.S.C. 300f et seq.);
- 33           (4) solid waste activities under the Solid Waste Disposal Act (42  
34 U.S.C. 6901 et seq.);
- 35           (5) pesticide activities under the Federal Insecticide, Fungicide, and  
36 Rodenticide Act (7 U.S.C. 136 et seq.);
- 37           (6) radiation activities under the Public Health Service Act (42  
38 U.S.C. 201 et seq.);
- 39           (7) interdisciplinary activities in the Health and Ecological Effects  
40 program and the Monitoring and Technical Support program;



1 (8) toxic substance activities under the Toxic Substances Control Act  
2 (15 U.S.C. 2601 et seq.); and

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

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

## 10 **Chapter 111—Provisions Applicable to** 11 **More Than 1 Subtitle or Other Law**

Sec.

111101. Oklahoma Indian country.

### 12 **§ 111101. Oklahoma Indian country**

13 (a) ADMINISTRATION OF STATE PROGRAMS BY THE STATE.—Notwith-  
14 standing any other provision of law, if the Administrator determines that  
15 a regulatory program submitted by the State of Oklahoma for approval by  
16 the Administrator under a law administered by the Administrator meets ap-  
17 plicable requirements of the law, and the Administrator approves the State  
18 to administer the State program under the law with respect to areas in the  
19 State that are not Indian country, on request of the State, the Adminis-  
20 trator shall approve the State to administer the State program in the areas  
21 of the State that are in Indian country, without any further demonstration  
22 of authority by the State.

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

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

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

## 34 **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.

1     **§ 199101. Interagency cooperation on prevention of environ-**  
2                     **mental cancer and heart and lung disease**

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

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

7                 (1) shall include—

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

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

15                 (2) shall be chaired by the Administrator.

16             (c) DUTIES.—The Task Force shall—

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

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

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

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

30     **§ 199102. Utilization of talents of older Americans in**  
31                     **projects of pollution prevention, abatement, and**  
32                     **control**

33             (a) TECHNICAL ASSISTANCE TO ENVIRONMENTAL AGENCIES.—Notwith-  
34    standing any other provision of law relating to Federal grants and coopera-  
35    tive agreements, the Administrator may make a grant to, or enter into a  
36    cooperative agreement with, a private nonprofit organization designated by  
37    the Secretary of Labor under title V of the Older Americans Act of 1965  
38    (42 U.S.C. 3056 et seq.) to utilize the talents of older Americans in pro-  
39    grams authorized by other provisions of law administered by the Adminis-

1 trator (and consistent with those provisions of law) in providing technical  
2 assistance to Federal, State, and local environmental agencies for projects  
3 of pollution prevention, abatement, and control.

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

8 (1) result in the displacement of individuals currently employed by  
9 the environmental agency concerned (including partial displacement  
10 through reduction of nonovertime hours, wages, or employment bene-  
11 fits);

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

15 (3) affect existing contracts for services.

16 (c) FUNDING.—

17 (1) IN GENERAL.—Funding for grants or agreements under this sec-  
18 tion may be made available from programs described in subsection (a)  
19 or through title V of the Older Americans Act of 1965 (42 U.S.C. 3056  
20 et seq.) and subtitle D of title I of the Workforce Investment Act of  
21 1998 (29 U.S.C. 2911 et seq.).

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

24 **§ 199103. Indian environmental general assistance program**

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

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

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

33 (b) DEFINITIONS.—In this section:

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

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

5 (c) GENERAL ASSISTANCE PROGRAM.—

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

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

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

22           (d) NO REDUCTION IN AMOUNTS.—In no case shall the award of a gen-  
23 eral assistance grant to an Indian tribal government or intertribal consor-  
24 tium under this section result in a reduction of EPA grants for environ-  
25 mental programs to that tribal government or consortium. Nothing in this  
26 section shall preclude an Indian tribal government or intertribal consortium  
27 from receiving individual media grants or cooperative agreements. Funds  
28 provided by the Administrator through the general assistance program shall  
29 be used by an Indian tribal government or intertribal consortium to supple-  
30 ment other funds provided by the Administrator through individual media  
31 grants or cooperative agreements.

32           (e) EXPENDITURE OF GENERAL ASSISTANCE.—Any general assistance  
33 under this section shall be expended for the purpose of planning, developing,  
34 and establishing the capability to implement programs administered by the  
35 Administrator and specified in the assistance agreement. Purposes and pro-  
36 grams authorized under this section shall include the development and im-  
37 plementation of solid and hazardous waste programs for Indian land. An In-  
38 dian tribal government or intertribal consortium receiving general assistance  
39 pursuant to this section shall utilize the funds for programs and purposes  
40 to be carried out in accordance with the terms of the assistance agreement.  
41 The programs and general assistance shall be carried out in accordance with

1 the purposes and requirements of applicable provisions of law (including the  
2 Solid Waste Disposal Act (42 U.S.C. 6901 et seq.)).

3 (f) PROCEDURES.—

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

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

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

18 **§ 199104. EPA fees**

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

22 (b) LIMITATION ON FEES AND CHARGES.—

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

27 (A) for services and activities carried out pursuant to the Fed-  
28 eral Water Pollution Control Act (33 U.S.C. 1251 et seq.) is  
29 \$10,000,000; and

30 (B) for services and activities in programs within the jurisdic-  
31 tion of the Committee on Energy and Commerce of the House of  
32 Representatives and administered by the Administrator shall be  
33 limited to—

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

37 (ii) such sums specifically authorized by Public Law 101-  
38 549 (commonly known as the Clean Air Act Amendments of  
39 1990).

40 (2) OTHER PROGRAMS.—Any remaining amounts required to be col-  
41 lected under this section shall be collected from services and programs

1 administered by the Administrator other than those specified in sub-  
2 paragraphs (A) and (B) of paragraph (1).

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

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

11 **§ 199105. Availability of fees and charges deposited in the**  
12 **Licensing and Other Services Fund to carry out**  
13 **EPA programs**

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

19 **§ 199106. Percentage of Federal funding for organizations**  
20 **owned by socially and economically disadvantaged**  
21 **individuals**

22 (a) IN GENERAL.—The Administrator shall, to the fullest extent possible,  
23 ensure that at least 8 percent of Federal funding for prime and sub-  
24 contracts awarded in support of authorized programs, including grants,  
25 loans, and contracts for wastewater treatment and leaking underground  
26 storage tanks grants, be made available to business concerns or other orga-  
27 nizations owned or controlled by socially and economically disadvantaged in-  
28 dividuals (within the meaning of paragraphs (5) and (6) of section 8(a) of  
29 the Small Business Act (15 U.S.C. 637(a))), including historically black col-  
30 leges and universities.

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

33 **§ 199107. Working capital fund**

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

39 (b) USE OF ASSETS TO CAPITALIZE FUND.—Any inventories, equipment,  
40 and other assets pertaining to the services to be provided by the working  
41 capital fund, either on hand or on order, less the related liabilities or unpaid

1 obligations, and any appropriations made for the purpose of providing cap-  
2 ital, shall be used to capitalize the working capital fund.

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

- 7 (1) accrued leave;
- 8 (2) depreciation of fund plant and equipment;
- 9 (3) amortization of automated data processing software and systems  
10 (either acquired or donated); and
- 11 (4) an amount necessary to maintain a reasonable operating reserve,  
12 as determined by the Administrator.

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

15 (e) RESERVE.—

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

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

25 **§ 199108. Availability of funds after expiration of period for**  
26 **liquidating obligations**

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

31 **Subtitle II—Air**  
32 **Division A—Clean Air**  
33 **Subdivision 1—General Provisions**  
34 **Chapter 201—Definitions**

35 Sec.  
201101. Definitions.

36 **§ 201101. Definitions**

37 In this division:

- 38 (1) AIR POLLUTANT.—  
39 (A) IN GENERAL.—The term “air pollutant” means any air pol-  
40 lution agent or combination of air pollution agents (including any  
physical, chemical, biological, radioactive (including source mate-

1           rial, special nuclear material, and byproduct material) substance  
2           or matter) that is emitted into or otherwise enters the ambient air.

3           (B) INCLUSIONS.—The term “air pollutant” includes any pre-  
4           cursor or precursors to the formation of any air pollutant, to the  
5           extent that the Administrator has identified the precursor or pre-  
6           cursors for the particular purpose for which the term “air pollut-  
7           ant” is used.

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

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

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

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

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

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

25           (E) An agency of an Indian tribe.

26           (3) AIR QUALITY CONTROL REGION.—The term “air quality control  
27           region” means an air quality control region designated under section  
28           211107 of this title.

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

32           (A) has been approved under section 211110 of this title, pro-  
33           mulgated under section 211110(c) of this title, or promulgated or  
34           approved pursuant to regulations promulgated under section  
35           203101(d) of this title; and

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

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

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



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

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

9 (9) EMISSION LIMITATION; EMISSION STANDARD.—

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

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

16 (i) any requirement relating to the operation or mainte-  
17 nance of a source to ensure continuous emission reduction;  
18 and

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

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

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

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

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

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

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

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

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

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

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

12 (15) MEANS OF EMISSION LIMITATION.—

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

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

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

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

23 (18) NO<sub>x</sub>.—The term “NO<sub>x</sub>” means a nitrogen oxide.

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

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

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

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

38 (23) STANDARD OF PERFORMANCE.—

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

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

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

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

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

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

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

19 (B) damage to and deterioration of property;

20 (C) hazards to transportation; and

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

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

## 26 **Chapter 203—Administrative and** 27 **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.

### 28 **§ 203101. Administration**

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

31 (1) IN GENERAL.—The Administrator may prescribe such regula-  
32 tions as are necessary to carry out the Administrator’s functions under  
33 this division. The Administrator may delegate to any officer or em-  
34 ployee of EPA such of the Administrator’s powers and duties under  
35 this division, except the making of regulations subject to section  
36 203102(d) of this title, as the Administrator considers necessary or ex-  
37 pedient.

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

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

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

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

11 (ii) ensure at least an adequate quality audit of each  
12 State's performance and adherence to the requirements of  
13 this division in implementing and enforcing This division, par-  
14 ticularly in the review of new sources and in enforcement of  
15 this division; and

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

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

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

28 (d) TRIBAL AUTHORITY.—

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

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

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

36 (2) REGULATIONS.—

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

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

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

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

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

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

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

22 **§ 203102. General provisions relating to administrative pro-**  
23 **ceedings and judicial review**

24 (a) ADMINISTRATIVE SUBPOENAS.—

25 (1) IN GENERAL.—In connection with any determination under sec-  
26 tion 211110(d) of this title, or for purposes of obtaining information  
27 under section 221111(d)(3) of this title, any investigation, monitoring,  
28 reporting requirement, entry, compliance inspection, or administrative  
29 enforcement proceeding under this division (including under section  
30 203103, 209101, 211113, 211114, 211119, 211128, 213109, 221105,  
31 221106, or 221108 of this title), the Administrator may—

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

34 (B) administer oaths.

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

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

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

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

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

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

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

18 (b) JUDICIAL REVIEW.—

19 (1) PLACE FOR REVIEW.—

20 (A) DISTRICT OF COLUMBIA CIRCUIT.—

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

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

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

28 (aa) primary or secondary NAAQS;

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

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

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

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

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

39 or

40 (gg) regulation issued under section 211113 or  
41 211119 of this title; or

1 (II) an action of the Administrator in promulgating  
2 any other nationally applicable regulation or taking any  
3 other nationally applicable final action under this divi-  
4 sion.

5 (B) OTHER CIRCUITS.—

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

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

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

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

14 (bb) order under section 211111(h), 211112, or  
15 211119 of this title;

16 (II) an action of the Administrator revising regula-  
17 tions for enhanced monitoring and compliance certifi-  
18 cation programs under section 211114(a)(3) of this title;  
19 or

20 (III) any other final action of the Administrator under  
21 this division (including any denial or disapproval by the  
22 Administrator under subdivision 2) that is locally or re-  
23 gionally applicable.

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

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

31 (II) in taking the action, the Administrator finds and  
32 publishes that the action is based on such a determina-  
33 tion.

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

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

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

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

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

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

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

18 (c) ADDITIONAL EVIDENCE.—In any judicial proceeding in which review  
19 is sought of a determination under this division required to be made on the  
20 record after notice and opportunity for hearing, if any party applies to the  
21 court for leave to adduce additional evidence, and shows to the satisfaction  
22 of the court that the additional evidence is material and that there were rea-  
23 sonable grounds for the failure to adduce the evidence in the proceeding be-  
24 fore the Administrator, the court may order the additional evidence (and  
25 evidence in rebuttal thereof) to be taken before the Administrator, in such  
26 manner and on such terms and conditions as the court considers proper.  
27 The Administrator may modify the Administrator’s findings as to the facts  
28 or make new findings by reason of the additional evidence so taken, and  
29 the Administrator shall file the modified or new findings, and the Adminis-  
30 trator’s recommendation, if any, for the modification or setting aside of the  
31 Administrator’s original determination, with the return of the additional evi-  
32 dence.

33 (d) RULEMAKING.—

34 (1) DEFINITIONS.—In this subsection:

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

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

40 (C) RULE.—The term “rule” means—



- 1 (i) the promulgation or revision of any NAAQS under sec-  
2 tion 211109 of this title;
- 3 (ii) the promulgation or revision of an implementation plan  
4 by the Administrator under section 211110(c) of this title;
- 5 (iii) the promulgation or revision of any standard of per-  
6 formance under section 211111 of this title, emission stand-  
7 ard or limitation under section 211112(d) of this title, stand-  
8 ard under section 211112(f) of this title, or regulation under  
9 subsection (l) or (m) of section 211112 of this title;
- 10 (iv) the promulgation of any requirement for solid waste  
11 combustion under section 211128 of this title;
- 12 (v) the promulgation or revision of any regulation pertain-  
13 ing to any fuel or fuel additive under section 221111 of this  
14 title;
- 15 (vi) the promulgation or revision of any aircraft emission  
16 standard under section 223102 of this title;
- 17 (vii) the promulgation or revision of any regulation under  
18 subdivision 5;
- 19 (viii) promulgation or revision of regulations under subdivi-  
20 sion 7;
- 21 (ix) promulgation or revision of regulations under chapter  
22 213;
- 23 (x) promulgation or revision of regulations under section  
24 221102 of this title and test procedures for new motor vehi-  
25 cles or engines under section 221106 of this title, and the re-  
26 vision of a standard under section 221102(a)(3) of this title;
- 27 (xi) promulgation or revision of regulations for noncompli-  
28 ance penalties under section 211119 of this title;
- 29 (xii) promulgation or revision of any regulations promul-  
30 gated under section 221107 of this title;
- 31 (xiii) action of the Administrator under section 211125 of  
32 this title;
- 33 (xiv) the promulgation or revision of any regulation pertain-  
34 ing to consumer and commercial products under section  
35 215204(e) of this title;
- 36 (xv) the promulgation or revision of any regulation pertain-  
37 ing to field citations under section 211113(e)(3) of this title;
- 38 (xvi) the promulgation or revision of any regulation pertain-  
39 ing to urban buses or the clean-fuel vehicle, clean-fuel  
40 fleet, and clean fuel programs under chapter 225;

1 (xvii) the promulgation or revision of any regulation per-  
2 taining to nonroad engines or nonroad vehicles under section  
3 221113 of this title;

4 (xviii) the promulgation or revision of any regulation relat-  
5 ing to motor vehicle compliance program fees under section  
6 221115 of this title;

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

10 (xx) such other actions as the Administrator may deter-  
11 mine.

12 (2) INAPPLICABILITY OF CERTAIN PROVISIONS IN TITLE 5.—Sections  
13 553 to 557 and section 706 of title 5 shall not, except as expressly pro-  
14 vided in this subsection, apply to a rule. This subsection shall not apply  
15 in the case of any rule or circumstance described in the provision des-  
16 ignated (A) or (B) of section 553(b) of title 5.

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

22 (4) NOTICE OF PROPOSED RULEMAKING.—

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

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

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

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

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

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

35 (i) shall include a summary of—

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

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

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

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(ii) shall—

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

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

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

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

(6) INCLUSION IN DOCKET.—

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

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

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

(D) DRAFTS OF PROPOSED AND FINAL RULES UNDER THIS SUBSECTION AND RELATED DOCUMENTS AND COMMENTS.—The drafts of a proposed rule submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any rule, all documents accompanying the drafts, all written comments thereon by other agencies, and all

1 written responses to such written comments by the Administrator  
2 shall be placed in the docket not later than the date of proposal  
3 of the rule. The drafts of the final rule submitted for such review  
4 process prior to promulgation and all such written comments  
5 thereon, all documents accompanying such drafts, and written re-  
6 sponses thereto shall be placed in the docket not later than the  
7 date of promulgation.

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

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

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

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

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

19 (8) PROMULGATED RULES UNDER THIS SUBSECTION.—

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

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

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

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

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

32 (9) JUDICIAL REVIEW.—

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

37 (B) OBJECTIONS.—

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

1 (ii) IMPRACTICALITY OF RAISING OBJECTION; GROUNDS  
2 ARISING AFTER COMMENT PERIOD.—If the person raising an  
3 objection demonstrates to the Administrator that it was im-  
4 practicable to raise an objection within the comment period  
5 or if the grounds for an objection arose after the comment  
6 period (but within the time specified for judicial review), and  
7 if the objection is of central relevance to the outcome of the  
8 rule, the Administrator shall convene a proceeding for recon-  
9 sideration of the rule and provide the same procedural rights  
10 as would have been afforded had the information been avail-  
11 able at the time at which the rule was proposed. If the Ad-  
12 ministrator refuses to convene such a proceeding, the person  
13 may seek review of the refusal in the United States court of  
14 appeals for the appropriate circuit (as provided in subsection  
15 (b)). Reconsideration shall not stay the effectiveness of the  
16 rule, but the Administrator or the court may stay the effec-  
17 tiveness of the rule during reconsideration for not more than  
18 3 months.

19 (10) PROCEDURAL DETERMINATIONS.—

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

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

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

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

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

36 (B) contrary to constitutional right, power, privilege, or immu-  
37 nity;

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

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

1 (i) the failure to observe the procedure is arbitrary or ca-  
2 pricious;

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

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

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

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

14 (f) COSTS.—In any judicial proceeding under this section, the court may  
15 award costs of litigation (including reasonable attorney’s fees and expert  
16 witness’s fees) whenever the court determines that such an award is appro-  
17 priate.

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

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

29 **§ 203103. Emergency powers**

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

39 (b) ISSUANCE OF ORDERS BY THE ADMINISTRATOR.—If it is not prac-  
40 ticable to ensure prompt protection of public health or welfare or the envi-  
41 ronment by commencement of a civil action under subsection (a), the Ad-

1 administrator may issue such orders as may be necessary to protect public  
2 health or welfare or the environment.

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

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

15 **§ 203104. Citizen suits**

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

19 (1) a schedule or timetable of compliance, emission limitation, stand-  
20 ard of performance, or emission standard;

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

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

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

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

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

33 (E) subdivision 7; or

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

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

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

4 (b) IN GENERAL.—

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

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

9 (i) the United States; and

10 (ii) any other governmental instrumentality or agency to  
11 the extent permitted by the Eleventh Amendment to the Con-  
12 stitution.

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

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

19 or

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

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

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

32 (A) proposes to construct or constructs any new or modified  
33 major emitting facility without a permit required under chapter  
34 213 or 215; or

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

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



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

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

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

10 (B) PENALTY ASSESSMENT CRITERIA.—

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

15 (I) the size of the business;

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

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

20 (IV) the duration of the violation as established by any  
21 credible evidence (including evidence other than the ap-  
22 plicable test method);

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

25 (VI) the economic benefit of noncompliance; and

26 (VII) the seriousness of the violation.

27 (ii) CIVIL PENALTY FOR EACH DAY OF VIOLATION.—A civil  
28 penalty may be assessed for each day of violation. For pur-  
29 poses of determining the number of days of violation for  
30 which a civil penalty may be assessed under this subsection,  
31 where the Administrator or an air pollution control agency  
32 has notified the source of the violation, and the plaintiff  
33 makes a prima facie showing that the conduct or events giv-  
34 ing rise to the violation are likely to have continued or re-  
35 curred past the date of notice, the days of violation shall be  
36 presumed to include the date of the notice and each day  
37 thereafter until the violator establishes that continuous com-  
38 pliance has been achieved, except to the extent that the viola-  
39 tor can prove by a preponderance of the evidence that there  
40 were intervening days during which no violation occurred or  
41 that the violation was not continuing in nature.

1           (5) COMPULSION OF AGENCY ACTION.—A United States district  
2 court shall have jurisdiction to compel (consistent with paragraph (2))  
3 agency action unreasonably delayed, except that a civil action to compel  
4 agency action under section 203102(b) of this title that is unreasonably  
5 delayed may be filed only in a United States district court within the  
6 circuit in which the civil action would be reviewable under section  
7 203102(b) of this title. In any such civil action for unreasonable delay,  
8 notice to the entities described in subsection (c)(1)(A)(i) shall be pro-  
9 vided 180 days before commencing the civil action.

10 (e) NOTICE.—

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

13           (A) under subsection (b)(1)(B)—

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

16           (I) the Administrator;

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

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

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

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

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

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

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

38           (1) PLACE FOR BRINGING CIVIL ACTION.—Any civil action respecting  
39 a violation by a stationary source of an emission standard or limitation  
40 or an order respecting an emission standard or limitation may be

1 brought only in the judicial district in which the stationary source is  
2 located.

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

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

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

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

25 (f) NONRESTRICTION OF OTHER RIGHTS.—

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

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

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

36 (B) bringing any administrative enforcement action or obtaining  
37 any administrative remedy or sanction in any State or local ad-  
38 ministrative agency, department, or instrumentality;

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

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

5 (g) PENALTY FUND.—

6 (1) IN GENERAL.—

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

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

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

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

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

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

26 **§ 203105. Representation in litigation**

27 (a) ATTORNEY GENERAL; ATTORNEYS APPOINTED BY ADMINIS-  
28 TRATOR.—The Administrator shall request the Attorney General to appear  
29 and represent the Administrator in any civil action instituted under this di-  
30 vision to which the Administrator is a party. Unless the Attorney General  
31 notifies the Administrator that the Attorney General will appear in the civil  
32 action within a reasonable time, attorneys appointed by the Administrator  
33 shall appear and represent the Administrator.

34 (b) MEMORANDUM OF UNDERSTANDING REGARDING LEGAL REPRESENTATION.—  
35 If the Attorney General agrees to appear and represent the Administrator  
36 in any civil action, the representation shall be conducted in accordance  
37 with, and shall include participation by attorneys appointed by the  
38 Administrator to the extent authorized by, the memorandum of understand-  
39 ing between the Department of Justice and the EPA dated June 13, 1977,  
40 respecting representation of EPA by the Department of Justice in civil li-  
41 tigation.

1

**Chapter 209—Miscellaneous**

Sec.

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2

**§ 209101. Federal procurement**

3

(a) PROHIBITION OF CONTRACTS WITH VIOLATORS.—

4

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

10

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

13

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

18

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

21

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

24

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

27

(1) requires each Federal agency authorized to enter into contracts and each Federal agency that is empowered to extend Federal assist-

28

1           ance by way of grant, loan, or contract to effectuate the purpose and  
2           policy of this division in such contracting or assistance activities; and  
3           (2) sets forth procedures, sanctions, penalties, and such other provi-  
4           sions as the President determines to be necessary to carry out that re-  
5           quirement.

6           (d) EXEMPTIONS.—The President—

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

10          (2) shall notify Congress of the exemption.

11       **§ 209102. Mandatory patent licensing**

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

14           (1) that—

15           (A) in the implementation of requirement of section 211111,  
16           211112, or 221102 of this title, a right under any United States  
17           letters patent that is being used or intended for public or commer-  
18           cial use and that is not otherwise reasonably available is necessary  
19           to enable any person required to comply with the requirement to  
20           comply with the requirement; and

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

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

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

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

33       **§ 209103. Policy review**

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

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

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

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

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

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

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

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

#### 12 **§ 209104. Other authority and responsibilities**

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

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

#### 21 **§ 209105. Records and audit**

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

25 (1) records that fully disclose—

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

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

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

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

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

#### 38 **§ 209106. Labor standards**

39 (a) IN GENERAL.—The Administrator shall take such action as may be  
40 necessary to ensure that all laborers and mechanics employed by contractors  
41 or subcontractors on projects assisted under this division are paid wages at

1 rates not less than those prevailing for the same type of work on similar  
2 construction in the locality as determined by the Secretary of Labor, in ac-  
3 cordance with sections 3141 to 3144, 3146, and 3147 of title 40.

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

8 **§ 209107. Sewage treatment grants**

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

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

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

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

20 (B) the State does not have in effect, or is not carrying out,  
21 a State implementation plan approved by the Administrator that  
22 expressly quantifies and provides for the increase in emissions of  
23 each air pollutant from stationary and mobile sources in any area  
24 to which chapter 213 or 215 applies for that pollutant, which in-  
25 crease may reasonably be anticipated to result directly or indi-  
26 rectly from the new sewage treatment capacity that would be cre-  
27 ated by the construction;

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

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

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

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

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

41 In the case of construction of a treatment works that would result, di-



1 rectly or indirectly, in an increase in emissions of any air pollutant  
2 from stationary and mobile sources in an area to which chapter 215  
3 applies, the quantification of emissions described in paragraph (1)(B)  
4 shall include the emissions of any such pollutant resulting directly or  
5 indirectly from areawide and nonmajor stationary source growth (mo-  
6 bile and stationary) for each such area.

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

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

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

12 **§ 209108. Economic impact assessment**

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

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

16 (A) any new source standard of performance under section  
17 211111 of this title;

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

19 (C) any regulation under subdivision 7;

20 (D) any regulation under chapter 213;

21 (E) any regulation establishing emission standards under sec-  
22 tion 221102 of this title and any other regulation promulgated  
23 under that section;

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

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

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

34 (b) PREPARATION OF ASSESSMENT BY ADMINISTRATOR.—

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

39 (2) INCLUSION IN DOCKET.—An economic impact assessment under  
40 paragraph (1) shall be included in the docket required under section  
41 203102(d)(3) of this title and shall be available to the public as pro-

1           vided in section 203102(d)(5) of this title. The notice of proposed rule-  
2           making shall include notice of such availability and an explanation of  
3           the extent to which and manner in which the Administrator has consid-  
4           ered the analysis contained in the economic impact assessment in pro-  
5           posing the action.

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

12       (c) ANALYSIS.—

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

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

18                   (i) the effective date; and

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

21               (B) the potential inflationary or recessionary effects;

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

23               (D) the effects on consumer costs; and

24               (E) the effects on energy use.

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

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

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

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

37           (2) to preclude the Administrator from carrying out the Administra-  
38           tor’s responsibility under this division to protect public health and wel-  
39           fare; or

40           (3) to authorize or require any judicial review of any such standard  
41           or regulation, or any stay or injunction of the proposal, promulgation,

1 or effectiveness of the standard or regulation on the basis of failure to  
2 comply with this section.

3 (f) CITIZEN SUITS.—

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

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

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

19 **§ 209109. Air quality monitoring**

20 (a) IN GENERAL.—

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

24 (A) utilizes uniform air quality monitoring criteria and meth-  
25 odology and measures the air quality according to a uniform air  
26 quality index;

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

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

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

37 (2) OPERATION.—The operation of the air quality monitoring system  
38 may be carried out by the Administrator or by such other departments,  
39 agencies, or entities of the Federal Government (including the National  
40 Weather Service) as the President considers appropriate. Any air qual-  
41 ity monitoring system required under any applicable implementation

1 plan under section 211110 of this title shall, as soon as practicable fol-  
2 lowing promulgation of regulations under this section, utilize the stand-  
3 ard criteria and methodology, and measure air quality according to the  
4 standard index, established under the regulations.

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

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

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

- 10 (i) affects air quality;  
11 (ii) is not reasonably controllable or preventable;  
12 (iii) is caused by human activity that is unlikely to recur  
13 at a particular location or is a natural event; and  
14 (iv) is determined by the Administrator through the process  
15 established in the regulations promulgated under paragraph  
16 (2) to be an exceptional event.

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

- 19 (i) stagnation of air masses or meteorological inversions;  
20 (ii) a meteorological event involving high temperatures or  
21 lack of precipitation; or  
22 (iii) air pollution relating to source noncompliance.

23 (2) REGULATIONS.—

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

29 (B) FINAL REGULATIONS.—Not later than 1 year after the date  
30 on which the Administrator publishes proposed regulations under  
31 subparagraph (A), and after providing an opportunity for inter-  
32 ested persons to make oral presentations of views, data, and argu-  
33 ments regarding the proposed regulations, the Administrator shall  
34 promulgate final regulations governing the review and handling of  
35 air quality monitoring data influenced by an exceptional event that  
36 are consistent with paragraph (3).

37 (3) PRINCIPLES AND REQUIREMENTS.—

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

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

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

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

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

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

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

13 (i) the occurrence of an exceptional event must be dem-  
14 onstrated by reliable, accurate data that are promptly pro-  
15 duced and provided by Federal, State, or local government  
16 agencies;

17 (ii) a clear causal relationship must exist between the  
18 measured exceedances of a NAAQS and the exceptional event  
19 to demonstrate that the exceptional event caused a specific  
20 air pollution concentration at a particular air quality monitor-  
21 ing location;

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

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

29 **§ 209110. Air quality modeling**

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

34 (b) CONFERENCEES.—A conference conducted under this section shall provide  
35 for participation by the National Academy of Sciences, representatives of  
36 State and local air pollution control agencies, and appropriate Federal agen-  
37 cies, including the National Science Foundation, the National Oceanic and  
38 Atmospheric Administration, and the National Institute of Standards and  
39 Technology.

40 (c) COMMENTS; TRANSCRIPTS.—Interested persons shall be permitted to  
41 submit written comments, and a verbatim transcript of the conference pro-

1 ceedings shall be maintained. The comments and transcript shall be in-  
2 cluded in the docket required to be established for purposes of promulgating  
3 or revising any regulation relating to air quality modeling under chapter  
4 213.

5 **§ 209111. Employment effects**

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

13 (b) INVESTIGATION.—

14 (1) REQUEST FOR INVESTIGATION.—Any employee, or any represent-  
15 ative of an employee, who is discharged or laid off, threatened with dis-  
16 charge or layoff, or whose employment is otherwise adversely affected  
17 or threatened to be adversely affected because of the alleged results of  
18 any requirement imposed or proposed to be imposed under this divi-  
19 sion, including any requirement applicable to Federal facilities and any  
20 requirement imposed by a State or political subdivision of a State, may  
21 request the Administrator to investigate the matter. Any such request  
22 shall be in writing, shall set forth with reasonable particularity the  
23 grounds for the request, and shall be signed by the employee (or rep-  
24 resentative of the employee) making the request.

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

37 (3) FINDINGS AND RECOMMENDATIONS.—

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

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

4 (ii) make such recommendations as the Administrator con-  
5 siders appropriate.

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

8 (c) SUBPOENAS; OATHS.—

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

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

13 (B) administer oaths.

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

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

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

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

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

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

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

39 (d) LIMITATIONS ON CONSTRUCTION OF SECTION.—Nothing in this sec-  
40 tion shall be construed to require or authorize the Administrator, a State,

1 or a political subdivision of a State to modify or withdraw any requirement  
2 imposed or proposed to be imposed under this division.

3 **§ 209112. Employee protection**

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

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

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

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

16 (b) INVESTIGATION.—

17 (1) COMPLAINT.—An employee who believes that the employee has  
18 been discharged or otherwise discriminated against by any person in  
19 violation of subsection (a) may, within 30 days after the violation oc-  
20 curs, file (or have any person file on the employee’s behalf) a complaint  
21 with the Secretary of Labor (referred to in this subsection as the “Sec-  
22 retary”) alleging the discharge or discrimination. On receipt of the  
23 complaint, the Secretary shall notify the person named in the complaint  
24 of the filing of the complaint.

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

32 (3) ORDER.—

33 (A) IN GENERAL.—Within 90 days after receipt of a complaint  
34 under paragraph (1), the Secretary shall, unless the proceeding on  
35 the complaint is terminated by the Secretary on the basis of a set-  
36 tlement entered into by the Secretary and the person alleged to  
37 have committed the violation, issue an order providing the relief  
38 prescribed by subparagraph (B) or denying the relief. An order of  
39 the Secretary shall be made on the record after notice and oppor-  
40 tunity for public hearing. The Secretary may not enter into a set-



1            tlement terminating a proceeding on a complaint without the par-  
2            ticipation and consent of the complainant.

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

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

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

8            (II) reinstate the complainant to the complainant's  
9            former position together with the compensation (includ-  
10           ing back pay), terms, conditions, and privileges of the  
11           complainant's employment; and

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

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

21           (c) REVIEW.—

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

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

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

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

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

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

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

14 (g) DELIBERATE VIOLATION BY EMPLOYEE.—Subsection (a) shall not  
15 apply with respect to any employee who, acting without direction from the  
16 employee’s employer (or the employer’s agent), deliberately causes a viola-  
17 tion of any requirement of this division.

18 **§ 209113. Cost of vapor recovery equipment**

19 (a) COSTS TO BE BORNE BY OWNER OF RETAIL OUTLET.—The regula-  
20 tions under this division applicable to vapor recovery with respect to mobile  
21 source fuels at retail outlets of such fuels shall provide that the cost of pro-  
22 curement and installation of the vapor recovery shall be borne by the owner  
23 of the outlet (as determined under the regulations). Except as provided in  
24 subsection (b), the regulations shall provide that no lease of a retail outlet  
25 by the owner thereof may provide for a payment by the lessee of the cost  
26 of procurement and installation of vapor recovery equipment. The regula-  
27 tions shall provide that the cost of procurement and installation of vapor  
28 recovery equipment may be recovered by the owner of the outlet by means  
29 of price increases in the cost of any product sold by the owner, notwith-  
30 standing any provision of law.

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

37 **§ 209114. Vapor recovery for independent small business**  
38 **marketers of gasoline**

39 (a) DEFINITIONS.—In this section:

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

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

10 (A)(i) is a refiner;

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

13 (iii) is otherwise directly or indirectly affiliated (as determined  
14 under the regulations of the Administrator) with a refiner or with  
15 a person that controls, is controlled by, or is under a common con-  
16 trol with a refiner (unless the sole affiliation is by means of a sup-  
17 ply contract or an agreement or contract to use a trademark,  
18 trade name, service mark, or other identifying symbol or name  
19 owned by the refiner or any such person); or

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

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

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

30 (c) STATE REQUIREMENTS.—Nothing in subsection (a) shall be construed  
31 to prohibit any State from adopting or enforcing, with respect to independ-  
32 ent small business marketers of gasoline having monthly sales of less than  
33 50,000 gallons, any vapor recovery requirements for mobile source fuels at  
34 retail outlets. Any vapor recovery requirement that is adopted by a State  
35 and submitted to the Administrator as part of its implementation plan may  
36 be approved and enforced by the Administrator as part of the applicable im-  
37 plementation plan for that State.

38 **§ 209115. Exemptions for certain territories**

39 (a) EXEMPTION ON PETITION.—

40 (1) IN GENERAL.—On petition by the Governor of Guam, American  
41 Samoa, the Virgin Islands, or the Northern Mariana Islands, the Ad-

1 administrator may exempt any person or source or class of persons or  
2 sources in that territory or commonwealth from any requirement under  
3 this division other than—

4 (A) section 211112 of this title; or

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

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

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

17 (4) NOTIFICATION.—The Administrator shall promptly notify the  
18 Committee on Energy and Commerce and Committee on Natural Re-  
19 sources of the House of Representatives and the Committee on Envi-  
20 ronment and Public Works and Committee on Energy and Natural Re-  
21 sources of the Senate on receipt of a petition under this subsection and  
22 of the approval or rejection of the petition and the basis for the action.

23 (b) EXEMPTION OF CERTAIN POWERPLANT.—

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

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

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

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

38 **§ 209116. Air pollution from Outer Continental Shelf activi-**  
39 **ties**

40 (a) DEFINITIONS.—In this section:

41 (1) CORRESPONDING ONSHORE AREA.—

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

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

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

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

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

21 (5) OCS SOURCE.—

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

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

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

29 (B) INCLUSIONS.—

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

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

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

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

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

1 (b) APPLICABLE REQUIREMENTS FOR CERTAIN AREAS.—

2 (1) REQUIREMENTS TO CONTROL AIR POLLUTION.—

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

9 (B) SOURCES LOCATED WITHIN 25 MILES OF THE SEAWARD  
10 BOUNDARY OF A STATE.—For OCS sources that are located within  
11 25 miles of the seaward boundary of a State, the requirements  
12 under subparagraph (A)—

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

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

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

21 (2) VESSELS.—For purposes of this subsection, emissions from any  
22 vessel servicing or associated with an OCS source, including emissions  
23 while at the OCS source or en route to or from the OCS source within  
24 25 miles of the OCS source, shall be considered emissions from the  
25 OCS source.

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

30 (4) TREATMENT AS STANDARD.—Each requirement established  
31 under this subsection shall be treated, for purposes of sections 203104,  
32 211113, 211114, 211116, and 211119 of this title, as a standard  
33 under section 211111 of this title, and a violation of any such require-  
34 ment shall be considered a violation of section 211111(j) of this title.

35 (5) EXEMPTIONS.—

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

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

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

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

14 (6) STATE PROCEDURES.—A State adjacent to an OCS source in-  
15 cluded under this subsection may promulgate and submit to the Admin-  
16 istrator regulations for implementing and enforcing the requirements of  
17 this subsection. If the Administrator finds that the State regulations  
18 are adequate, the Administrator shall delegate to that State any au-  
19 thority the Administrator has under this division to implement and en-  
20 force the requirements. Nothing in this subsection shall prohibit the  
21 Administrator from enforcing any requirement of this section.

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

28 (d) COASTAL WATER.—

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

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

38 **§ 209117. Demonstration grant program for local govern-**  
39 **ments**

40 (a) DEFINITIONS.—In this section:

1 (1) COST-EFFECTIVE TECHNOLOGIES AND PRACTICES.—The term  
2 “cost-effective technologies and practices” has the meaning given the  
3 term in section 401 of the Energy Independence and Security Act of  
4 2007 (42 U.S.C. 17061).

5 (2) OPERATING COST SAVINGS.—The term “operating cost savings”  
6 has the meaning given the term in section 401 of the Energy Independ-  
7 ence and Security Act of 2007 (42 U.S.C. 17061).

8 (b) GRANT PROGRAM.—

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

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

14 (B) achieve operational cost savings through the application of  
15 cost-effective technologies and practices, as verified by the Admin-  
16 istrator.

17 (2) COST SHARING.—

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

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

27 (3) MAXIMUM AMOUNT.—The amount of a grant under this sub-  
28 section shall not exceed \$1,000,000.

29 (c) GUIDELINES.—

30 (1) IN GENERAL.—The Administrator shall issue guidelines to imple-  
31 ment the grant program established under subsection (b).

32 (2) REQUIREMENTS.—The guidelines under paragraph (1) shall es-  
33 tablish—

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

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

40 (C) a requirement that each local government that receives a  
41 grant under this section shall achieve facility-wide cost savings,



1 through renovation of existing local government buildings using  
2 cost-effective technologies and practices, of at least 40 percent as  
3 compared with the baseline operational costs of the buildings be-  
4 fore the renovation (as calculated assuming a 3-year, weather-nor-  
5 malized average).

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

11 (e) REPORTS.—

12 (1) IN GENERAL.—The Administrator shall annually submit to Con-  
13 gress a report that—

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

16 (B) includes any recommendations for further action that the  
17 Administrator may have.

18 (2) FINAL REPORT.—The Administrator shall issue a final report at  
19 the conclusion of the program that includes findings, a summary of  
20 total cost savings achieved, and recommendations for further action.

21 (f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be ap-  
22 propriated to carry out this section \$20,000,000 for each of fiscal years  
23 2007 to 2012.

24 (g) TERMINATION.—The program under this section shall terminate on  
25 September 30, 2012.

26 **Subdivision 2—Air Pollution Prevention**  
27 **and Control**  
28 **Chapter 211—Air Quality And Emission**  
29 **Limitations**

Sec.

211101. Findings; purposes; primary goal.

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1     **§ 211101. Findings; purposes; primary goal**

2           (a) FINDINGS.—Congress finds that—

3               (1) the predominant part of the Nation's population is located in its  
4               rapidly expanding metropolitan and other urban areas, which generally  
5               cross the boundary lines of local jurisdictions and often extend into 2  
6               or more States;

7               (2) the growth in the amount and complexity of air pollution brought  
8               about by urbanization, industrial development, and the increasing use  
9               of motor vehicles has resulted in mounting dangers to the public health  
10              and welfare, including injury to agricultural crops and livestock, dam-  
11              age to and the deterioration of property, and hazards to air and ground  
12              transportation;

13              (3) air pollution prevention (that is, the reduction or elimination,  
14              through any measures, of the amount of pollutants produced or created  
15              at the source) and air pollution control at its source are the primary  
16              responsibility of States and local governments; and

17              (4) Federal financial assistance and leadership are essential for the  
18              development of cooperative Federal, State, regional, and local programs  
19              to prevent and control air pollution.

20           (b) PURPOSES.—The purposes of this subdivision are—

21               (1) to protect and enhance the quality of the Nation's air resources  
22               so as to promote the public health and welfare and the productive ca-  
23               pacity of its population;

24               (2) to initiate and accelerate a national research and development  
25               program to achieve the prevention and control of air pollution;

26               (3) to provide technical and financial assistance to State and local  
27               governments in connection with the development and execution of their  
28               air pollution prevention and control programs; and

29               (4) to encourage and assist the development and operation of re-  
30               gional air pollution prevention and control programs.

31           (c) PRIMARY GOAL.—A primary goal of this division is to encourage or  
32           otherwise promote reasonable Federal, State, and local governmental ac-  
33           tions, consistent with this division, for pollution prevention.

1    **§ 211102. Cooperative activities**

2       (a) INTERSTATE COOPERATION; UNIFORM STATE LAWS; STATE COM-  
3    PACTS.—The Administrator shall encourage—

4           (1) cooperative activities by States and local governments for the  
5       prevention and control of air pollution;

6           (2) enactment of improved and, so far as practicable in the light of  
7       varying conditions and needs, uniform State and local laws relating to  
8       the prevention and control of air pollution; and

9           (3) the making of agreements and compacts between States for the  
10      prevention and control of air pollution.

11      (b) FEDERAL COOPERATION.—The Administrator shall cooperate with  
12      and encourage cooperative activities by all Federal departments and agen-  
13      cies having functions relating to the prevention and control of air pollution,  
14      so as to ensure the utilization in the Federal air pollution control program  
15      of all appropriate and available facilities and resources within the Federal  
16      Government.

17      (c) CONSENT OF CONGRESS TO COMPACTS.—

18           (1) IN GENERAL.—The consent of Congress is given to 2 or more  
19      States to negotiate and enter into agreements or compacts, not in con-  
20      flict with any law or treaty of the United States, for—

21           (A) cooperative effort and mutual assistance for the prevention  
22      and control of air pollution and the enforcement of their respective  
23      laws relating thereto; and

24           (B) the establishment of such agencies, joint or otherwise, as  
25      the States consider desirable for making effective such agreements  
26      or compacts.

27           (2) NO BINDING EFFECT WITHOUT APPROVAL BY CONGRESS.—No  
28      agreement or compact under paragraph (1) shall be binding or obliga-  
29      tory on any State a party thereto unless and until the agreement or  
30      compact is approved by Congress.

31           (3) INTENT OF CONGRESS.—It is the intent of Congress that no  
32      agreement or compact entered into between States after November 21,  
33      1967, that relates to the control and abatement of air pollution in an  
34      air quality control region shall provide for participation by a State that  
35      is not included (in whole or in part) in that air quality control region.

36    **§ 211103. Research, investigation, training, and other activi-**  
37    **ties**

38      (a) RESEARCH AND DEVELOPMENT PROGRAM FOR PREVENTION AND  
39      CONTROL OF AIR POLLUTION.—

1 (1) IN GENERAL.—The Administrator shall establish a national re-  
2 search and development program for the prevention and control of air  
3 pollution.

4 (2) ACTIVITIES.—As part of the program, the Administrator shall—

5 (A) conduct, and promote the coordination and acceleration of,  
6 research, investigations, experiments, demonstrations, surveys, and  
7 studies relating to the causes, effects (including health and welfare  
8 effects), extent, prevention, and control of air pollution;

9 (B) encourage, cooperate with, and render technical services and  
10 provide financial assistance to air pollution control agencies and  
11 other appropriate public or private agencies, institutions, and or-  
12 ganizations, and individuals in the conduct of such activities;

13 (C) conduct investigations and research and make surveys con-  
14 cerning any specific problem of air pollution in cooperation with  
15 any air pollution control agency with a view to recommending a  
16 solution of the problem, if—

17 (i) the Administrator is requested to do so by the agency;

18 or

19 (ii) in the Administrator's judgment, the problem may af-  
20 fect any community or communities in a State other than  
21 that in which the source of the matter causing or contributing  
22 to the pollution is located;

23 (D) establish technical advisory committees composed of recog-  
24 nized experts in various aspects of air pollution to assist in the  
25 examination and evaluation of research progress and proposals  
26 and to avoid duplication of research; and

27 (E) conduct and promote coordination and acceleration of train-  
28 ing for individuals relating to the causes, effects, extent, preven-  
29 tion, and control of air pollution.

30 (b) ACTIVITIES.—

31 (1) IN GENERAL.—In carrying out subsection (a), the Administrator  
32 may—

33 (A) collect and make available, through publications and other  
34 appropriate means—

35 (i) the results of research activities and other activities  
36 under subsection (a); and

37 (ii) other information (including appropriate recommenda-  
38 tions by the Administrator in connection therewith) pertain-  
39 ing to those research activities and other activities;

40 (B) cooperate with other Federal departments and agencies,  
41 with air pollution control agencies, with other public and private

1 agencies, institutions, and organizations, and with any industries  
2 involved, in the preparation and conduct of those research activi-  
3 ties and other activities;

4 (C) make grants to air pollution control agencies, to other pub-  
5 lic or nonprofit private agencies, institutions, and organizations,  
6 and to individuals, for purposes stated in subsection (a)(2)(A);

7 (D) contract with public or private agencies, institutions, and  
8 organizations, and with individuals, without regard to subsection  
9 (a) or (b) of section 3324 of title 31 or section 6101 of title 5;

10 (E) establish and maintain research fellowships in EPA and at  
11 public or nonprofit private educational institutions or research or-  
12 ganizations;

13 (F) collect and disseminate, in cooperation with other Federal  
14 departments and agencies, and with other public or private agen-  
15 cies, institutions, and organizations having related responsibilities,  
16 basic data on chemical, physical, and biological effects of varying  
17 air quality and other information pertaining to air pollution and  
18 the prevention and control of air pollution;

19 (G) develop effective and practical processes, methods, and  
20 prototype devices for the prevention or control of air pollution; and

21 (H) construct facilities, provide equipment, and employ staff as  
22 necessary to carry out this division.

23 (2) TRAINING.—

24 (A) IN GENERAL.—In carrying out subsection (a), the Adminis-  
25 trator shall—

26 (i) provide training for, and make training grants to, per-  
27 sonnel of air pollution control agencies and other persons with  
28 suitable qualifications; and

29 (ii) make grants to air pollution control agencies, to other  
30 public or nonprofit private agencies, institutions, and organi-  
31 zations for the purposes stated in subsection (a)(2)(E).

32 (B) FEES.—Reasonable fees may be charged for training pro-  
33 vided to persons other than personnel of air pollution control agen-  
34 cies, but training shall be provided to personnel of air pollution  
35 control agencies without charge.

36 (c) AIR POLLUTANT SAMPLING, MEASUREMENT, MONITORING, ANALY-  
37 SIS, AND MODELING.—

38 (1) IN GENERAL.—In carrying out subsection (a), the Administrator  
39 shall conduct a program of research, testing, and development of meth-  
40 ods for sampling, measurement, monitoring, analysis, and modeling of  
41 air pollutants.

1           (2) ELEMENTS.—The program under paragraph (1) shall include the  
2 following elements:

3           (A) Consideration of individual air pollutants and complex mix-  
4 tures of air pollutants and their chemical transformations in the  
5 atmosphere.

6           (B) Establishment of a national network to—

7               (i) monitor, collect, and compile data with quantification of  
8 certainty in the status and trends of air emissions, deposition,  
9 air quality, surface water quality, forest condition, and im-  
10 pairment of visibility; and

11               (ii) ensure the comparability of air quality data collected in  
12 different States and obtained from different nations.

13           (C) Development of improved methods and technologies for  
14 sampling, measurement, monitoring, analysis, and modeling to in-  
15 crease understanding of the sources of ozone precursors, ozone  
16 formation, ozone transport, regional influences on urban ozone, re-  
17 gional ozone trends, and interactions of ozone with other pollut-  
18 ants.

19           (D) Submission of periodic reports to Congress, not less than  
20 once every 5 years, that evaluate and assess the effectiveness of  
21 air pollution control regulations and programs using monitoring  
22 and modeling data obtained pursuant to this subsection.

23           (3) EMPHASIS.—In developing methodologies and technologies under  
24 paragraph (2)(C), the Administrator shall place emphasis on techniques  
25 that—

26           (A) improve the ability to inventory emissions of volatile organic  
27 compounds and nitrogen oxides that contribute to urban air pollu-  
28 tion, including anthropogenic and natural sources;

29           (B) improve the understanding of the mechanism through which  
30 anthropogenic and biogenic volatile organic compounds react to  
31 form ozone and other oxidants; and

32           (C) improve the ability to identify and evaluate region-specific  
33 prevention and control options for ozone pollution.

34           (d) ENVIRONMENTAL HEALTH EFFECTS RESEARCH.—

35               (1) IN GENERAL.—The Administrator, in consultation with the Sec-  
36 retary of Health and Human Services, shall conduct a research pro-  
37 gram on the short-term and long-term effects of air pollutants, includ-  
38 ing wood smoke, on human health. In conducting the research pro-  
39 gram, the Administrator—

1 (A) shall conduct studies, including epidemiological, clinical, and  
2 laboratory and field studies, as necessary to identify and evaluate  
3 exposure to and effects of air pollutants on human health;

4 (B) may utilize, on a reimbursable basis, the facilities of exist-  
5 ing Federal scientific laboratories and research centers; and

6 (C) shall consult with other Federal agencies to ensure that  
7 similar research being conducted in other agencies is coordinated  
8 to avoid duplication.

9 (2) METHODS AND TECHNIQUES TO IDENTIFY AND ASSESS RISKS.—

10 In conducting the research program, the Administrator shall develop  
11 methods and techniques necessary to identify and assess the risks to  
12 human health from both routine and accidental exposures to individual  
13 air pollutants and combinations of air pollutants.

14 (3) ELEMENTS.—The research program shall include the following  
15 elements:

16 (A) An interagency task force to coordinate the research pro-  
17 gram.

18 (B) An evaluation of each of the hazardous air pollutants listed  
19 under section 211112(b) of this title, to decide, on the basis of  
20 available information, their relative priority for preparation of en-  
21 vironmental health assessments pursuant to subparagraph (C).

22 (C) Preparation of environmental health assessments for each of  
23 the hazardous air pollutants listed under section 211112(b) of this  
24 title.

25 (4) TASK FORCE.—The task force established under paragraph  
26 (3)(A) shall include representatives of the National Institute of Envi-  
27 ronmental Health Sciences, EPA, the Agency for Toxic Substances and  
28 Disease Registry, the National Toxicology Program, the National Insti-  
29 tute of Standards and Technology, the National Science Foundation,  
30 the Surgeon General, and the Department of Energy. The task force  
31 shall be chaired by a representative of EPA.

32 (5) EVALUATION.—The evaluation under paragraph (3)(B) shall be  
33 based on reasonably anticipated toxicity to humans and exposure fac-  
34 tors such as frequency of occurrence as an air pollutant and volume  
35 of emissions in populated areas. The evaluation shall be reviewed by  
36 the task force established under paragraph (3)(A).

37 (6) ENVIRONMENTAL HEALTH ASSESSMENTS.—

38 (A) IN GENERAL.—The Administrator shall prepare an environ-  
39 mental health assessment for each hazardous air pollutant de-  
40 scribed in subparagraphs (B) and (C) of paragraph (3). Not fewer

1 than 24 environmental health assessments shall be completed and  
2 published annually.

3 (B) GUIDELINES.—An environmental health assessment shall be  
4 prepared in accordance with guidelines developed by the Adminis-  
5 trator in consultation with the task force established under para-  
6 graph (3)(A) and EPA's Science Advisory Board.

7 (C) CONTENTS.—An environmental health assessment shall in-  
8 clude—

9 (i) an examination, summary, and evaluation of available  
10 toxicological and epidemiological information for an air pollut-  
11 ant to ascertain the levels of human exposure that pose a sig-  
12 nificant threat to human health and the associated acute,  
13 subacute, and chronic adverse health effects;

14 (ii) a determination of gaps in available information related  
15 to human health effects and exposure levels; and

16 (iii) where appropriate, an identification of additional ac-  
17 tivities, including toxicological and inhalation testing, needed  
18 to identify the types or levels of exposure that may present  
19 significant risk of adverse health effects in humans.

20 (e) ECOSYSTEM RESEARCH.—

21 (1) IN GENERAL.—In carrying out subsection (a), the Administrator,  
22 in cooperation, where appropriate, with the Under Secretary of Com-  
23 merce for Oceans and Atmosphere, the Director of the Fish and Wild-  
24 life Service, and the Secretary of Agriculture, shall conduct a research  
25 program to improve understanding of the short-term and long-term  
26 causes, effects, and trends of ecosystems damage from air pollutants  
27 on ecosystems.

28 (2) ELEMENTS.—The program shall include the following elements:

29 (A) Identification of regionally representative and critical eco-  
30 systems for research.

31 (B) Evaluation of risks to ecosystems exposed to air pollutants,  
32 including characterization of the causes and effects of chronic and  
33 episodic exposures to air pollutants and determination of the re-  
34 versibility of those effects.

35 (C) Development of improved atmospheric dispersion models  
36 and monitoring systems and networks for evaluating and quantify-  
37 ing exposure to and effects of multiple environmental stresses as-  
38 sociated with air pollution.

39 (D) Evaluation of the effects of air pollution on water quality,  
40 including assessments of the short-term and long-term ecological  
41 effects of acid deposition and other atmospherically derived pollut-



1           ants on surface water (including wetland and estuaries) and  
2           groundwater.

3           (E) Evaluation of the effects of air pollution on forests, mate-  
4           rials, crops, biological diversity, soils, and other terrestrial and  
5           aquatic systems exposed to air pollutants.

6           (F) Estimation of the associated economic costs of ecological  
7           damage that have occurred as a result of exposure to air pollut-  
8           ants.

9           (3) ESTUARINE RESEARCH RESERVES.—Consistent with the purpose  
10          of the program, the Administrator may use the estuarine research re-  
11          serves established pursuant to section 315 of the Coastal Zone Manage-  
12          ment Act of 1972 (16 U.S.C. 1461) to carry out the research.

13       (f) LIQUEFIED GASEOUS FUELS SPILL TEST FACILITY.—

14           (1) IN GENERAL.—The Administrator, in consultation with the Sec-  
15           retary of Energy and the Federal Coordinating Council for Science,  
16           Engineering, and Technology, shall oversee an experimental and analyt-  
17           ical research effort, with the experimental research to be carried out  
18           at the Liquefied Gaseous Fuels Spill Test Facility.

19           (2) LIST OF CHEMICALS; SCHEDULE FOR FIELD TESTING.—In con-  
20           sultation with the Secretary of Energy, the Administrator shall develop  
21           a list of chemicals and a schedule for field testing at the Liquefied Gas-  
22           eous Fuels Spill Test Facility.

23           (3) NUMBER OF CHEMICALS.—Analysis of a minimum of 10 chemi-  
24           cals per year shall be carried out, with the selection of a minimum of  
25           2 chemicals for field testing each year.

26           (4) PRIORITY.—Highest priority shall be given to chemicals that  
27           would present the greatest potential risk to human health as a result  
28           of an accidental release—

29               (A) from a fixed site; or

30               (B) related to the transport of the chemicals.

31           (5) PURPOSE.—The purpose of the research shall be to—

32               (A) develop improved predictive models for atmospheric disper-  
33               sion that, at a minimum—

34                   (i) describe dense gas releases in complex terrain including  
35                   man-made structures or obstacles with variable winds;

36                   (ii) improve understanding of the effects of turbulence on  
37                   dispersion patterns; and

38                   (iii) consider realistic behavior of aerosols by including  
39                   physicochemical reactions with water vapor, ground deposi-  
40                   tion, and removal by water spray;

1 (B) evaluate existing and future atmospheric dispersion models  
2 by—

3 (i) the development of a rigorous, standardized methodol-  
4 ogy for dense gas models; and

5 (ii) the application of the methodology to current dense gas  
6 dispersion models using data generated from field experi-  
7 ments; and

8 (C) evaluate the effectiveness of hazard mitigation and emer-  
9 gency response technology for fixed site and transportation related  
10 accidental releases of toxic chemicals.

11 (6) MODELS.—Models pertaining to accidental release shall be evalu-  
12 ated and improved periodically for their utility in planning and imple-  
13 menting evacuation procedures and other mitigative strategies designed  
14 to minimize human exposure to hazardous air pollutants released acci-  
15 dentally.

16 (7) USE OF FACILITY.—The Secretary of Energy shall make avail-  
17 able to interested persons (including other Federal agencies and busi-  
18 nesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to  
19 conduct research and other activities in connection with the activities  
20 described in this subsection.

21 (g) POLLUTION PREVENTION AND EMISSION CONTROL.—

22 (1) IN GENERAL.—In carrying out subsection (a), the Administrator  
23 shall conduct a basic engineering research and technology program to  
24 develop, evaluate, and demonstrate nonregulatory strategies and tech-  
25 nologies for air pollution prevention.

26 (2) PRIORITY; PARTICIPATION.—The strategies and technologies  
27 shall be developed with priority on pollutants that pose a significant  
28 risk to human health and the environment, and with opportunities for  
29 participation by industry, public interest groups, scientists, and other  
30 interested persons in the development of the strategies and tech-  
31 nologies.

32 (3) ELEMENTS.—

33 (A) IN GENERAL.—The program shall include the following ele-  
34 ments:

35 (i) Improvements in nonregulatory strategies and tech-  
36 nologies for preventing or reducing multiple air pollutants, in-  
37 cluding sulfur oxides, nitrogen oxides, heavy metals, PM-10  
38 (particulate matter), carbon monoxide, and carbon dioxide,  
39 from stationary sources, including fossil fuel powerplants.

40 (ii) Improvements in nonregulatory strategies and tech-  
41 nologies for reducing air emissions from area sources.

1 (iii) Improvements in nonregulatory strategies and tech-  
2 nologies for preventing, detecting, and correcting accidental  
3 releases of hazardous air pollutants.

4 (iv) Improvements in nonregulatory strategies and tech-  
5 nologies that dispose of tires in ways that avoid adverse air  
6 quality impacts.

7 (B) PREVENTION OR REDUCTION OF MULTIPLE AIR POLLUT-  
8 ANTS.—The strategies and technologies described in subparagraph  
9 (A)(i) shall include improvements in the relative cost effectiveness  
10 and long-range implications of various air pollutant reduction and  
11 nonregulatory control strategies such as energy conservation, in-  
12 cluding end-use efficiency, and fuel-switching to cleaner fuels. The  
13 strategies and technologies shall be considered for existing and  
14 new facilities.

15 (4) EFFECT OF SUBSECTION.—Nothing in this subsection shall be  
16 construed to authorize the imposition on any person of air pollution  
17 control requirements.

18 (5) CONSULTATION.—The Administrator shall consult with other ap-  
19 propriate Federal agencies to ensure coordination and to avoid duplica-  
20 tion of activities authorized under this subsection.

21 (h) NIEHS STUDIES.—

22 (1) BASIC RESEARCH PROGRAM.—

23 (A) IN GENERAL.—The Director of the National Institute of  
24 Environmental Health Sciences may conduct a program of basic  
25 research to identify, characterize, and quantify risks to human  
26 health from air pollutants.

27 (B) MEANS OF RESEARCH.—The research shall be conducted  
28 primarily through a combination of university and medical school-  
29 based grants and through intramural studies and contracts.

30 (2) PHYSICIAN EDUCATION AND TRAINING PROGRAM.—The Director  
31 of the National Institute of Environmental Health Sciences shall con-  
32 duct a program for the education and training of physicians in environ-  
33 mental health.

34 (3) NO CONFLICT.—The Director shall ensure that the programs  
35 shall not conflict with research undertaken by the Administrator.

36 (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to  
37 be appropriated to the National Institute of Environmental Health Sci-  
38 ences such sums as are necessary to carry out this subsection.

39 (i) COORDINATION OF RESEARCH.—

40 (1) IN GENERAL.—The Administrator shall develop and implement  
41 a plan for identifying areas in which activities authorized under this

1 section can be carried out in conjunction with other Federal ecological  
2 and air pollution research efforts.

3 (2) CONTENTS.—The plan shall include—

4 (A) an assessment of ambient monitoring stations and networks  
5 to determine cost effective ways to expand monitoring capabilities  
6 in both urban and rural environments;

7 (B) a consideration of the extent of the feasibility and scientific  
8 value of conducting the research program under subsection (e) to  
9 include consideration of the effects of atmospheric processes and  
10 air pollution effects; and

11 (C) a methodology for evaluating and ranking pollution preven-  
12 tion technologies, such as those developed under subsection (g), in  
13 terms of their ability to reduce cost-effectively the emissions of air  
14 pollutants and other airborne chemicals of concern.

15 (3) REPORTS.—Every 4 years, the Administrator shall report to  
16 Congress on the progress made in implementing the plan developed  
17 under this subsection, and shall include in the report any revisions of  
18 the plan.

19 (j) NATIONAL ACID PRECIPITATION ASSESSMENT PROGRAM.—

20 (1) DEFINITIONS.—In this subsection:

21 (A) ACID PRECIPITATION.—The term “acid precipitation”  
22 means the wet or dry deposition from the atmosphere of acid  
23 chemical compounds.

24 (B) COMPREHENSIVE PLAN.—The term “comprehensive plan”  
25 means the comprehensive research plan prepared under paragraph  
26 (3).

27 (C) TASK FORCE.—The term “Task Force” means the Acid  
28 Precipitation Task Force formed under paragraph (2).

29 (2) TASK FORCE.—There shall be formed an Acid Precipitation Task  
30 Force consisting of the Administrator, the Secretary of Energy, the  
31 Secretary of the Interior, the Secretary of Agriculture, the Adminis-  
32 trator of the National Oceanic and Atmospheric Administration, the  
33 Administrator of the National Aeronautics and Space Administration,  
34 and such additional members as the President may select. The Presi-  
35 dent shall appoint a chairman for the Task Force from among its  
36 members.

37 (3) CONVENING OF TASK FORCE.—The Task Force shall convene as  
38 necessary, but not less than twice during each fiscal year.

39 (4) COMPREHENSIVE RESEARCH PLAN.—

40 (A) IN GENERAL.—The Task Force shall prepare a comprehen-  
41 sive research plan setting forth a coordinated program—

- 1 (i) to identify the causes and effects of acid precipitation;  
2 and  
3 (ii) to identify actions to limit or ameliorate the harmful  
4 effects of acid precipitation.
- 5 (B) SCOPE.—The comprehensive plan shall include programs  
6 for—
- 7 (i) identifying the sources of atmospheric emissions contrib-  
8 uting to acid precipitation;
- 9 (ii) establishing and operating a nationwide long-term mon-  
10 itoring network to detect and measure levels of acid precipita-  
11 tion;
- 12 (iii) research in atmospheric physics and chemistry to fa-  
13 cilitate understanding of the processes by which atmospheric  
14 emissions are transformed into acid precipitation;
- 15 (iv) development and application of atmospheric transport  
16 models to enable prediction of long-range transport of sub-  
17 stances causing acid precipitation;
- 18 (v) defining geographic areas of impact through deposition  
19 monitoring, identification of sensitive areas, and identification  
20 of areas at risk;
- 21 (vi) broadening of impact databases through collection of  
22 existing data on water and soil chemistry and through tem-  
23 poral trend analysis;
- 24 (vii) development of dose-response functions with respect to  
25 soils, soil organisms, aquatic and amphibious organisms, crop  
26 plants, and forest plants;
- 27 (viii) establishing and carrying out system studies with re-  
28 spect to plant physiology, aquatic ecosystems, soil chemistry  
29 systems, soil microbial systems, and forest ecosystems;
- 30 (ix) economic assessments of—
- 31 (I) the environmental impacts caused by acid precipi-  
32 tation on crops, forests, fisheries, and recreational and  
33 aesthetic resources and structures; and
- 34 (II) alternative technologies to remedy or otherwise  
35 ameliorate the harmful effects which may result from  
36 acid precipitation;
- 37 (x) documenting all current Federal activities related to re-  
38 search on acid precipitation and ensuring that those activities  
39 are coordinated in ways that prevent needless duplication and  
40 waste of financial and technical resources;

1 (xi) effecting cooperation in acid precipitation research and  
2 development programs, ongoing and planned, with the af-  
3 fected and contributing States and with other sovereign na-  
4 tions having a commonality of interest;

5 (xii) subject to subparagraph (E)(i), management by the  
6 Task Force of financial resources committed to Federal acid  
7 precipitation research and development;

8 (xiii) subject to subparagraph (E)(ii), management of the  
9 technical aspects of Federal acid precipitation research and  
10 development programs, including—

11 (I) the planning and management of research and de-  
12 velopment programs and projects;

13 (II) the selection of contractors and grantees to carry  
14 out the programs and projects; and

15 (III) the establishment of peer review procedures to  
16 ensure the quality of research and development programs  
17 and their products; and

18 (xiv) analyzing the information available regarding acid  
19 precipitation in order to present periodic recommendations to  
20 Congress and the appropriate agencies about actions to be  
21 taken by Congress and the agencies to alleviate acid precipita-  
22 tion and its effects.

23 (C) BASIS FOR AUTHORIZATIONS AND APPROPRIATIONS.—The  
24 comprehensive plan shall constitute the basis on which requests for  
25 authorizations and appropriations are to be made.

26 (D) IMPLEMENTATION.—The comprehensive plan—

27 (i) shall be carried out in accordance with, and meet the  
28 program objectives specified in, clauses (i) through (xi) of  
29 subparagraph (B);

30 (ii) shall be managed in accordance with clauses (xii)  
31 through (xiv) of subparagraph (B); and

32 (iii) shall be funded by annual appropriations, subject to  
33 annual authorizations.

34 (E) RULES OF CONSTRUCTION.—

35 (i) MANAGEMENT OF FINANCIAL RESOURCES.—Subpara-  
36 graph (B)(xii) shall not be construed as modifying, or as au-  
37 thORIZING the Task Force or the comprehensive plan to mod-  
38 ify, any provision of an appropriation Act (or any other provi-  
39 sion of law relating to the use of appropriated funds) that  
40 specifies—

1 (I) the department or agency to which funds are ap-  
2 propriated; or

3 (II) the obligations of a department or agency with re-  
4 spect to the use of those funds.

5 (ii) MANAGEMENT OF TECHNICAL ASPECTS OF PRO-  
6 GRAMS.—Subparagraph (B)(xiii) shall not be construed as  
7 modifying, or as authorizing the Task Force or the compre-  
8 hensive plan to modify, any provision of law relating to or in-  
9 volving a department or agency that specifies—

10 (I) procurement practices for the selection, award, or  
11 management of contracts or grants by the department or  
12 agency; or

13 (II) program activities, limitations, obligations, or re-  
14 sponsibilities of the department or agency.

15 (5) OTHER RESPONSIBILITIES OF THE TASK FORCE.—

16 (A) IN GENERAL.—The responsibilities of the Task Force shall  
17 include the following:

18 (i) Coordination with participating Federal agencies, aug-  
19 menting the agencies' research and monitoring efforts and  
20 sponsoring additional research in the scientific community as  
21 necessary to ensure the availability and quality of data and  
22 methodologies needed to evaluate the status and effectiveness  
23 of the acid deposition control program.

24 (ii) Publication and maintenance of a national acid lakes  
25 registry that tracks the condition and change over time of a  
26 statistically representative sample of lakes in regions that are  
27 known to be sensitive to surface water acidification.

28 (iii) Biennial submission of a unified budget recommenda-  
29 tion to the President for activities of the Federal Government  
30 in connection with the research program described in this  
31 subsection.

32 (iv) Biennial submission of a report to Congress describing  
33 the results of the Task Force's investigations and analyses.

34 (B) RESEARCH AND MONITORING EFFORTS.—Research and  
35 monitoring efforts under subparagraph (A)(i) shall include—

36 (i) continuous monitoring of emissions of precursors of acid  
37 deposition;

38 (ii) maintenance, upgrading, and application of models,  
39 such as the Regional Acid Deposition Model, that describe the  
40 interactions of emissions with the atmosphere, and models

1 that describe the response of ecosystems to acid deposition;  
2 and

3 (iii) analysis of the costs, benefits, and effectiveness of the  
4 acid deposition control program.

5 (C) REPORTS.—

6 (i) TECHNICAL INFORMATION.—The reporting of technical  
7 information about acid deposition in a report under subpara-  
8 graph (A)(iv) shall be provided in a format that facilitates  
9 communication with policymakers and the public.

10 (ii) CONTENTS OF BIENNIAL REPORT.—A report under  
11 subparagraph (A)(iv) shall include—

12 (I) actual and projected emissions and acid deposition  
13 trends;

14 (II) average ambient concentrations of acid deposition  
15 precursors and their transformation products;

16 (III) the status of ecosystems (including forests and  
17 surface water), materials, and visibility affected by acid  
18 deposition;

19 (IV) the causes and effects of such deposition, includ-  
20 ing changes in surface water quality and forest and soil  
21 conditions;

22 (V) the occurrence and effects of episodic acidification,  
23 particularly with respect to high elevation watersheds;  
24 and

25 (VI) the confidence level associated with each conclu-  
26 sion to aid policymakers in use of the information.

27 (iii) ADDITIONAL CONTENTS OF QUADRENNIAL REPORT.—  
28 Every 4 years, a report under subparagraph (A)(iv) shall in-  
29 clude—

30 (I) the reduction in deposition rates that must be  
31 achieved to prevent adverse ecological effects; and

32 (II) the costs and benefits of the acid deposition con-  
33 trol program created by subdivision 5.

34 (6) EFFECT OF SUBSECTION.—Nothing in this subsection shall be  
35 deemed to—

36 (A) grant any new regulatory authority;

37 (B) limit, expand, or otherwise modify any regulatory authority  
38 under existing law; or

39 (C) establish new criteria, standards, or requirements for regu-  
40 lation under existing law.

41 (k) AIR POLLUTION CONFERENCES.—



1 (1) IN GENERAL.—If, in the judgment of the Administrator, an air  
2 pollution problem of substantial significance may result from discharge  
3 or discharges into the atmosphere, the Administrator may call a con-  
4 ference concerning the potential air pollution problem to be held in or  
5 near 1 or more of the places where the discharge or discharges are oc-  
6 ccurring or will occur.

7 (2) OPPORTUNITY TO BE HEARD.—All interested persons shall be  
8 given an opportunity to be heard at a conference under paragraph (1),  
9 orally or in writing, and shall be permitted to appear in person or by  
10 representative in accordance with procedures prescribed by the Admin-  
11 istrator.

12 (3) FINDINGS.—

13 (A) IN GENERAL.—If the Administrator finds, on the basis of  
14 the evidence presented at a conference, that the discharge or dis-  
15 charges if permitted to take place or continue are likely to cause  
16 or contribute to air pollution subject to abatement under this part,  
17 the Administrator shall send the findings, together with recom-  
18 mendations concerning the measures that the Administrator finds  
19 reasonable and suitable to prevent the pollution, to—

20 (i) the person or persons whose actions will result in the  
21 discharge or discharges;

22 (ii) air pollution agencies of the State or States and of the  
23 municipality or municipalities where the discharge or dis-  
24 charges will originate; and

25 (iii) the interstate air pollution control agency, if any, in  
26 the jurisdictional area of which any such municipality is lo-  
27 cated.

28 (B) EFFECT.—Findings and recommendations under subpara-  
29 graph (A) shall be advisory only, but shall be admitted with the  
30 record of the conference as part of the proceedings under sub-  
31 sections (b), (c), (d), (e), and (f) of section 211108 of this title.

32 **§ 211104. Research relating to fuels and vehicles**

33 (a) IN GENERAL.—

34 (1) SPECIAL EMPHASIS.—The Administrator shall give special em-  
35 phasis to research and development into new and improved methods,  
36 having industry-wide application, for the prevention and control of air  
37 pollution resulting from the combustion of fuels.

38 (2) ACTIVITIES.—In furtherance of research and development under  
39 paragraph (1), the Administrator shall—

40 (A) conduct and accelerate research programs directed toward  
41 development of improved, cost-effective techniques for—

- 1 (i) control of combustion byproducts of fuels;
- 2 (ii) removal of potential air pollutants from fuels prior to
- 3 combustion;
- 4 (iii) control of emissions from the evaporation of fuels;
- 5 (iv) improving the efficiency of fuels combustion so as to
- 6 decrease atmospheric emissions; and
- 7 (v) producing synthetic or new fuels that, when used, result
- 8 in decreased atmospheric emissions;
- 9 (B) provide for Federal grants to public or nonprofit agencies,
- 10 institutions, and organizations and to individuals, and contracts
- 11 with public or private agencies, institutions, or persons, for pay-
- 12 ment of—
- 13 (i) part of the cost of acquiring, constructing, or otherwise
- 14 securing for research and development purposes, new or im-
- 15 proved devices or methods having industrywide application of
- 16 preventing or controlling discharges into the air of various
- 17 types of pollutants;
- 18 (ii) part of the cost of programs to develop low emission
- 19 alternatives to the present internal combustion engine;
- 20 (iii) the cost to purchase vehicles and vehicle engines, or
- 21 portions thereof, for research, development, and testing pur-
- 22 poses; and
- 23 (iv) carrying out the other provisions of this section, with-
- 24 out regard to subsection (a) or (b) of section 3324 of title 31
- 25 or section 6101 of title 5;
- 26 (C) determine, by laboratory and pilot plant testing, the results
- 27 of air pollution research and studies in order to develop new or
- 28 improved processes and plant designs to the point where the pro-
- 29 cesses and plant designs can be demonstrated on a large and prac-
- 30 tical scale;
- 31 (D) construct, operate, and maintain, or assist in meeting the
- 32 cost of the construction, operation, and maintenance of, new or
- 33 improved demonstration plants or processes that have promise of
- 34 accomplishing the purposes of this division; and
- 35 (E) study new or improved methods for the recovery and mar-
- 36 keting of commercially valuable byproducts resulting from the re-
- 37 moval of pollutants.
- 38 (3) RESEARCH OR DEMONSTRATION CONTRACTS.—A research or
- 39 demonstration contract awarded pursuant to this subsection (including
- 40 a contract for construction) may be made in accordance with, and sub-
- 41 ject to the limitations provided with respect to research contracts of the

1 military departments in, section 2353 of title 10, except that the deter-  
2 mination, approval, and certification required by that subsection shall  
3 be made by the Administrator.

4 (4) LIMITATION ON GRANT AMOUNT.—No grant may be made under  
5 paragraph (2)(B) in excess of \$1,500,000.

6 (b) POWERS OF ADMINISTRATOR.—In carrying out this section, the Ad-  
7 ministrator may—

8 (1) conduct and accelerate research and development of cost-effective  
9 instrumentation techniques to facilitate determination of the quantity  
10 and quality of air pollutant emissions, including automotive emissions;

11 (2) utilize, on a reimbursable basis, the facilities of existing Federal  
12 scientific laboratories;

13 (3) establish and operate necessary facilities and test sites at which  
14 to carry on the research, testing, development, and programming nec-  
15 essary to effectuate this section;

16 (4) acquire secret processes, technical data, inventions, patent appli-  
17 cations, patents, licenses, and interests in land, plants, and facilities,  
18 and other property or rights by purchase, license, lease, or donation;  
19 and

20 (5) cause on-site inspections to be made of promising domestic and  
21 foreign projects, and cooperate and participate in their development in  
22 instances in which the purposes of this division will be served thereby.

23 (c) CLEAN ALTERNATIVE FUELS.—The Administrator shall conduct a re-  
24 search program to identify, characterize, and predict air emissions related  
25 to the production, distribution, storage, and use of clean alternative fuels  
26 to determine the risks and benefits to human health and the environment  
27 relative to those from using conventional gasoline and diesel fuels. The Ad-  
28 ministrator shall consult with other Federal agencies to ensure coordination  
29 and to avoid duplication of activities authorized under this subsection.

30 **§211105. Grants for support of air pollution planning and**  
31 **control programs**

32 (a) DEFINITION OF IMPLEMENT.—In this section, the term “implement”,  
33 in the context of implementation of a program or of a primary or secondary  
34 NAAQS, means to engage in any activity related to the planning, develop-  
35 ing, establishing, carrying out, improving, or maintaining of the program or  
36 primary or secondary NAAQS.

37 (b) IN GENERAL.—

38 (1) GRANTS.—

39 (A) IN GENERAL.—The Administrator may make a grant to an  
40 air pollution control agency described in subparagraph (A), (B),  
41 (C), (D), or (E) of section 201101 of this title in an amount up

1 to  $\frac{3}{5}$  of the cost of implementing programs for the prevention and  
2 control of air pollution or implementation of primary and second-  
3 ary NAAQSes.

4 (B) FAILURE TO CONTRIBUTE MINIMUM REQUIRED AMOUNT.—  
5 Subject to subsections (c) and (d), an air pollution control agency  
6 that receives a grant under subparagraph (A) shall contribute the  
7 required  $\frac{2}{5}$  minimum. If an air pollution control agency fails to  
8 meet and maintain the required level, the Administrator shall re-  
9 duce the amount of the Federal contribution accordingly.

10 (C) AIR QUALITY CONTROL REGIONS OR PORTIONS THEREOF  
11 FOR WHICH THERE IS AN APPLICABLE IMPLEMENTATION PLAN.—  
12 With respect to any air quality control region or portion thereof  
13 for which there is an applicable implementation plan under section  
14 211110 of this title, a grant under subparagraph (A) may be  
15 made only to an air pollution control agency that has substantial  
16 responsibilities for carrying out the applicable implementation  
17 plan.

18 (2) AIR POLLUTION CONTROL AGENCIES ESTABLISHED BY 2 OR  
19 MORE STATES OR MUNICIPALITIES.—Before approving any grant under  
20 this subsection to any air pollution control agency described in sub-  
21 paragraph (B) or (D) of section 201101(2) of this title, the Adminis-  
22 trator shall receive assurances that the air pollution control agency—

23 (A) provides for adequate representation of appropriate State,  
24 interstate, local, and (when appropriate) international interests in  
25 the air quality control region; and

26 (B) has the capability of developing a comprehensive air quality  
27 plan for the air quality control region, which plan shall include—

28 (i) (when appropriate) a recommended system of alerts to  
29 avert and reduce the risk of situations in which there may be  
30 imminent and serious danger to the public health or welfare  
31 from air pollutants; and

32 (ii) the various aspects relevant to the establishment of air  
33 quality standards for that air quality control region, including  
34 the concentration of industries, other commercial establish-  
35 ments, population, and naturally occurring factors that affect  
36 those air quality standards.

37 (c) TERMS AND CONDITIONS; LIMITATION ON GRANT AMOUNTS.—

38 (1) TERMS AND CONDITIONS.—From the sums available for the pur-  
39 poses of subsection (b) for any fiscal year, the Administrator shall from  
40 time to time make grants to air pollution control agencies on such  
41 terms and conditions as the Administrator may find necessary to carry

1 out this section. In establishing regulations for the granting of such  
2 funds the Administrator shall, so far as practicable, give due consider-  
3 ation to—

4 (A) the population;

5 (B) the extent of the actual or potential air pollution problem;

6 and

7 (C) the financial need of the respective air pollution control  
8 agencies.

9 (2) LIMITATION ON GRANT AMOUNTS.—Not more than 10 percent of  
10 the total of funds appropriated or allocated for the purposes of sub-  
11 section (b) shall be granted for programs in any 1 State. In the case  
12 of a grant for a program in an area crossing State boundaries, the Ad-  
13 ministrator shall determine the portion of the grant that is chargeable  
14 to the percentage limitation under this subsection for each State into  
15 which the area extends.

16 (3) MINIMUM AMOUNT.—Subject to paragraph (1), no State shall  
17 have made available to it for application less than 0.5 percent of the  
18 annual appropriation for grants under this section for grants to air pol-  
19 lution control agencies within the State.

20 (d) MAINTENANCE OF EFFORT.—

21 (1) EXPENDITURES.—

22 (A) IN GENERAL.—Except as provided in paragraph (2), no air  
23 pollution control agency shall receive any grant under this section  
24 during any fiscal year when its expenditures of non-Federal funds  
25 for recurrent expenditures for air pollution control programs will  
26 be less than its expenditures were for such programs during the  
27 preceding fiscal year. In order for the Administrator to award  
28 grants under this section in a timely manner each fiscal year, the  
29 Administrator shall compare an air pollution control agency's pro-  
30 spective expenditure level to that of its 2d preceding fiscal year.

31 (B) CONSIDERATION OF EXEMPTIONS.—In prescribing regula-  
32 tions that define applicable nonrecurrent and recurrent expendi-  
33 tures, the Administrator shall give due consideration to exempting  
34 an air pollution control agency from the limitations of this para-  
35 graph and subsection (b) due to increases experienced by that air  
36 pollution control agency from time to time in its annual expendi-  
37 tures for purposes acceptable to the Administrator for that fiscal  
38 year.

39 (2) NONSELECTIVE REDUCTION IN EXPENDITURES.—The Adminis-  
40 trator may award a grant to an air pollution control agency that does  
41 not meet the requirements of paragraph (1) if the Administrator, after

1 notice and opportunity for public hearing, determines that a reduction  
2 in expenditures is attributable to a nonselective reduction in the ex-  
3 penditures in the programs of all executive branch agencies of the ap-  
4 plicable unit of government.

5 (3) USE TO SUPPLEMENT OR INCREASE NON-FEDERAL FUNDS.—No  
6 air pollution control agency shall receive any grant under this section  
7 with respect to the maintenance of a program for the prevention and  
8 control of air pollution unless the Administrator is satisfied that such  
9 a grant will be used to supplement and, to the extent practicable, in-  
10 crease the level of State, local, or other non-Federal funds.

11 (4) CONSULTATION.—No grant shall be made under this section  
12 until the Administrator has consulted with the appropriate official as  
13 designated by the Governor or Governors of the State or States af-  
14 fected.

15 (e) REDUCTION OF PAYMENTS.—The Administrator, with the concu-  
16 rence of any recipient of a grant under this section, may reduce the pay-  
17 ments to the recipient by the amount of the pay, allowances, traveling ex-  
18 penses, and any other costs in connection with the detail of any officer or  
19 employee to the recipient under section 203101 of this title, when the detail  
20 is for the convenience of, and at the request of, the recipient and for the  
21 purpose of carrying out this division. The amount by which such payments  
22 have been reduced shall be available for payment of such costs by the Ad-  
23 ministrator, but shall, for the purpose of determining the amount of any  
24 grant to a recipient under subsection (b), be deemed to have been paid to  
25 the recipient.

26 (f) NOTICE AND OPPORTUNITY FOR HEARING.—No application by a  
27 State for a grant under this section may be disapproved by the Adminis-  
28 trator without prior notice and opportunity for a public hearing in the af-  
29 fected State, and no commitment or obligation of any funds under any such  
30 grant may be revoked or reduced without prior notice and opportunity for  
31 a public hearing in the affected State (or in 1 of the affected States if more  
32 than 1 State is affected).

33 **§211106. Interstate air quality agencies**

34 (a) IN GENERAL.—For the purpose of developing implementation plans  
35 for any interstate air quality control region designated pursuant to section  
36 211107 of this title or of implementing section 215108 or 215205 of this  
37 title, the Administrator may pay, for 2 years, up to 100 percent of the air  
38 quality planning program costs of—

39 (1) any commission established under either of those sections; or

40 (2) any agency designated by the Governors of the affected States,  
41 which agency—

1 (A) shall be capable of recommending to the Governors plans  
2 for implementation of primary and secondary NAAQSeS; and

3 (B) shall include representation from the States and appropriate  
4 political subdivisions within the air quality control region.

5 (b) SUBSEQUENT YEARS.—After the initial 2-year period, the Adminis-  
6 trator may make grants to a commission or agency described in subsection  
7 (a) in an amount up to  $\frac{3}{5}$  of the air quality implementation program costs  
8 of the commission or agency.

9 **§ 211107. Air quality control regions**

10 (a) STATE RESPONSIBILITY.—Each State shall have the primary respon-  
11 sibility for ensuring air quality within the entire geographic area comprising  
12 the State by submitting an implementation plan for the State that specifies  
13 the manner in which primary and secondary NAAQSeS will be achieved and  
14 maintained within each air quality control region in the State.

15 (b) DESIGNATED AIR QUALITY CONTROL REGIONS.—For purposes of de-  
16 veloping and carrying out State implementation plans under section 211110  
17 of this title—

18 (1) an air quality control region designated under this section before  
19 December 31, 1970, or a region designated after that date under sub-  
20 section (c), shall be an air quality control region; and

21 (2) the portion of a State that is not part of any such designated  
22 region shall be an air quality control region, but that portion may be  
23 subdivided by the State into 2 or more air quality control regions with  
24 the approval of the Administrator.

25 (c) DESIGNATION BY THE ADMINISTRATOR.—After consultation with ap-  
26 propriate State and local authorities, the Administrator shall designate as  
27 an air quality control region any interstate area or major intrastate area  
28 that the Administrator considers necessary or appropriate for the attain-  
29 ment and maintenance of ambient air quality standards. The Administrator  
30 shall immediately notify the Governors of the affected States of any designa-  
31 tion made under this subsection.

32 (d) DESIGNATIONS.—

33 (1) DESIGNATIONS GENERALLY.—

34 (A) SUBMISSION BY GOVERNORS OF INITIAL DESIGNATIONS  
35 FOLLOWING PROMULGATION OF NEW OR REVISED STANDARDS.—

36 (i) IN GENERAL.—By such date as the Administrator may  
37 reasonably require, but not later than 1 year after promulga-  
38 tion of a new or revised NAAQS for any pollutant under sec-  
39 tion 211109 of this title, the Governor of each State shall  
40 (and at any other time the Governor of a State considers ap-  
41 appropriate the Governor may) submit to the Administrator a

1 list of all areas (or portions thereof) in the State, designating  
2 as—

3 (I) nonattainment, any area that does not meet (or  
4 that contributes to ambient air quality in a nearby area  
5 that does not meet) the primary or secondary NAAQS  
6 for the pollutant;

7 (II) attainment, any area (other than an area identi-  
8 fied in subclause (I)) that meets the primary or second-  
9 ary NAAQS for the pollutant; or

10 (III) unclassifiable, any area that cannot be classified  
11 on the basis of available information as meeting or not  
12 meeting the primary or secondary NAAQS for the pollut-  
13 ant.

14 (ii) TIMING.—The Administrator may not require a Gov-  
15 ernor to submit a list required under clause (i) sooner than  
16 120 days after promulgating a new or revised NAAQS.

17 (B) PROMULGATION OF DESIGNATIONS BY THE ADMINIS-  
18 TRATOR.—

19 (i) IN GENERAL.—On promulgation or revision of a  
20 NAAQS, the Administrator shall promulgate the designations  
21 of all areas (or portions thereof) submitted under subpara-  
22 graph (A) as expeditiously as practicable, but in no case later  
23 than 2 years after the date of promulgation of the new or re-  
24 vised NAAQS. The 2-year period may be extended for up to  
25 1 year if the Administrator has insufficient information to  
26 promulgate the designations.

27 (ii) MODIFICATIONS.—In making the promulgations re-  
28 quired under clause (i), the Administrator may make such  
29 modifications as the Administrator considers necessary to the  
30 designations of the areas (or portions thereof) submitted  
31 under subparagraph (A)(i) (including to the boundaries of the  
32 areas or portions thereof). Whenever the Administrator in-  
33 tends to make a modification, the Administrator shall notify  
34 the State and provide the State with an opportunity to dem-  
35 onstrate why any proposed modification is inappropriate. The  
36 Administrator shall give the notification not later than 120  
37 days before the date the Administrator promulgates the des-  
38 ignation, including any modification to the designation. If the  
39 Governor fails to submit the list in whole or in part, as re-  
40 quired under subparagraph (A), the Administrator shall pro-  
41 mulgate the designation that the Administrator considers ap-



1           appropriate for any area (or portion thereof) not designated by  
2           the State.

3           (iii) SUBMISSION OF LIST ON GOVERNOR'S OWN MOTION.—  
4           If the Governor of any State, on the Governor's own motion,  
5           submits a list of areas (or portions thereof) in the State des-  
6           ignated as nonattainment, attainment, or unclassifiable, the  
7           Administrator shall act on the designations in accordance  
8           with the procedures under paragraph (3).

9           (iv) EFFECTIVE PERIOD.—A designation for an area (or  
10          portion thereof) made pursuant to this subsection shall re-  
11          main in effect until the area (or portion thereof) is redesign-  
12          ated pursuant to paragraph (3) or (4).

13       (C) DESIGNATIONS BY OPERATION OF LAW.—

14           (i) NONATTAINMENT.—Any area designated with respect to  
15           any air pollutant under subparagraph (A), (B), or (C) of sec-  
16           tion 107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1))  
17           (as in effect on November 14, 1990) is designated, by oper-  
18           ation of law, as a nonattainment area for that air pollutant  
19           within the meaning of subparagraph (A)(i)(I).

20           (ii) ATTAINMENT.—Any area designated with respect to  
21           any air pollutant under subparagraph (E) of section  
22           107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as  
23           in effect on November 14, 1990) is designated by operation  
24           of law, as an attainment area for that air pollutant within the  
25           meaning of subparagraph (A)(i)(II).

26           (iii) UNCLASSIFIABLE.—Any area designated with respect  
27           to any air pollutant under subparagraph (D) of section  
28           107(d)(1) of the Clean Air Act (42 U.S.C. 7407(d)(1)) (as  
29           in effect on November 14, 1990) is designated, by operation  
30           of law, as an unclassifiable area for that air pollutant within  
31           the meaning of subparagraph (A)(i)(III).

32       (2) PUBLICATION OF DESIGNATIONS AND REDESIGNATIONS.—

33           (A) NOTICE.—The Administrator shall publish a notice in the  
34           Federal Register promulgating any designation under paragraph  
35           (1) or (5), announcing any designation under paragraph (4), or  
36           promulgating any redesignation under paragraph (3).

37           (B) NONAPPLICABILITY OF OTHER LAW.—Promulgation or an-  
38           nouncement of a designation under paragraph (1), (4) or (5) shall  
39           not be subject to sections 553 to 557 of title 5, except that noth-  
40           ing in this subparagraph shall be construed as precluding such  
41           public notice and comment whenever possible.

1 (3) REDESIGNATION.—

2 (A) NOTIFICATION.—Subject to subparagraph (E), on the basis  
3 of air quality data, planning and control considerations, or any  
4 other air quality-related considerations that the Administrator con-  
5 siders appropriate, the Administrator may at any time publicly no-  
6 tify the Governor of any State that available information indicates  
7 that the designation of any area or portion of an area within the  
8 State or interstate area should be revised. In issuing such a notifi-  
9 cation to the Governor, the Administrator shall provide such infor-  
10 mation as the Administrator may have available explaining the  
11 basis for the notification.

12 (B) SUBMISSION OF REDESIGNATION.—Not later than 120 days  
13 after receiving a notification under subparagraph (A), the Gov-  
14 ernor shall submit to the Administrator such redesignation, if any,  
15 of the appropriate area (or areas) or portion thereof within the  
16 State or interstate area, as the Governor considers appropriate.

17 (C) PROMULGATION OF REDESIGNATION.—Not later than 120  
18 days after the date described in subparagraph (B) (or paragraph  
19 (1)(B)(iii)), the Administrator shall promulgate the redesignation,  
20 if any, of the area or portion thereof, submitted by the Governor  
21 in accordance with subparagraph (B), making such modifications  
22 as the Administrator considers necessary, in the same manner and  
23 under the same procedure as is applicable under clause (ii) of  
24 paragraph (1)(B), except that “60 days” shall be substituted for  
25 “120 days” in that clause. If the Governor does not submit, in ac-  
26 cordance with subparagraph (B), a redesignation for an area (or  
27 portion thereof) identified by the Administrator under subpara-  
28 graph (A), the Administrator shall promulgate such redesignation,  
29 if any, as the Administrator considers appropriate.

30 (D) REDESIGNATION ON GOVERNOR’S OWN MOTION.—The Gov-  
31 ernor of any State may, on the Governor’s own motion, submit to  
32 the Administrator a revised designation of any area or portion  
33 thereof within the State. Within 18 months after receipt of a com-  
34 plete State redesignation submittal, the Administrator shall ap-  
35 prove or deny the redesignation. The submission of a redesignation  
36 by a Governor shall not affect the effectiveness or enforceability  
37 of the applicable State implementation plan.

38 (E) REDESIGNATION OF NONATTAINMENT TO ATTAINMENT.—  
39 The Administrator may not promulgate a redesignation of a non-  
40 attainment area (or portion thereof) to attainment unless—

1 (i) the Administrator determines that the area has attained  
2 the NAAQS;

3 (ii) the Administrator has fully approved the applicable  
4 State implementation plan for the area under section  
5 211110(i) of this title;

6 (iii) the Administrator determines that the improvement in  
7 air quality is due to permanent and enforceable reductions in  
8 emissions resulting from implementation of the applicable  
9 State implementation plan and applicable Federal air pollut-  
10 ant control regulations and other permanent and enforceable  
11 reductions;

12 (iv) the Administrator has fully approved a maintenance  
13 plan for the area as meeting the requirements of section  
14 215106 of this title; and

15 (v) the State containing the area has met all requirements  
16 applicable to the area under section 211110 of this title and  
17 chapter 215.

18 (F) NO REDESIGNATION FROM NONATTAINMENT TO UN-  
19 CLASSIFIABLE.—The Administrator shall not promulgate any re-  
20 designation of any area (or portion thereof) from nonattainment  
21 to unclassifiable.

22 (4) NONATTAINMENT DESIGNATIONS FOR OZONE, CARBON MON-  
23 OXIDE, AND PARTICULATE MATTER (PM-10).—

24 (A) OZONE AND CARBON MONOXIDE.—

25 (i) SUBMISSIONS BY GOVERNORS.—The Governor of each  
26 State shall submit to the Administrator a list that designates,  
27 affirms or reaffirms the designation of, or redesignates all  
28 areas (or portions thereof) of the Governor's State as attain-  
29 ment, nonattainment, or unclassifiable with respect to the  
30 NAAQSeS for ozone and carbon monoxide.

31 (ii) PROMULGATION.—The Administrator shall promulgate  
32 the designations required under clause (i), making such modi-  
33 fications as the Administrator considers necessary, in the  
34 same manner and under the same procedure as is applicable  
35 under clause (ii) of paragraph (1)(B), except that "60 days"  
36 shall be substituted for "120 days" in that clause. If the Gov-  
37 ernor does not submit, in accordance with clause (i) of this  
38 subparagraph, a designation for an area (or portion thereof),  
39 the Administrator shall promulgate the designation that the  
40 Administrator considers appropriate.

1 (iii) NO REDESIGNATION AS ATTAINMENT.—No nonattain-  
2 ment area may be redesignated as an attainment area under  
3 this subparagraph.

4 (iv) AREAS CLASSIFIED AS A SERIOUS AREA, SEVERE AREA,  
5 OR EXTREME AREA.—Notwithstanding paragraph (1)(C)(ii),  
6 if an ozone or carbon monoxide nonattainment area located  
7 within a metropolitan statistical area or consolidated metro-  
8 politan statistical area (as established by the Bureau of the  
9 Census) is classified under chapter 215 as a serious area, se-  
10 vere area, or extreme area, the boundaries of the area are re-  
11 vised (on the date that is 45 days after such classification)  
12 by operation of law to include the entire metropolitan statis-  
13 tical area or consolidated metropolitan statistical area, as the  
14 case may be, unless within that 45-day period the Governor  
15 (in consultation with State and local air pollution control  
16 agencies) notifies the Administrator that additional time is  
17 necessary to evaluate the application of clause (v). When a  
18 Governor has submitted such a notice to the Administrator,  
19 the boundary revision shall occur on the date that is 8  
20 months after the date of the classification unless the Gov-  
21 ernor makes the finding described in clause (v), and the Ad-  
22 ministrator concurs in the finding, within that period. Except  
23 as otherwise provided in this paragraph, a boundary revision  
24 under this clause or clause (v) shall apply for purposes of any  
25 State implementation plan revision.

26 (v) EXCLUSION OF PORTION OF AREA.—Whenever the Gov-  
27 ernor of a State has submitted a notice under clause (iv), the  
28 Governor, in consultation with State and local air pollution  
29 control agencies, shall undertake a study to evaluate whether  
30 the entire metropolitan statistical area or consolidated metro-  
31 politan statistical area should be included within the non-  
32 attainment area. Whenever a Governor finds and dem-  
33 onstrates to the satisfaction of the Administrator, and the  
34 Administrator concurs in the finding, that with respect to a  
35 portion of a metropolitan statistical area or consolidated met-  
36 ropolitan statistical area, sources in the portion do not con-  
37 tribute significantly to violation of the NAAQS, the Adminis-  
38 trator shall approve the Governor's request to exclude that  
39 portion from the nonattainment area. In making the finding,  
40 the Governor and the Administrator shall consider factors  
41 such as population density, traffic congestion, commercial de-

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1                    development, industrial development, meteorological conditions,  
2                    and pollution transport.

3                    (B) PM-10 DESIGNATIONS.—

4                    (i) IN GENERAL.—By operation of law, until redesignation  
5                    by the Administrator pursuant to paragraph (3)—

6                    (I) each area identified in 52 Fed. Reg. 29383 (Au-  
7                    gust 7, 1987) as a Group I area (except to the extent  
8                    that such identification was modified by the Adminis-  
9                    trator before November 15, 1990) is designated non-  
10                    attainment for PM-10;

11                    (II) any area containing a site for which air quality  
12                    monitoring data show a violation of the NAAQS for PM-  
13                    10 before January 1, 1989 (as determined under part  
14                    50, appendix K of title 40, Code of Federal Regulations),  
15                    is designated nonattainment for PM-10; and

16                    (III) each area not described in subclause (I) or (II)  
17                    is designated unclassifiable for PM-10.

18                    (ii) CONTINUANCE IN EFFECT OF CERTAIN DESIGNA-  
19                    TIONS.—Any designation for particulate matter (measured in  
20                    terms of total suspended particulates) that the Administrator  
21                    promulgated pursuant to section 107(d) of the Clean Air Act  
22                    (42 U.S.C. 7407(d)) (as in effect on November 14, 1990)  
23                    shall remain in effect for purposes of implementing the maxi-  
24                    mum allowable increases in concentrations of particulate mat-  
25                    ter (measured in terms of total suspended particulates) pur-  
26                    suant to section 213105(b) of this title, until the Adminis-  
27                    trator determines that such designation is no longer necessary  
28                    for that purpose.

29                    (5) DESIGNATIONS FOR LEAD.—The Administrator may, at any time  
30                    that the Administrator considers appropriate, require a State to des-  
31                    ignate areas (or portions thereof) with respect to the NAAQS for lead  
32                    in effect as of November 15, 1990, in accordance with the procedures  
33                    under subparagraphs (A) and (B) of paragraph (1), except that in ap-  
34                    plying subparagraph (B)(i) of paragraph (1), the phrase “2 years after  
35                    the date of promulgation of the new or revised NAAQS” shall be re-  
36                    placed by the phrase “1 year after the date on which the Administrator  
37                    notifies the State of the requirement to designate areas with respect  
38                    to the NAAQS for lead”.

39                    (6) DESIGNATIONS FOR JULY 1997 PM<sub>2.5</sub> NAAQS.—

40                    (A) SUBMISSION.—Notwithstanding any other provision of law,  
41                    the Governor of each State shall submit designations described in

1 paragraph (1) for the July 1997 PM<sub>2.5</sub> NAAQSeS for each area  
2 within the State, based on air quality monitoring data collected in  
3 accordance with any applicable Federal reference methods for the  
4 relevant areas.

5 (B) PROMULGATION.—Notwithstanding any other provision of  
6 law, the Administrator shall, consistent with paragraph (1), pro-  
7 mulgate the designations described in subparagraph (A) for each  
8 area of each State for the July 1997 PM<sub>2.5</sub> NAAQSeS.

9 (7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

10 (A) IN GENERAL.—Notwithstanding any other provision of law,  
11 not later than 3 years after the date on which the Administrator  
12 promulgates the designations described in paragraph (6)(B) for a  
13 State, the State shall submit, for the entire State, the State imple-  
14 mentation plan revisions to meet the requirements promulgated by  
15 the Administrator under section 213202(e)(1) of this title (re-  
16 ferred to in this paragraph as “regional haze requirements”).

17 (B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this  
18 paragraph precludes the implementation of the agreements and  
19 recommendations stemming from the Grand Canyon Visibility  
20 Transport Commission Report dated June 1996, including the  
21 submission of State implementation plan revisions by the States  
22 of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Or-  
23 egon, Utah, or Wyoming for implementation of regional haze re-  
24 quirements applicable to those States.

25 (e) REDESIGNATION OF AIR QUALITY CONTROL REGIONS.—

26 (1) IN GENERAL.—Except as otherwise provided in paragraph (2),  
27 the Governor of each State may, with the approval of the Adminis-  
28 trator, redesignate from time to time the air quality control regions  
29 within the State for purposes of efficient and effective air quality man-  
30 agement. On such redesignation, the list under subsection (d) shall be  
31 modified accordingly.

32 (2) SIGNIFICANT EFFECT ON AIR POLLUTION CONCENTRATIONS IN  
33 ANOTHER STATE.—In the case of an air quality control region in a  
34 State, or part of an air quality control region, that the Administrator  
35 finds may significantly affect air pollution concentrations in another  
36 State, the Governor of the State in which that region or part of a re-  
37 gion is located may redesignate from time to time the boundaries of  
38 so much of the air quality control region as is located within that State  
39 only with the approval of the Administrator and with the consent of  
40 all Governors of all States that the Administrator determines may be  
41 significantly affected.

1     **§ 211108. Air quality criteria and control techniques**

2     (a) AIR POLLUTANT LIST; AIR QUALITY CRITERIA.—

3         (1) AIR POLLUTANT LIST.—For the purpose of establishing primary  
4         and secondary NAAQSeS, the Administrator shall publish and shall  
5         from time to time revise a list that includes each air pollutant—

6             (A) emissions of which, in the Administrator’s judgment, cause  
7             or contribute to air pollution that may reasonably be anticipated  
8             to endanger public health or welfare;

9             (B) the presence of which in the ambient air results from nu-  
10            merous or diverse mobile or stationary sources; and

11            (C) for which air quality criteria had not been issued before De-  
12            cember 31, 1970, but for which the Administrator plans to issue  
13            air quality criteria under this section.

14     (2) AIR QUALITY CRITERIA.—

15         (A) IN GENERAL.—The Administrator shall issue air quality cri-  
16         teria for an air pollutant within 12 months after the Adminis-  
17         trator includes the air pollutant in a list under paragraph (1). Air  
18         quality criteria for an air pollutant shall accurately reflect the lat-  
19         est scientific knowledge useful in indicating the kind and extent  
20         of all identifiable effects on public health or welfare that may be  
21         expected from the presence of the pollutant in the ambient air, in  
22         varying quantities.

23         (B) INFORMATION TO BE INCLUDED.—The criteria for an air  
24         pollutant, to the extent practicable, shall include information on—

25             (i) the variable factors (including atmospheric conditions)  
26             that of themselves or in combination with other factors may  
27             alter the effects on public health or welfare of the air pollut-  
28             ant;

29             (ii) the types of air pollutants that, when present in the at-  
30             mosphere, may interact with the air pollutant to produce an  
31             adverse effect on public health or welfare; and

32             (iii) any known or anticipated adverse effects on welfare.

33     (b) AIR POLLUTION CONTROL TECHNIQUES.—

34         (1) ISSUANCE OF INFORMATION.—

35             (A) IN GENERAL.—Simultaneously with the issuance of criteria  
36             under subsection (a), the Administrator shall, after consultation  
37             with appropriate advisory committees and Federal departments  
38             and agencies, issue to the States and appropriate air pollution con-  
39             trol agencies information on air pollution control techniques.

40             (B) INFORMATION TO BE INCLUDED.—The information issued  
41             under subparagraph (A) shall include—

1 (i) data relating to the cost of installation and operation,  
2 energy requirements, emission reduction benefits, and envi-  
3 ronmental impact of the emission control technology;

4 (ii) such data as are available on available technology and  
5 alternative methods of prevention and control of air pollution;  
6 and

7 (iii) data on alternative fuels, processes, and operating  
8 methods that will result in elimination or significant reduction  
9 of emissions.

10 (2) CONSULTING COMMITTEES.—To assist in the development of in-  
11 formation on pollution control techniques, the Administrator may es-  
12 tablish a standing consulting committee for each air pollutant included  
13 in a list published pursuant to subsection (a)(1), which shall be com-  
14 prised of technically qualified individuals representative of State and  
15 local governments, industry, and the academic community. Each such  
16 committee shall submit, as appropriate, to the Administrator informa-  
17 tion related to that required by paragraph (1).

18 (c) REVIEW, MODIFICATION, AND REISSUANCE OF CRITERIA OR INFOR-  
19 MATION.—The Administrator shall from time to time review, and, as appro-  
20 priate, modify and reissue any criteria or information on control techniques  
21 issued pursuant to this section. The criteria shall include a discussion of ni-  
22 tric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcino-  
23 genic and potentially carcinogenic derivatives of nitrogen oxides.

24 (d) ANNOUNCEMENT IN FEDERAL REGISTER; PUBLIC AVAILABILITY.—  
25 The issuance of air quality criteria and information on air pollution control  
26 techniques shall be announced in the Federal Register, and copies shall be  
27 made available to the general public.

28 (e) TRANSPORTATION PLANNING AND GUIDELINES.—

29 (1) IN GENERAL.—The Administrator shall, after consultation with  
30 the Secretary of Transportation, and after providing public notice and  
31 opportunity for comment, and with State and local officials, periodically  
32 as necessary to maintain a continuous transportation-air quality plan-  
33 ning process, update the June 1978 Transportation-Air Quality Plan-  
34 ning Guidelines and publish guidance on the development and imple-  
35 mentation of transportation and other measures necessary to dem-  
36 onstrate and maintain attainment of NAAQSeS.

37 (2) INFORMATION TO BE INCLUDED.—The guidelines shall include  
38 information on—

39 (A) methods to identify and evaluate alternative planning and  
40 control activities;



1 (B) methods of reviewing plans on a regular basis as conditions  
2 change or new information is presented;

3 (C) identification of funds and other resources necessary to im-  
4 plement the plan, including interagency agreements on providing  
5 such funds and resources;

6 (D) methods to ensure participation by the public in all phases  
7 of the planning process; and

8 (E) such other methods as the Administrator determines to be  
9 necessary to carry out a continuous planning process.

10 (f) INFORMATION REGARDING TRANSPORTATION CONTROL MEASURES.—

11 (1) IN GENERAL.—The Administrator shall publish and make avail-  
12 able to appropriate Federal, State, and local environmental and trans-  
13 portation agencies from time to time—

14 (A) information prepared, as appropriate, in consultation with  
15 the Secretary of Transportation, and after providing public notice  
16 and opportunity for comment, regarding the formulation and emis-  
17 sion reduction potential of transportation control measures related  
18 to criteria pollutants and their precursors, including—

19 (i) programs for improved public transit;

20 (ii) restriction of certain roads or lanes to, or construction  
21 of roads or lanes for use by, passenger buses or high occu-  
22 pancy vehicles;

23 (iii) employer-based transportation management plans, in-  
24 cluding incentives;

25 (iv) trip-reduction ordinances;

26 (v) traffic flow improvement programs that achieve emis-  
27 sion reductions;

28 (vi) fringe and transportation corridor parking facilities  
29 serving multiple occupancy vehicle programs or transit serv-  
30 ice;

31 (vii) programs to limit or restrict vehicle use in downtown  
32 areas or other areas of emission concentration particularly  
33 during periods of peak use;

34 (viii) programs for the provision of all forms of high-occu-  
35 pancy, shared-ride services;

36 (ix) programs to limit portions of road surfaces or certain  
37 sections of a metropolitan area to the use of non-motorized  
38 vehicles or pedestrian use, as to both time and place;

39 (x) programs for secure bicycle storage facilities and other  
40 facilities, including bicycle lanes, for the convenience and pro-  
41 tection of bicyclists, in both public and private areas;

- 1 (xi) programs to control extended idling of vehicles;
- 2 (xii) programs to reduce motor vehicle emissions, consistent  
3 with subdivision 3, that are caused by extreme cold start con-  
4 ditions;
- 5 (xiii) employer-sponsored programs to permit flexible work  
6 schedules;
- 7 (xiv) programs and ordinances to facilitate non-automobile  
8 travel and the provision and utilization of mass transit and  
9 to generally reduce the need for single-occupant vehicle travel,  
10 as part of transportation planning and development efforts of  
11 a locality, including programs and ordinances applicable to  
12 new shopping centers, special events, and other centers of ve-  
13 hicle activity;
- 14 (xv) programs for new construction and major reconstruc-  
15 tions of paths, tracks, or areas solely for the use by pedes-  
16 trian or other non-motorized means of transportation when  
17 economically feasible and in the public interest; and
- 18 (xvi) programs to encourage the voluntary removal from  
19 use and the marketplace of pre-1980 model year light-duty  
20 vehicles and pre-1980 model year light-duty trucks;
- 21 (B) information on additional methods or strategies that will  
22 contribute to the reduction of mobile source related pollutants dur-  
23 ing periods in which any primary ambient air quality standard will  
24 be exceeded and during episodes for which an air pollution alert,  
25 warning, or emergency has been declared;
- 26 (C) information on other measures that may be employed to re-  
27 duce the impact on public health or protect the health of sensitive  
28 or susceptible individuals or groups; and
- 29 (D) information on the extent to which any process, procedure,  
30 or method to reduce or control an air pollutant may cause an in-  
31 crease in the emissions or formation of any other pollutant.
- 32 (2) ASSESSMENT.—In publishing information under paragraph (1)  
33 the Administrator shall include an assessment of—
- 34 (A) the relative effectiveness of the processes, procedures, and  
35 methods described in paragraph (1);
- 36 (B) the potential effect of those processes, procedures, and  
37 methods on transportation systems and the provision of transpor-  
38 tation services; and
- 39 (C) the environmental, energy, and economic impact of those  
40 processes, procedures, and methods.

1 (3) CONSULTATION.—For purposes of paragraph (1)(A)(xv), the Ad-  
2 ministrator shall consult with the Secretary of the Interior as well as  
3 with the Secretary of Transportation.

4 (g) ASSESSMENT OF RISKS TO ECOSYSTEMS.—The Administrator may  
5 assess the risks to ecosystems from exposure to criteria air pollutants (as  
6 identified by the Administrator in the Administrator's sole discretion).

7 (h) RACT/BACT/LAER CLEARINGHOUSE.—The Administrator shall  
8 make information regarding emission control technology available to the  
9 States and to the general public through a central database. Such informa-  
10 tion shall include all control technology information received pursuant to  
11 State plan provisions requiring permits for sources, including operating per-  
12 mits for existing sources.

13 **§211109. National primary and secondary ambient air qual-**  
14 **ity standards**

15 (a) PROMULGATION.—

16 (1) AIR POLLUTANTS FOR WHICH AIR QUALITY CRITERIA WERE IS-  
17 SUED BEFORE DECEMBER 31, 1970.—The Administrator shall promul-  
18 gate regulations prescribing a primary NAAQS and a secondary  
19 NAAQS for each air pollutant for which air quality criteria were issued  
20 before December 31, 1970.

21 (2) AIR POLLUTANTS FOR WHICH AIR QUALITY CRITERIA ARE IS-  
22 SUED AFTER DECEMBER 31, 1970.—

23 (A) PROPOSED STANDARDS.—With respect to any air pollutant  
24 for which air quality criteria are issued after December 31, 1970,  
25 the Administrator shall publish, simultaneously with the issuance  
26 of such criteria and information, proposed primary and secondary  
27 NAAQSeS for any such air pollutant.

28 (B) PROMULGATION.—After a reasonable time for interested  
29 persons to submit written comments on the proposed standards  
30 (but not later than 90 days after the initial publication of the pro-  
31 posed standards), the Administrator shall by regulation promul-  
32 gate the proposed primary and secondary NAAQSeS with such  
33 modifications as the Administrator considers appropriate.

34 (b) PROTECTION OF PUBLIC HEALTH AND WELFARE.—

35 (1) PRIMARY NAAQSeS.—Primary NAAQSeS promulgated under sub-  
36 section (a) shall be ambient air quality standards the attainment and  
37 maintenance of which, in the judgment of the Administrator, based on  
38 such criteria and allowing an adequate margin of safety, are requisite  
39 to protect the public health. The primary NAAQSeS may be revised in  
40 the same manner as promulgated.

1           (2) SECONDARY NAAQSES.—Any secondary NAAQS promulgated  
2           under subsection (a) shall specify a level of air quality the attainment  
3           and maintenance of which, in the judgment of the Administrator, based  
4           on such criteria, is requisite to protect the public welfare from any  
5           known or anticipated adverse effects associated with the presence of an  
6           air pollutant in the ambient air. The secondary NAAQSES may be re-  
7           vised in the same manner as promulgated.

8           (c) PRIMARY NAAQS FOR NITROGEN DIOXIDE.—The Administrator shall  
9           promulgate a primary NAAQS for nitrogen dioxide concentrations over a  
10          period of not more than 3 hours unless, based on the criteria issued under  
11          section 211108(c) of this title, the Administrator finds that there is no sig-  
12          nificant evidence that such a standard for such a period is requisite to pro-  
13          tect public health.

14          (d) REVIEW OF CRITERIA AND STANDARDS.—

15            (1) IN GENERAL.—

16              (A) 5-YEAR INTERVALS.—At 5-year intervals, the Administrator  
17              shall—

18                  (i) complete a thorough review of the criteria published  
19                  under section 211108 of this title and the NAAQSES promul-  
20                  gated under this section; and

21                  (ii) make such revisions in the criteria and standards and  
22                  promulgate such new standards as may be appropriate in ac-  
23                  cordance with section 211108 of this title and subsection (b).

24              (B) MORE FREQUENT INTERVALS.—The Administrator may re-  
25              view and revise criteria or promulgate new standards more fre-  
26              quently than required under this paragraph.

27            (2) SCIENTIFIC REVIEW COMMITTEE.—

28              (A) APPOINTMENT.—The Administrator shall appoint an inde-  
29              pendent scientific review committee composed of 7 members, in-  
30              cluding at least 1 member of the National Academy of Sciences,  
31              1 physician, and 1 person representing State air pollution control  
32              agencies.

33              (B) REVIEW.—At 5-year intervals, the scientific review commit-  
34              tee shall—

35                  (i) complete a review of the criteria published under section  
36                  211108 of this title and the primary and secondary NAAQSES  
37                  promulgated under this section; and

38                  (ii) recommend to the Administrator any new NAAQSES  
39                  and revisions of existing criteria and standards as may be ap-  
40                  propriate under section 211108 of this title and subsection  
41                  (b).

- 1 (C) OTHER DUTIES.—The scientific review committee shall—  
2 (i) advise the Administrator of areas in which additional  
3 knowledge is required to appraise the adequacy and basis of  
4 existing, new, or revised NAAQSES;  
5 (ii) describe the research efforts necessary to provide the  
6 required information;  
7 (iii) advise the Administrator on the relative contribution to  
8 air pollution concentrations of natural activity and anthropo-  
9 genic activity; and  
10 (iv) advise the Administrator of any adverse public health,  
11 welfare, social, economic, or energy effects that may result  
12 from various strategies for attainment and maintenance of  
13 NAAQSES.

14 **§ 211110. State implementation plans**

- 15 (a) ADOPTION OF PLAN OR PLANS.—  
16 (1) PRIMARY NAAQSES.—Each State shall, after reasonable notice  
17 and public hearings, adopt and submit to the Administrator, within 3  
18 years (or such shorter period as the Administrator may prescribe) after  
19 the promulgation of a primary NAAQS (or any revision thereof) under  
20 section 211109 of this title for any air pollutant, a plan that provides  
21 for implementation, maintenance, and enforcement of the primary  
22 standard in each air quality control region (or portion thereof) within  
23 the State.  
24 (2) SECONDARY NAAQSES.—  
25 (A) IN GENERAL.—Each State shall, after reasonable notice and  
26 public hearings, adopt and submit to the Administrator (either as  
27 a part of a plan submitted under paragraph (1) or separately)  
28 within 3 years (or such shorter period as the Administrator may  
29 prescribe) after the promulgation of a secondary NAAQS (or revi-  
30 sion thereof), a plan that provides for implementation, mainte-  
31 nance, and enforcement of the secondary standard in each air  
32 quality control region (or portion thereof) within the State.  
33 (B) PUBLIC HEARING.—Unless a separate public hearing is pro-  
34 vided, each State shall consider its plan implementing a secondary  
35 standard at the hearing required by paragraph (1).  
36 (3) CONTENTS.—Each State implementation plan shall—  
37 (A) include enforceable emission limitations and other control  
38 measures, means, or techniques (including economic incentives  
39 such as fees, marketable permits, and auctions of emissions  
40 rights), and schedules and timetables for compliance, as may be

- 1 necessary or appropriate to meet the applicable requirements of  
2 this division;
- 3 (B) provide for establishment and operation of appropriate de-  
4 vices, methods, systems, and procedures necessary to—
- 5 (i) monitor, compile, and analyze data on ambient air qual-  
6 ity; and
- 7 (ii) on request, make the data available to the Adminis-  
8 trator;
- 9 (C) include a program to provide for—
- 10 (i) enforcement of the measures described in subparagraph  
11 (A); and
- 12 (ii) regulation of the modification and construction of any  
13 stationary source within the areas covered by the plan as nec-  
14 essary to ensure that NAAQSEs are achieved, including a per-  
15 mit program as required in chapters 213 and 215;
- 16 (D) contain adequate provisions—
- 17 (i) prohibiting, consistent with this subdivision, any source  
18 or other type of emission activity within the State from emit-  
19 ting any air pollutant in amounts that will—
- 20 (I) contribute significantly to nonattainment in, or  
21 interfere with maintenance by, any other State with re-  
22 spect to any such primary or secondary NAAQS; or
- 23 (II) interfere with measures required to be included in  
24 the applicable implementation plan for any other State  
25 under chapter 213 to prevent significant deterioration of  
26 air quality or to protect visibility;
- 27 (ii) ensuring compliance with the applicable requirements  
28 of sections 211115 and 211125 of this title;
- 29 (E) provide—
- 30 (i) necessary assurances that the State (or, except where  
31 the Administrator considers inappropriate, the general pur-  
32 pose local government or governments, or a regional agency  
33 designated by the State or general purpose local governments  
34 for the purpose)—
- 35 (I) will have adequate personnel, funding, and author-  
36 ity under State (and, as appropriate, local) law to carry  
37 out the implementation plan; and
- 38 (II) is not prohibited by any Federal or State law  
39 from carrying out the implementation plan or portion  
40 thereof);

1 (ii) requirements that the State comply with the require-  
2 ments respecting State boards under section 211127 of this  
3 title; and

4 (iii) necessary assurances that, where the State has relied  
5 on a local or regional government, agency, or instrumentality  
6 for the implementation of any plan provision, the State has  
7 responsibility for ensuring adequate implementation of the  
8 plan provision;

9 (F) require, as may be prescribed by the Administrator—

10 (i) the installation, maintenance, and replacement of equip-  
11 ment, and the implementation of other necessary steps, by  
12 owners or operators of stationary sources to monitor emis-  
13 sions from stationary sources;

14 (ii) periodic reports on the nature and amounts of emis-  
15 sions and emissions-related data from such sources; and

16 (iii) correlation of such reports by the State agency with  
17 any emission limitations or standards established pursuant to  
18 this division, which reports shall be available at reasonable  
19 times for public inspection;

20 (G) provide for authority comparable to that in section 203103  
21 of this title and adequate contingency plans to implement that au-  
22 thority;

23 (H) provide for revision of the plan—

24 (i) from time to time as may be necessary to take account  
25 of revisions of the primary or secondary NAAQS or the avail-  
26 ability of improved or more expeditious methods of attaining  
27 the NAAQS; and

28 (ii) except as provided in paragraph (4)(B), whenever the  
29 Administrator finds on the basis of information available to  
30 the Administrator that the plan is substantially inadequate to  
31 attain the NAAQS that it implements or to otherwise comply  
32 with any additional requirements established under this divi-  
33 sion;

34 (I) in the case of a plan or plan revision for an area designated  
35 as a nonattainment area, meet the applicable requirements of  
36 chapter 215;

37 (J) meet the applicable requirements of sections 211120 and  
38 211126 of this title and chapter 213;

39 (K) provide for—

40 (i) the performance of such air quality modeling as the Ad-  
41 ministrator may prescribe for the purpose of predicting the

1 effect on ambient air quality of any emissions of any air pol-  
2 lutant for which the Administrator has established a NAAQS;  
3 and

4 (ii) the submission, on request, of data related to such air  
5 quality modeling to the Administrator;

6 (L) require the owner or operator of each major stationary  
7 source to pay to the permitting authority, as a condition of any  
8 permit required under this division, a fee under an approved fee  
9 program under subdivision 6; and

10 (M) provide for consultation and participation by local political  
11 subdivisions affected by the plan.

12 (4) PLAN REVISION.—

13 (A) REVIEW.—As soon as practicable, the Administrator shall,  
14 consistent with the purposes of this division and the Energy Sup-  
15 ply and Environmental Coordination Act of 1974 (15 U.S.C. 791  
16 et seq.), review each State's applicable implementation plans and  
17 report to the State on whether the plans can be revised in relation  
18 to fuel burning stationary sources (or persons supplying fuel to  
19 such sources) without interfering with the attainment and mainte-  
20 nance of any NAAQS within the period permitted in this section.  
21 If the Administrator determines that any such plan can be revised,  
22 the Administrator shall notify the State that a plan revision may  
23 be submitted by the State. Any plan revision that is submitted by  
24 the State shall, after public notice and opportunity for public hear-  
25 ing, be approved by the Administrator if the revision relates only  
26 to fuel burning stationary sources (or persons supplying fuel to  
27 such sources), and the plan as revised complies with paragraph  
28 (3). The Administrator shall approve or disapprove any revision  
29 not later than 3 months after its submission.

30 (B) LIMITATION.—Neither the State, in the case of a plan (or  
31 portion thereof) approved under this subsection, nor the Adminis-  
32 trator, in the case of a plan (or portion thereof) promulgated  
33 under subsection (c), shall be required to revise an applicable im-  
34 plementation plan because 1 or more suspensions under subsection  
35 (d) or (e) or exemptions under section 211118 of this title have  
36 been granted, if the plan would have met the requirements of this  
37 section if no such suspension or exemption had been granted.

38 (5) INDIRECT SOURCE REVIEW PROGRAMS.—

39 (A) DEFINITIONS.—In this paragraph:

40 (i) INDIRECT SOURCE.—



1 (I) IN GENERAL.—The term “indirect source” means  
2 a facility, building, structure, installation, real property,  
3 road, or highway that attracts, or may attract, mobile  
4 sources of pollution.

5 (II) INCLUSIONS.—The term “indirect source” in-  
6 cludes a parking lot, parking garage, or other facility  
7 subject to any measure for management of parking sup-  
8 ply (within the meaning of subsection (c)(2)(A)(i)), in-  
9 cluding regulation of existing off-street parking.

10 (III) EXCLUSIONS.—The term “indirect source” does  
11 not include—

12 (aa) new or existing on-street parking; or

13 (bb) a direct emission source or facility at, within,  
14 or associated with a source described in subclause  
15 (I) or (II).

16 (ii) INDIRECT SOURCE REVIEW PROGRAM.—The term “indi-  
17 rect source review program” means the facility-by-facility re-  
18 view of indirect sources of air pollution, including such meas-  
19 ures as are necessary to ensure, or assist in ensuring, that  
20 a new or modified indirect source will not attract mobile  
21 sources of air pollution, the emissions from which would cause  
22 or contribute to air pollution concentrations—

23 (I) exceeding any primary NAAQS for a mobile  
24 source-related air pollutant after the primary standard  
25 attainment date; or

26 (II) preventing maintenance of any such standard  
27 after that date.

28 (B) INCLUSION IN STATE IMPLEMENTATION PLAN.—

29 (i) IN GENERAL.—Any State may include in a State imple-  
30 mentation plan, but the Administrator may not require as a  
31 condition of approval of such a plan under this section, any  
32 indirect source review program.

33 (ii) APPROVAL AND ENFORCEMENT BY THE ADMINIS-  
34 TRATOR.—The Administrator may approve and enforce, as  
35 part of an applicable implementation plan, an indirect source  
36 review program that the State chooses to adopt and submit  
37 as part of its plan.

38 (iii) REVISION.—Any State may revise an applicable imple-  
39 mentation plan approved under this subsection to suspend or  
40 revoke an indirect source review program included in the

1 plan, provided that the plan meets the requirements of this  
2 section.

3 (C) PLANS PROMULGATED BY THE ADMINISTRATOR.—

4 (i) IN GENERAL.—Except as provided in clause (ii), no plan  
5 promulgated by the Administrator shall include any indirect  
6 source review program for any air quality control region, or  
7 portion thereof.

8 (ii) FEDERALLY ASSISTED OR FEDERALLY OWNED OR OP-  
9 ERATED SOURCES.—The Administrator may promulgate, im-  
10 plement, and enforce regulations under subsection (c) respect-  
11 ing indirect source review programs that apply only to feder-  
12 ally assisted highways, airports, and other major federally as-  
13 sisted indirect sources and federally owned or operated indi-  
14 rect sources.

15 (b) EXTENSION OF PERIOD FOR SUBMISSION OF PLANS.—The Adminis-  
16 trator may, wherever the Administrator determines it to be necessary, ex-  
17 tend the period for submission of any plan or portion thereof that imple-  
18 ments a secondary NAAQS for a period not to exceed 18 months after the  
19 date otherwise required for submission of the plan.

20 (c) FEDERAL IMPLEMENTATION PLANS.—

21 (1) PROMULGATION.—The Administrator shall promulgate a Federal  
22 implementation plan at any time within 2 years after the Adminis-  
23 trator—

24 (A) finds that a State has failed to make a required submission  
25 or finds that the plan or plan revision submitted by the State does  
26 not satisfy the minimum criteria established under subsection  
27 (i)(1)(A); or

28 (B) disapproves a State implementation plan submission in  
29 whole or in part;

30 unless the State corrects the deficiency, and the Administrator ap-  
31 proves the plan or plan revision, before the Administrator promulgates  
32 the Federal implementation plan.

33 (2) PARKING SURCHARGE REGULATION.—

34 (A) DEFINITIONS.—In this paragraph:

35 (i) MANAGEMENT OF PARKING SUPPLY.—The term “man-  
36 agement of parking supply” includes any requirement provid-  
37 ing that any new facility containing a given number of park-  
38 ing spaces shall receive a permit or other prior approval, issu-  
39 ance of which is to be conditioned on air quality consider-  
40 ations.

1 (ii) PARKING SURCHARGE REGULATION.—The term “park-  
2 ing surcharge regulation” means a regulation imposing or re-  
3 quiring the imposition of any tax, surcharge, fee, or other  
4 charge on parking spaces, or any other area used for the tem-  
5 porary storage of motor vehicles.

6 (iii) PREFERENTIAL BUS/CARPOOL LANE.—The term “pref-  
7 erential bus/carpool lane” includes any requirement for the  
8 setting aside of 1 or more lanes of a street or highway on a  
9 permanent or temporary basis for the exclusive use of buses  
10 or carpools, or both.

11 (B) NO REQUIREMENT BY THE ADMINISTRATOR.—

12 (i) FEDERAL IMPLEMENTATION PLAN.—No parking sur-  
13 charge regulation may be required by the Administrator  
14 under paragraph (1) as a part of an applicable implementa-  
15 tion plan. All parking surcharge regulations previously re-  
16 quired by the Administrator are void.

17 (ii) STATE IMPLEMENTATION PLAN.—The Administrator  
18 may not condition approval of any implementation plan sub-  
19 mitted by a State on the plan’s including a parking surcharge  
20 regulation.

21 (iii) REQUIREMENT BY A STATE.—This subparagraph shall  
22 not preclude the Administrator from approving a parking sur-  
23 charge regulation if it is adopted and submitted by a State  
24 as part of an applicable implementation plan.

25 (C) MANAGEMENT OF PARKING SUPPLY; PREFERENTIAL BUS/  
26 CARPOOL LANES.—No standard, plan, or requirement, relating to  
27 management of parking supply or preferential bus/carpool lanes  
28 shall be promulgated after June 22, 1974, by the Administrator  
29 pursuant to this section unless the promulgation has been sub-  
30 jected to a public hearing held in the affected area for which rea-  
31 sonable notice has been given in that area. If substantial changes  
32 are made after public hearing, 1 or more additional hearings shall  
33 be held in the area after such notice.

34 (3) DELEGATION OF AUTHORITY.—On application of the chief execu-  
35 tive officer of any general purpose unit of local government, if the Ad-  
36 ministrator determines that the unit has adequate authority under  
37 State or local law, the Administrator may delegate to the unit the au-  
38 thority to implement and enforce within the jurisdiction of the unit any  
39 part of a plan promulgated under this subsection. Nothing in this para-  
40 graph precludes the Administrator from implementing or enforcing any  
41 applicable provision of a plan promulgated under this subsection.

1 (4) BRIDGE USE CHARGES.—

2 (A) ELIMINATION.—Any measure in an applicable implementa-  
3 tion plan that requires a toll or other charge for the use of a  
4 bridge located entirely within 1 city shall be eliminated from the  
5 plan by the Administrator on application by the Governor of the  
6 State, which application shall include a certification by the Gov-  
7 ernor that the Governor will revise the plan in accordance with  
8 subparagraph (B).

9 (B) PLAN REVISION.—In the case of any applicable implementa-  
10 tion plan with respect to which a measure has been eliminated  
11 under subparagraph (A)—

12 (i) the plan shall be revised to include comprehensive meas-  
13 ures to—

14 (I) establish, expand, or improve public transportation  
15 measures to meet basic transportation needs, as expedi-  
16 tiously as is practicable; and

17 (II) implement transportation control measures nec-  
18 essary to attain and maintain NAAQSeS; and

19 (ii) the revised plan shall, for the purpose of implementing  
20 those comprehensive public transportation measures, include  
21 requirements to use (insofar as is necessary) Federal grants,  
22 State or local funds, or any combination of such grants and  
23 funds as may be consistent with the terms of the legislation  
24 providing the grants and funds.

25 (C) EMISSION REDUCTIONS EQUIVALENT.—The measures under  
26 subparagraph (B)(i) shall, as a substitute for the tolls or charges  
27 eliminated under subparagraph (A), provide for emission reduc-  
28 tions equivalent to the reductions that may reasonably be expected  
29 to be achieved through the use of the tolls or charges eliminated.

30 (D) COORDINATION.—Any revision of an implementation plan  
31 for purposes of meeting the requirements of subparagraphs (B)  
32 and (C) shall be submitted in coordination with any plan revision  
33 required under chapter 215.

34 (d) TEMPORARY EMERGENCY SUSPENSIONS ON DETERMINATION BY THE  
35 PRESIDENT OF A NATIONAL OR REGIONAL ENERGY EMERGENCY.—

36 (1) DETERMINATION BY THE PRESIDENT.—On application by the  
37 owner or operator of a fuel burning stationary source, and after notice  
38 and opportunity for public hearing, the Governor of the State in which  
39 the source is located may petition the President to determine that a  
40 national or regional energy emergency exists of such severity that—

1 (A) a temporary suspension of any part of the applicable imple-  
2 mentation plan or of any requirement under section 233110 of  
3 this title may be necessary; and

4 (B) other means of responding to the energy emergency may be  
5 inadequate.

6 (2) NONDELEGABILITY.—A determination under paragraph (1) shall  
7 not be delegable by the President to any other person.

8 (3) TEMPORARY EMERGENCY SUSPENSIONS.—

9 (A) IN GENERAL.—If the President determines that a national  
10 or regional energy emergency of the severity described in para-  
11 graph (1) exists, a temporary emergency suspension of any part  
12 of an applicable implementation plan or of any requirement under  
13 section 233110 of this title adopted by the State may be issued  
14 by the Governor of any State covered by the President's deter-  
15 mination under the condition specified in subparagraph (B) and  
16 may take effect immediately.

17 (B) CONDITION.—A temporary emergency suspension under  
18 subparagraph (A) shall be issued to a source only if the Governor  
19 of the State finds that—

20 (i) there exists in the vicinity of the source a temporary en-  
21 ergy emergency involving high levels of unemployment or loss  
22 of necessary energy supplies for residential dwellings; and

23 (ii) such unemployment or loss can be totally or partially  
24 alleviated by the emergency suspension.

25 (C) LIMITATION.—Not more than 1 temporary emergency sus-  
26 pension may be issued for any source on the basis of the same  
27 set of circumstances or on the basis of the same emergency.

28 (D) EFFECTIVE PERIOD.—A temporary emergency suspension  
29 shall remain in effect for a maximum of—

30 (i) 4 months; or

31 (ii) such lesser period as may be specified in a disapproval  
32 order of the Administrator, if any.

33 (E) DISAPPROVAL BY THE ADMINISTRATOR.—The Adminis-  
34 trator may disapprove a temporary emergency suspension if the  
35 Administrator determines that it does not meet the requirements  
36 of subparagraphs (B) and (C).

37 (4) APPLICABILITY.—This subsection shall not apply in the case of  
38 a plan provision or requirement promulgated by the Administrator  
39 under subsection (c), but in any such case the President may grant a  
40 temporary emergency suspension for a 4-month period of any such pro-  
41 vision or requirement if the President makes the determinations and

1 findings specified in paragraph (1) and subparagraphs (B) and (C) of  
2 paragraph (3).

3 (e) TEMPORARY EMERGENCY SUSPENSIONS BY A GOVERNOR TO PRE-  
4 VENT CLOSING OF A SOURCE.—

5 (1) IN GENERAL.—In the case of any State that has adopted and  
6 submitted to the Administrator a proposed plan revision that—

7 (A) the State determines—

8 (i) meets the requirements of this section; and

9 (ii) is necessary—

10 (I) to prevent the closing for 1 year or more of any  
11 source of air pollution; and

12 (II) to prevent substantial increases in unemployment  
13 that would result from such a closing; and

14 (B) the Administrator has not approved or disapproved under  
15 this section within 12 months of submission of the proposed plan  
16 revision;

17 the Governor may issue a temporary emergency suspension of the part  
18 of the applicable implementation plan for the State that is proposed to  
19 be revised with respect to that source.

20 (2) DETERMINATION UNDER PARAGRAPH (1)(A)(ii).—A determination  
21 under paragraph (1)(A)(ii) may not be made with respect to a source  
22 that would close without regard to whether or not the proposed plan  
23 revision is approved.

24 (3) EFFECTIVE PERIOD.—A temporary emergency suspension issued  
25 by a Governor under this subsection shall remain in effect for a maxi-  
26 mum of—

27 (A) 4 months; or

28 (B) such lesser period as may be specified in a disapproval  
29 order of the Administrator.

30 (4) DISAPPROVAL BY THE ADMINISTRATOR.—The Administrator  
31 may disapprove a temporary emergency suspension if the Administrator  
32 determines that it does not meet the requirements of this subsection.

33 (f) COMPREHENSIVE DOCUMENTS SETTING FORTH REQUIREMENTS OF  
34 APPLICABLE IMPLEMENTATION PLANS.—

35 (1) IN GENERAL.—Every 3 years, the Administrator shall assemble  
36 and publish a comprehensive document for each State setting forth all  
37 requirements of the applicable implementation plan for the State and  
38 shall publish notice in the Federal Register of the availability of such  
39 documents.

40 (2) REGULATIONS.—The Administrator may promulgate such regu-  
41 lations as may be reasonably necessary to carry out this subsection.

1 (g) NO MODIFICATION OF IMPLEMENTATION PLAN REQUIREMENTS.—  
2 Except for a suspension under subsection (d) or (e), an exemption under  
3 section 211118 of this title, a plan promulgation under subsection (e), or  
4 a plan revision under subsection (a)(4), no order, suspension, plan revision,  
5 or other action modifying any requirement of an applicable implementation  
6 plan may be taken with respect to any stationary source by a State or by  
7 the Administrator.

8 (h) TECHNOLOGICAL SYSTEMS OF CONTINUOUS EMISSION REDUCTION  
9 ON NEW OR MODIFIED STATIONARY SOURCES; COMPLIANCE WITH RE-  
10 QUIREMENTS.—As a condition for issuance of any permit required under  
11 this subdivision, the owner or operator of each new or modified stationary  
12 source that is required to obtain such a permit shall show to the satisfaction  
13 of the permitting authority that—

14 (1) the technological system of continuous emission reduction that is  
15 to be used at the source will enable the source to comply with the  
16 standards of performance that are to apply to the source; and

17 (2) the construction or modification and operation of the source will  
18 be in compliance with all other requirements of this division.

19 (i) EPA ACTION ON PLAN SUBMISSIONS.—

20 (1) COMPLETENESS OF PLAN SUBMISSIONS.—

21 (A) COMPLETENESS CRITERIA.—The Administrator shall pro-  
22 mulgate minimum criteria that any plan submission shall meet be-  
23 fore the Administrator is required to act on the submission under  
24 this subsection. The criteria shall be limited to the information  
25 necessary to enable the Administrator to determine whether the  
26 plan submission complies with this division.

27 (B) COMPLETENESS FINDING.—Within 60 days after the Ad-  
28 ministrators receipt of a plan or plan revision, but not later than  
29 6 months after the date, if any, by which a State is required to  
30 submit the plan or revision, the Administrator shall determine  
31 whether the minimum criteria established pursuant to subpara-  
32 graph (A) have been met. Any plan or plan revision that a State  
33 submits to the Administrator, and that has not been determined  
34 by the Administrator (by the date that is 6 months after receipt  
35 of the submission) to have failed to meet the minimum criteria es-  
36 tablished pursuant to subparagraph (A) shall on that date be  
37 deemed by operation of law to meet the minimum criteria.

38 (C) EFFECT OF FINDING OF INCOMPLETENESS.—Where the  
39 Administrator determines that a plan submission (or part thereof)  
40 does not meet the minimum criteria established pursuant to sub-

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

3 (2) DEADLINE FOR ACTION.—Within 12 months after a determina-  
4 tion by the Administrator (or a determination deemed by operation of  
5 law) under paragraph (1) that a State has submitted a plan or plan  
6 revision (or, in the Administrator's discretion, part thereof) that meets  
7 the minimum criteria established pursuant to paragraph (1), if applica-  
8 ble (or, if those criteria are not applicable, within 12 months after sub-  
9 mission of the plan or revision), the Administrator shall act on the sub-  
10 mission in accordance with paragraph (3).

11 (3) FULL AND PARTIAL APPROVAL AND DISAPPROVAL.—In the case  
12 of any submittal on which the Administrator is required to act under  
13 paragraph (2), the Administrator shall approve the submittal as a  
14 whole if it meets all of the applicable requirements of this division. If  
15 a portion of the plan revision meets all the applicable requirements of  
16 this division, the Administrator may approve the plan revision in part  
17 and disapprove the plan revision in part. The plan revision shall not  
18 be treated as meeting the requirements of this division until the Ad-  
19 ministrator approves the entire plan revision as complying with the ap-  
20 plicable requirements of this division.

21 (4) CONDITIONAL APPROVAL.—The Administrator may approve a  
22 plan revision based on a commitment of the State to adopt specific en-  
23 forceable measures by a date certain, but not later than 1 year after  
24 the date of approval of the plan revision. Any such conditional approval  
25 shall be treated as a disapproval if the State fails to comply with the  
26 commitment.

27 (5) CALLS FOR PLAN REVISIONS.—

28 (A) IN GENERAL.—Whenever the Administrator finds that the  
29 applicable implementation plan for any area is substantially inad-  
30 equate to attain or maintain the relevant NAAQS, to mitigate ade-  
31 quately the interstate pollutant transport described in section  
32 215108 of this title or section 215205 of this title, or to otherwise  
33 comply with any requirement of this division, the Administrator  
34 shall require the State to revise the plan as necessary to correct  
35 such inadequacies.

36 (B) NOTICE; DEADLINES.—The Administrator—

37 (i) shall notify the State of the inadequacies; and

38 (ii) may establish reasonable deadlines (not to exceed 18  
39 months after the date of the notice) for the submission of the  
40 plan revisions.



1 (C) PUBLIC AVAILABILITY.—The findings under subparagraph  
2 (A) and notice under subparagraph (B) shall be public.

3 (D) EFFECT OF FINDING.—Any finding under this paragraph  
4 shall, to the extent that the Administrator considers appropriate,  
5 subject the State to the requirements of this division to which the  
6 State was subject when it developed and submitted the plan for  
7 which the finding was made, except that the Administrator may  
8 adjust any dates applicable under those requirements as appro-  
9 priate (except that the Administrator may not adjust any attain-  
10 ment date prescribed under chapter 215 unless that date has  
11 elapsed).

12 (6) CORRECTIONS.—Whenever the Administrator determines that  
13 the Administrator's action approving, disapproving, or promulgating  
14 any plan or plan revision (or part thereof), area designation, redesigna-  
15 tion, classification, or reclassification was in error, the Administrator  
16 may in the same manner as the approval, disapproval, or promulgation  
17 revise the action as appropriate without requiring any further submis-  
18 sion from the State. Such a determination and the basis thereof shall  
19 be provided to the State and public.

20 (j) PLAN REVISIONS.—Each revision to an implementation plan submit-  
21 ted by a State under this division shall be adopted by the State after rea-  
22 sonable notice and public hearing. The Administrator shall not approve a  
23 revision of a plan if the revision would interfere with any applicable require-  
24 ment concerning attainment and reasonable further progress (as defined in  
25 section 215101 of this title) or any other applicable requirement of this divi-  
26 sion.

27 (k) SANCTIONS.—

28 (1) IN GENERAL.—The Administrator may apply any of the sanc-  
29 tions listed in section 215111(b) of this title at any time (or at any  
30 time after) the Administrator makes a finding, disapproval, or deter-  
31 mination under subparagraphs (A) through (D), respectively, of section  
32 215111(a)(1) of this title in relation to any plan or plan item (as that  
33 term is defined by the Administrator) required under this division, with  
34 respect to any portion of the State that the Administrator determines  
35 to be reasonable and appropriate, for the purpose of ensuring that the  
36 requirements of this division relating to the plan or plan item are met.

37 (2) CRITERIA.—The Administrator shall, by regulation, establish cri-  
38 teria for exercising the Administrator's authority under paragraph (1)  
39 with respect to any deficiency described in section 215111(a)(1) of this  
40 title to ensure that, during the 24-month period following the finding,  
41 disapproval, or determination described in section 215111(a)(1) of this

1 title, the sanctions are not applied on a statewide basis where 1 or  
2 more political subdivisions covered by the applicable implementation  
3 plan are principally responsible for the deficiency.

4 (l) SAVINGS PROVISIONS.—

5 (1) EXISTING PLAN PROVISIONS.—Any provision of any applicable  
6 implementation plan that was approved or promulgated by the Admin-  
7 istrator pursuant to section 110 of the Clean Air Act (42 U.S.C. 7410)  
8 (as in effect before November 15, 1990) shall remain in effect as part  
9 of the applicable implementation plan, except to the extent that a revi-  
10 sion to the provision is approved or promulgated by the Administrator  
11 pursuant to this division.

12 (2) ATTAINMENT DATES.—For any area not designated nonattain-  
13 ment, any plan or plan revision submitted or required to be submitted  
14 by a State—

15 (A) in response to the promulgation or revision of a primary  
16 NAAQS in effect on November 15, 1990; or

17 (B) in response to a finding of substantial inadequacy under  
18 section 110(a)(2) of the Clean Air Act (42 U.S.C. 7410(a)(2)) (as  
19 in effect before November 15, 1990);

20 shall provide for attainment of the primary NAAQSeS within 5 years  
21 after issuance of the finding of substantial inadequacy.

22 (3) RETENTION OF CONSTRUCTION MORATORIUM IN CERTAIN  
23 AREAS.—In the case of an area to which, as of November 14, 1990,  
24 the prohibition on construction or modification of major stationary  
25 sources prescribed in section 110(a)(2)(I) of the Clean Air Act (42  
26 U.S.C. 7410(a)(2)(I)) (as in effect before November 15, 1990) applied  
27 by virtue of a finding of the Administrator that the State containing  
28 that area had not submitted an implementation plan meeting the re-  
29 quirements of section 172(b)(6) of the Clean Air Act (42 U.S.C.  
30 7502(b)(6)) (as in effect before November 15, 1990) or section  
31 172(a)(1) of the Clean Air Act (42 U.S.C. 7502(a)(1)) (to the extent  
32 that those requirements relate to provision for attainment of the pri-  
33 mary NAAQS for sulfur oxides by December 31, 1982) (as in effect  
34 before November 15, 1990), no major stationary source of the relevant  
35 air pollutant or pollutants shall be constructed or modified in the area  
36 until the Administrator finds that the plan for the area meets the ap-  
37 plicable requirements of section 215102(c)(5) of this title or subchapter  
38 V of chapter 215, respectively.

39 (m) INDIAN TRIBES.—

40 (1) REVIEW OF IMPLEMENTATION PLAN.—If an Indian tribe submits  
41 an implementation plan to the Administrator pursuant to section

1 203101(d) of this title, the plan shall be reviewed in accordance with  
2 the provisions for review set forth in this section for State plans, except  
3 as otherwise provided by regulation promulgated pursuant to section  
4 203101(d)(2) of this title.

5 (2) APPLICABILITY OF IMPLEMENTATION PLAN.—When an imple-  
6 mentation plan described in paragraph (1) becomes effective in accord-  
7 ance with the regulations promulgated under section 203101(d) of this  
8 title, the plan shall become applicable to all areas (except as expressly  
9 provided otherwise in the plan) located within the exterior boundaries  
10 of the reservation, notwithstanding the issuance of any patent and in-  
11 cluding rights-of-way running through the reservation.

12 (n) REPORTS.—Any State shall submit, according to such schedule as the  
13 Administrator may prescribe, such reports as the Administrator may require  
14 relating to—

15 (1) emission reductions;

16 (2) vehicle miles traveled;

17 (3) congestion levels; and

18 (4) any other information that the Administrator considers necessary  
19 to assess the development, effectiveness, need for revision, or implemen-  
20 tation of any plan or plan revision required under this division.

21 **§211111. Standards of performance for new stationary**  
22 **sources**

23 (a) DEFINITIONS.—In this section:

24 (1) EXISTING SOURCE.—The term “existing source” means any sta-  
25 tionary source other than a new source.

26 (2) MODIFY.—

27 (A) IN GENERAL.—The term “modify”, with respect to a sta-  
28 tionary source, means to make or undergo any physical change in,  
29 or change in the method of operation of, the stationary source  
30 that—

31 (i) increases the amount of any air pollutant emitted by the  
32 stationary source; or

33 (ii) results in the emission of any air pollutant not pre-  
34 viously emitted.

35 (B) EXCLUSION.—The term “modify” does not include convert-  
36 ing to coal by reason of an order under section 2(a) of the Energy  
37 Supply and Environmental Coordination Act of 1974 (15 U.S.C.  
38 792(a)) or any enactment that supersedes that Act.

39 (3) NEW SOURCE.—The term “new source” means any stationary  
40 source, the construction or modification of which is commenced after  
41 the publication of regulations (or, if earlier, proposed regulations) pre-

1           scribing a standard of performance under this section that will be ap-  
2           plicable to the source.

3           (4) OWNER OR OPERATOR.—The term “owner or operator” means  
4           any person that owns, leases, operates, controls, or supervises a sta-  
5           tionary source.

6           (5) STANDARD OF PERFORMANCE.—The term “standard of perform-  
7           ance” means a standard for emissions of air pollutants that reflects the  
8           degree of emission limitation achievable through the application of the  
9           best system of emission reduction that (taking into account the cost of  
10          achieving the reduction and any non-air-quality health and environ-  
11          mental impact and energy requirements) the Administrator determines  
12          has been adequately demonstrated.

13          (6) STATIONARY SOURCE.—The term “stationary source” means any  
14          building, structure, facility, or installation that emits or may emit any  
15          air pollutant.

16          (7) TECHNOLOGICAL SYSTEM OF CONTINUOUS EMISSION REDUC-  
17          TION.—The term “technological system of continuous emission reduc-  
18          tion” means—

19                (A) a technological process for production or operation by any  
20                source that is inherently low-polluting or nonpolluting; or

21                (B) a technological system for continuous reduction of the pollu-  
22                tion generated by a source before the pollution is emitted into the  
23                ambient air, including precombustion cleaning or treatment of  
24                fuel.

25          (b) STANDARDS OF PERFORMANCE.—

26                (1) LIST OF CATEGORIES.—The Administrator shall publish (and  
27                from time to time revise) a list of categories of stationary sources. The  
28                Administrator shall include a category of sources in the list if in the  
29                Administrator’s judgment it causes, or contributes significantly to, air  
30                pollution that may reasonably be anticipated to endanger public health  
31                or welfare.

32                (2) REGULATIONS.—Within 1 year after the inclusion of a category  
33                of stationary sources in a list under paragraph (1), the Administrator  
34                shall publish proposed regulations establishing Federal standards of  
35                performance for new sources within the category. The Administrator  
36                shall afford interested persons an opportunity for written comment on  
37                the proposed regulations. After considering the comments, the Adminis-  
38                trator shall promulgate, within 1 year after publication of the proposed  
39                regulations, the standard of performance with such modifications as the  
40                Administrator considers appropriate.

41                (3) PERIODIC REVIEW.—

1 (A) IN GENERAL.—The Administrator shall, at least every 8  
2 years, review and, if appropriate, revise the standard of perform-  
3 ance following the procedure required by this subsection for pro-  
4 mulgation of standards of performance.

5 (B) READILY AVAILABLE INFORMATION.—Notwithstanding sub-  
6 paragraph (A), the Administrator need not review any standard of  
7 performance if the Administrator determines that review is not ap-  
8 propriate in light of readily available information on the efficacy  
9 of the standard of performance.

10 (4) EFFECTIVE DATE.—A standard of performance or revision there-  
11 of shall become effective on promulgation.

12 (5) CONSIDERATION OF EMISSION LIMITATIONS AND PERCENT RE-  
13 DUCTIONS ACHIEVED IN PRACTICE.—When implementation and en-  
14 forcement of any requirement of this division indicate that emission  
15 limitations and percent reductions beyond those required by the stand-  
16 ard of performance promulgated under this section are achieved in  
17 practice, the Administrator shall, when revising the standard of per-  
18 formance promulgated under this section, consider the emission limita-  
19 tions and percent reductions achieved in practice.

20 (6) CLASSES, TYPES, AND SIZES.—The Administrator may distin-  
21 guish among classes, types, and sizes within categories of new sources  
22 for the purpose of establishing standards of performance.

23 (7) POLLUTION CONTROL TECHNIQUES.—The Administrator shall  
24 from time to time issue information on pollution control techniques for  
25 categories of new sources and air pollutants subject to this section.

26 (8) NEW SOURCES OWNED OR OPERATED BY THE UNITED STATES.—  
27 This section shall apply to any new source owned or operated by the  
28 United States.

29 (9) EFFECT OF SECTION.—Except as otherwise authorized under  
30 subsection (f), nothing in this section shall be construed to require, or  
31 to authorize the Administrator to require, any new or modified source  
32 to install and operate any particular technological system of continuous  
33 emission reduction to comply with any new source standard of perform-  
34 ance.

35 (10) CERTAIN NEW OR MODIFIED FOSSIL FUEL-FIRED STATIONARY  
36 SOURCES.—Any new or modified fossil fuel-fired stationary source that  
37 commences construction prior to the date of publication of proposed re-  
38 vised standards shall not be required to comply with those revised  
39 standards.

40 (c) STATE IMPLEMENTATION AND ENFORCEMENT OF STANDARDS OF  
41 PERFORMANCE.—

1 (1) DELEGATION OF AUTHORITY.—Each State may develop and sub-  
2 mit to the Administrator a procedure for implementing and enforcing  
3 standards of performance for new sources located in the State. If the  
4 Administrator finds that the State procedure is adequate, the Adminis-  
5 trator shall delegate to the State any authority that the Administrator  
6 has under this division to implement and enforce the standards of per-  
7 formance.

8 (2) EFFECT OF SUBSECTION.—Nothing in this subsection prohibits  
9 the Administrator from enforcing any applicable standard of perform-  
10 ance under this section.

11 (d) STANDARDS OF PERFORMANCE ESTABLISHED BY STATES FOR EX-  
12 ISTING SOURCES.—

13 (1) REGULATIONS.—

14 (A) IN GENERAL.—The Administrator shall prescribe regula-  
15 tions that establish a procedure similar to that provided by section  
16 211110 of this title under which each State shall submit to the  
17 Administrator a plan that—

18 (i) establishes standards of performance for any existing  
19 source for any air pollutant—

20 (I)(aa) for which air quality criteria have not been is-  
21 sued; or

22 (bb) that is not included on a list published under sec-  
23 tion 211108(a) of this title or emitted from a source cat-  
24 egory that is regulated under section 211112 of this  
25 title; but

26 (II) to which a standard of performance under this  
27 section would apply if the existing source were a new  
28 source; and

29 (ii) provides for the implementation and enforcement of the  
30 standards of performance.

31 (B) CONSIDERATIONS.—The regulations under this paragraph  
32 shall permit a State in applying a standard of performance to any  
33 particular source under a plan submitted under this paragraph to  
34 take into consideration, among other factors, the remaining useful  
35 life of the existing source to which the standard of performance  
36 applies.

37 (2) AUTHORITY OF THE ADMINISTRATOR.—

38 (A) IN GENERAL.—The Administrator shall have the authority  
39 described in paragraph (1)—

40 (i) to prescribe a plan for a State in a case where the State  
41 fails to submit a satisfactory plan as the Administrator would

1           have under section 211110(c) of this title in the case of fail-  
2           ure to submit an implementation plan; and

3           (ii) to enforce the plan in a case where the State fails to  
4           enforce the plan as the Administrator would have under sec-  
5           tions 211113 and 211114 of this title with respect to an im-  
6           plementation plan.

7           (B) CONSIDERATIONS.—In promulgating a standard of perform-  
8           ance under a plan prescribed under this paragraph, the Adminis-  
9           trator shall take into consideration, among other factors, the re-  
10          maining useful lives of the sources in the category of sources to  
11          which the standard applies.

12       (e) NEW SOURCE STANDARDS OF PERFORMANCE.—

13           (1) IN GENERAL.—For categories of major stationary sources that  
14           the Administrator listed under section 111(b)(1)(A) of the Clean Air  
15           Act (42 U.S.C. 7411(b)(1)(A)) before November 15, 1990, and for  
16           which the Administrator had not proposed regulations by November 15,  
17           1990, the Administrator shall promulgate regulations establishing  
18           standards of performance.

19           (2) PRIORITIES.—In determining priorities for promulgating stand-  
20           ards for categories of major stationary sources for the purpose of para-  
21           graph (1), the Administrator shall consider—

22           (A) the quantity of air pollutant emissions that each category  
23           will emit or be designed to emit;

24           (B) the extent to which each air pollutant may reasonably be  
25           anticipated to endanger public health or welfare; and

26           (C) the mobility and competitive nature of each category of  
27           sources and the consequent need for nationally applicable new  
28           source standards of performance.

29           (3) CONSULTATION.—Before promulgating any regulations under  
30           this subsection or listing any category of major stationary sources as  
31           required under this subsection, the Administrator shall consult with ap-  
32           propriate representatives of the Governors and of State air pollution  
33           control agencies.

34           (4) REVISION OF REGULATIONS.—

35           (A) SPECIFICATION OF CATEGORY LISTED.—On application by  
36           the Governor of a State showing that the Administrator has failed  
37           to specify in regulations under paragraph (1) any category of  
38           major stationary sources required to be specified under the regula-  
39           tions, the Administrator shall revise the regulations to specify any  
40           such category.

1 (B) SPECIFICATION OF CATEGORY NOT LISTED.—On application  
2 of the Governor of a State showing that any category of stationary  
3 sources not included in the list under section 111(b)(1)(A) of the  
4 Clean Air Act (42 U.S.C. 7411(b)(1)(A)) before November 15,  
5 1990, contributes significantly to air pollution that may reasonably  
6 be anticipated to endanger public health or welfare (notwithstand-  
7 ing that that category is not a category of major stationary  
8 sources), the Administrator shall revise the regulations to specify  
9 that category of stationary sources.

10 (C) PROPER APPLICATION OF CRITERIA.—On application of the  
11 Governor of a State showing that the Administrator has failed to  
12 apply properly the criteria required to be considered under para-  
13 graph (2), the Administrator shall revise the list under subsection  
14 (b)(1) to apply properly the criteria.

15 (D) NEW, INNOVATIVE, OR IMPROVED TECHNOLOGY OR PROC-  
16 ESS.—On application of the Governor of a State showing that—

17 (i) a new, innovative, or improved technology or process  
18 that achieves greater continuous emission reduction has been  
19 adequately demonstrated for any category of stationary  
20 sources; and

21 (ii) as a result of that technology or process, the new  
22 source standard of performance in effect under this section  
23 for that category no longer reflects the greatest degree of  
24 emission limitation achievable through application of the best  
25 technological system of continuous emission reduction that  
26 (taking into consideration the cost of achieving such an emis-  
27 sion reduction, and any non-air-quality health and environ-  
28 mental impact and energy requirements) has been adequately  
29 demonstrated,

30 the Administrator shall revise the standard of performance for  
31 that category accordingly.

32 (E) DEADLINE.—Unless later deadlines for action of the Ad-  
33 ministrator are otherwise prescribed under this section, the Ad-  
34 ministrator shall, not later than 3 months after the date of receipt  
35 of any application by a Governor of a State—

36 (i) find that the application does not contain the requisite  
37 showing and deny the application; or

38 (ii) grant the application and take the action required  
39 under this subsection.



1 (5) NOTICE AND OPPORTUNITY FOR PUBLIC HEARING.—Before tak-  
2 ing any action required by this subsection, the Administrator shall pro-  
3 vide notice and opportunity for public hearing.

4 (f) DESIGN, EQUIPMENT, WORK PRACTICE, OR OPERATIONAL STANDARD  
5 IF STANDARD OF PERFORMANCE IS NOT FEASIBLE.—

6 (1) IN GENERAL.—If, in the judgment of the Administrator, it is not  
7 feasible to prescribe or enforce a standard of performance, the Admin-  
8 istrator may instead promulgate a design, equipment, work practice, or  
9 operational standard (or combination thereof) that reflects the best  
10 technological system of continuous emission reduction that (taking into  
11 consideration the cost of achieving the emission reduction, and any  
12 non-air-quality health and environmental impact and energy require-  
13 ments) the Administrator determines has been adequately dem-  
14 onstrated.

15 (2) OPERATION AND MAINTENANCE.—The Administrator shall in-  
16 clude as part of any design or equipment standard promulgated under  
17 this subsection such requirements as will ensure the proper operation  
18 and maintenance of any such element of design or equipment.

19 (3) STANDARD OF PERFORMANCE NOT FEASIBLE.—For the purpose  
20 of this subsection, the Administrator may determine that it is not fea-  
21 sible to prescribe or enforce a standard of performance in any situation  
22 in which the Administrator determines that—

23 (A) a pollutant or pollutants cannot be emitted through a con-  
24 veyance designed and constructed to emit or capture pollutant, or  
25 any requirement for, or use of, such a conveyance would be incon-  
26 sistent with Federal, State, or local law; or

27 (B) the application of measurement methodology to a particular  
28 class of sources is not practicable due to technological or economic  
29 limitations.

30 (4) ALTERNATIVE MEANS OF EMISSION LIMITATION.—If, after notice  
31 and opportunity for public hearing, any person establishes to the satis-  
32 faction of the Administrator that an alternative means of emission limi-  
33 tation will achieve a reduction in emissions of any air pollutant at least  
34 equivalent to the reduction in emissions of that air pollutant achieved  
35 under a design, equipment, work practice, or operational standard pro-  
36 mulgated under paragraph (1), the Administrator shall permit the use  
37 of the alternative by the source for purposes of compliance with this  
38 section with respect to that pollutant.

39 (5) PROMULGATION OF STANDARD OF PERFORMANCE WHEN FEA-  
40 SIBLE.—Any design, equipment, work practice, or operational standard  
41 promulgated under paragraph (1) shall be promulgated in terms of a

1 standard of performance whenever it becomes feasible to promulgate  
2 and enforce the design, equipment, work practice, or operational stand-  
3 ard in terms of a standard of performance.

4 (6) TREATMENT.—Any design, equipment, work practice, or oper-  
5 ational standard, or any combination thereof, described in this sub-  
6 section shall be treated as a standard of performance for purposes of  
7 this division (except subsection (a) and this subsection).

8 (g) COUNTRY ELEVATORS.—Any regulations promulgated by the Admin-  
9 istrator under this section applicable to grain elevators shall not apply to  
10 country elevators (as defined by the Administrator) that have a storage ca-  
11 pacity of less than 2,500,000 bushels.

12 (h) WAIVERS TO ENCOURAGE THE USE OF INNOVATIVE TECHNOLOGICAL  
13 SYSTEMS OF CONTINUOUS EMISSION REDUCTION.—

14 (1) REQUEST FOR WAIVER.—Any person proposing to own or oper-  
15 ate a new source may request the Administrator for 1 or more waivers  
16 from the requirements of this section for the source or any portion  
17 thereof with respect to any air pollutant to encourage the use of 1 or  
18 more innovative technological systems of continuous emission reduction.

19 (2) GRANT OF WAIVER.—The Administrator may, with the consent  
20 of the Governor of the State in which the source is to be located, grant  
21 a waiver under paragraph (1) if the Administrator determines, after  
22 notice and opportunity for public hearing, that—

23 (A) the proposed system or systems have not been adequately  
24 demonstrated;

25 (B)(i) the proposed system or systems will operate effectively;  
26 and

27 (ii) there is a substantial likelihood that the system or systems  
28 will achieve—

29 (I) greater continuous emission reduction than that re-  
30 quired to be achieved under the standards of performance  
31 that would otherwise apply; or

32 (II) at least an equivalent reduction at lower cost in terms  
33 of energy, economic, or non-air-quality environmental impact;

34 (C) the owner or operator of the proposed source has dem-  
35 onstrated to the satisfaction of the Administrator that the pro-  
36 posed system will not cause or contribute to an unreasonable risk  
37 to public health, welfare, or safety in its operation, function, or  
38 malfunction; and

39 (D) the granting of the waiver is consistent with paragraph (6).

40 (3) LIKELIHOOD OF GREATER CONTINUOUS EMISSION REDUCTION.—

41 In making any determination under paragraph (2)(B), the Adminis-

1 trator shall take into account any previous failure of the system or sys-  
2 tems to operate effectively or to meet any requirement of the new  
3 source performance standards.

4 (4) RISK TO PUBLIC HEALTH, WELFARE, OR SAFETY.—

5 (A) CONSIDERATIONS.—In determining whether an unreason-  
6 able risk exists under paragraph (2)(C), the Administrator shall  
7 consider, among other factors—

8 (i) whether and to what extent the use of the proposed  
9 technological system will cause, increase, reduce, or eliminate  
10 emissions of any unregulated pollutants;

11 (ii) available methods for reducing or eliminating any risk  
12 to public health, welfare, or safety that may be associated  
13 with the use of the system; and

14 (iii) the availability of other technological systems that may  
15 be used to conform to standards under this section without  
16 causing or contributing to an unreasonable risk.

17 (B) TESTS; INFORMATION.—The Administrator may conduct  
18 such tests and require the owner or operator of the proposed  
19 source to conduct such tests and provide such information as is  
20 necessary to carry out paragraph (2)(C). Such requirements shall  
21 include a requirement for prompt reporting of the emission of any  
22 unregulated pollutant from a system if the pollutant was not emit-  
23 ted, or was emitted in significantly lesser amounts, without use of  
24 the system.

25 (5) TERMS AND CONDITIONS.—

26 (A) IN GENERAL.—A waiver under paragraph (5) shall be  
27 granted on such terms and conditions as the Administrator deter-  
28 mines to be necessary to—

29 (i) ensure that emissions from the source will not prevent  
30 attainment and maintenance of any NAAQSeS; and

31 (ii) ensure the proper functioning of the technological sys-  
32 tem or systems authorized.

33 (B) TREATMENT AS STANDARD OF PERFORMANCE.—Any such  
34 term or condition shall be treated as a standard of performance  
35 for the purposes of subsection (j) and section 211113 of this title.

36 (6) NUMBER OF WAIVERS.—The number of waivers granted under  
37 this subsection with respect to a proposed technological system of con-  
38 tinuous emission reduction shall not exceed such number as the Admin-  
39 istrator finds necessary to ascertain whether or not the system will  
40 achieve the conditions specified in subparagraphs (B) and (C) of para-  
41 graph (2).

- 1 (7) EFFECTIVE PERIOD.—
- 2 (A) IN GENERAL.—A waiver under paragraph (1) shall extend
- 3 to the earlier of—
- 4 (i) a date determined by the Administrator, after consulta-
- 5 tion with the owner or operator of the source, taking into
- 6 consideration the design, installation, and capital cost of the
- 7 technological system or systems being used; or
- 8 (ii) the date on which the Administrator determines that—
- 9 (I) the system has failed to—
- 10 (aa) achieve at least an equivalent continuous
- 11 emission reduction to that required to be achieved
- 12 under the standards of performance that would
- 13 otherwise apply; or
- 14 (bb) comply with the condition specified in para-
- 15 graph (2)(C); and
- 16 (II) the failure cannot be corrected.
- 17 (B) DATE DETERMINED BY THE ADMINISTRATOR.—In carrying
- 18 out subparagraph (A)(i), the Administrator shall not permit any
- 19 waiver for a source or portion thereof to extend beyond the earlier
- 20 of—
- 21 (i) years after the date on which any waiver is granted to
- 22 the source or portion thereof; or
- 23 (ii) the date that is 4 years after the date on which the
- 24 source or portion thereof commences operation.
- 25 (8) PORTION OF SOURCE TO WHICH WAIVER APPLIES.—No waiver
- 26 under paragraph (1) shall apply to any portion of a source other than
- 27 the portion on which the innovative technological system or systems of
- 28 continuous emission reduction are used.
- 29 (9) EXTENSION.—
- 30 (A) IN GENERAL.—If a waiver for a source is terminated under
- 31 paragraph (7)(A)(ii), the Administrator shall grant an extension
- 32 of the requirements of this section for the source for such mini-
- 33 mum period as may be necessary to comply with the applicable
- 34 standard of performance under this section. That period shall not
- 35 extend beyond the date that is 3 years after the date on which
- 36 the waiver is terminated.
- 37 (B) EMISSION LIMITS AND COMPLIANCE SCHEDULE.—
- 38 (i) IN GENERAL.—An extension granted under this para-
- 39 graph shall—
- 40 (I) set forth emission limits and a compliance schedule
- 41 containing increments of progress that require compli-

1                   ance with the applicable standards of performance as ex-  
2                   peditiously as practicable; and

3                   (II) include such measures as are necessary and prac-  
4                   ticable in the interim to minimize emissions.

5                   (ii) TREATMENT.—A schedule under clause (i)(I) shall be  
6                   treated as a standard of performance for purposes of sub-  
7                   section (j) and section 211113 of this title.

8                   (i) INCINERATION UNITS.—An incineration unit shall not be considered  
9                   to be combusting municipal waste for purposes of this section if the inciner-  
10                  ation unit combusts a fuel feed stream 30 percent or less of the weight of  
11                  which is comprised, in aggregate, of municipal waste.

12                  (j) PROHIBITION.—It shall be unlawful for any owner or operator of any  
13                  new source to operate the source in violation of any standard of perform-  
14                  ance applicable to the source.

15                  **§ 211112. Hazardous air pollutants**

16                  (a) DEFINITIONS.—In this section:

17                   (1) ADVERSE ENVIRONMENTAL EFFECT.—

18                   (A) IN GENERAL.—The term “adverse environmental effect”  
19                   means any significant and widespread adverse effect that may rea-  
20                   sonably be anticipated, to wildlife, aquatic life, or other natural re-  
21                   sources.

22                   (B) INCLUSIONS.—The term “adverse environmental effect” in-  
23                   cludes adverse impacts on—

24                   (i) populations of endangered or threatened species; or

25                   (ii) significant degradation of environmental quality over  
26                   broad areas.

27                   (2) AREA SOURCE.—

28                   (A) IN GENERAL.—The term “area source” means any station-  
29                   ary source of hazardous air pollutants that is not a major source.

30                   (B) EXCLUSIONS.—The term “area source” does not include  
31                   motor vehicles or nonroad vehicles subject to regulation under sub-  
32                   division 3.

33                   (3) CARCINOGENIC.—

34                   (A) IN GENERAL.—Unless revised, the term “carcinogenic” has  
35                   the meaning provided by the Administrator for purposes of the  
36                   term “carcinogenic effect” under the Guidelines for Carcinogenic  
37                   Risk Assessment as of November 15, 1990.

38                   (B) REVISION.—Any revision in the Guidelines for Carcinogenic  
39                   Risk Assessment shall be subject to notice and opportunity for  
40                   comment.

41                   (4) ELECTRIC UTILITY STEAM GENERATING UNIT.—

1 (A) IN GENERAL.—The term “electric utility steam generating  
2 unit” means any fossil fuel-fired combustion unit of more than 25  
3 megawatts that serves a generator that produces electricity for  
4 sale.

5 (B) COGENERATION UNITS.—A unit that cogenerates steam and  
6 electricity and supplies more than  $\frac{1}{3}$  of its potential electric out-  
7 put capacity and more than 25 megawatts electrical output to any  
8 utility power distribution system for sale shall be considered to be  
9 an electric utility steam generating unit.

10 (5) EXISTING SOURCE.—The term “existing source” means any sta-  
11 tionary source other than a new source.

12 (6) HAZARDOUS AIR POLLUTANT.—The term “hazardous air pollut-  
13 ant” means any air pollutant listed pursuant to subsection (b).

14 (7) MAJOR SOURCE.—

15 (A) IN GENERAL.—The term “major source” means any sta-  
16 tionary source or group of stationary sources located within a con-  
17 tiguous area and under common control that emits or has the po-  
18 tential to emit, considering controls, in the aggregate—

19 (i) 10 tons per year or more of any hazardous air pollut-  
20 ant; or

21 (ii) 25 tons per year or more of any combination of hazard-  
22 ous air pollutants.

23 (B) LESSER QUANTITY; DIFFERENT CRITERIA.—The Adminis-  
24 trator may establish a lesser quantity, or in the case of radio-  
25 nuclides different criteria, for a major source than that specified  
26 in subparagraph (A), on the basis of—

27 (i) the potency of the air pollutant;

28 (ii) the persistence of the air pollutant;

29 (iii) the potential for bioaccumulation of the air pollutant;

30 (iv) other characteristics of the air pollutant; or

31 (v) other relevant factors.

32 (8) MODIFICATION.—The term “modification” means any physical  
33 change in, or change in the method of operation of, a major source  
34 that—

35 (A) increases the actual emissions of any hazardous air pollut-  
36 ant emitted by the source by more than a de minimis amount; or

37 (B) results in the emission of any hazardous air pollutant not  
38 previously emitted by more than a de minimis amount.

39 (9) NEW SOURCE.—The term “new source” means a stationary  
40 source the construction or reconstruction of which is commenced after

1 the Administrator first proposes regulations under this section estab-  
 2 lishing an emission standard applicable to the source.

3 (10) OWNER OR OPERATOR.—Except in subsection (q), the term  
 4 “owner or operator” means any person that owns, leases, operates, con-  
 5 trols, or supervises a stationary source.

6 (11) STATIONARY SOURCE.—The term “stationary source” has the  
 7 meaning given the term in section 211111(a) of this title.

8 (b) LIST OF POLLUTANTS.—

9 (1) LIST.—Congress establishes for purposes of this section a list of  
 10 hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Aerolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Di chlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate

CAS number	Chemical name
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (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
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertiary butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)



CAS number	Chemical name
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds <sup>1</sup>
0	Glycol ethers <sup>2</sup>
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers <sup>3</sup>
0	Nickel Compounds
0	Polycyclic Organic Matter <sup>4</sup>
0	Radionuclides (including radon) <sup>5</sup>
0	Selenium Compounds

NOTE: For all listings above 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.

<sup>1</sup>X’CN where X = H’ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>.

<sup>2</sup>Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR’ where n = 1, 2, or 3

R = alkyl or aryl groups

R’ = R, H, or groups that, when removed, yield glycol ethers with the structure: R-(OCH<sub>2</sub>CH)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup>Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

<sup>4</sup>Includes organic compounds that have more than 1 benzene ring and have a boiling point greater than or equal to 100°C.

<sup>5</sup>A 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—

1 (I) are known to be, or may reasonably be anticipated  
2 to be, carcinogenic, mutagenic, teratogenic, neurotoxic;  
3 (II) cause reproductive dysfunction; or  
4 (III) are acutely or chronically toxic; or  
5 (ii) adverse environmental effects, whether through—  
6 (I) ambient concentrations;  
7 (II) bioaccumulation;  
8 (III) deposition; or  
9 (IV) otherwise (not including releases subject to regu-  
10 lation under subsection (q) as a result of emissions to  
11 the air).

12 (B) POLLUTANTS LISTED UNDER SECTION 211108(a).—

13 (i) IN GENERAL.—No air pollutant that is listed under sec-  
14 tion 211108(a) of this title may be added to the list under  
15 this section.

16 (ii) APPLICABILITY.—This subparagraph does not apply to  
17 any pollutant that—

18 (I) independently meets the listing criteria of subpara-  
19 graph (A) and is a precursor to a pollutant that is listed  
20 under section 211108(a) of this title; or

21 (II) is in a class of pollutants listed under that sec-  
22 tion.

23 (C) SUBSTANCES, PRACTICES, PROCESSES, AND ACTIVITIES  
24 REGULATED UNDER SUBDIVISION 7.—No substance, practice,  
25 process, or activity regulated under subdivision 7 shall be subject  
26 to regulation under this section solely due to its adverse effects on  
27 the environment.

28 (3) PETITIONS TO MODIFY THE LIST.—

29 (A) PETITION.—Any person may petition the Administrator to  
30 modify the list of hazardous air pollutants under this subsection  
31 by adding or deleting a substance or, in case of listed pollutants  
32 without CAS numbers (other than coke oven emissions, mineral fi-  
33 bers, or polycyclic organic matter), removing certain unique sub-  
34 stances. Any such petition shall include a showing by the peti-  
35 tioner that there are adequate data on the health or environmental  
36 effects of the pollutant or other evidence adequate to support the  
37 petition.

38 (B) ACTION BY THE ADMINISTRATOR.—Within 18 months after  
39 receipt of a petition, the Administrator shall grant or deny the pe-  
40 tition by publishing a written explanation of the reasons for the

1 Administrator's decision. The Administrator may not deny a peti-  
2 tion solely on the basis of inadequate resources or time for review.

3 (C) ADDITION OF SUBSTANCE.—The Administrator shall add a  
4 substance to the list on a showing by the petitioner or on the Ad-  
5 ministrator's own determination that—

6 (i) the substance is an air pollutant; and

7 (ii) emissions, ambient concentrations, bioaccumulation, or  
8 deposition of the substance are known to cause or may rea-  
9 sonably be anticipated to cause adverse effects on human  
10 health or adverse environmental effects.

11 (D) DELETION FROM LIST.—

12 (i) IN GENERAL.—The Administrator shall delete a sub-  
13 stance from the list on a showing by the petitioner or on the  
14 Administrator's own determination that there are adequate  
15 data on the health and environmental effects of the substance  
16 to determine that emissions, ambient concentrations, bio-  
17 accumulation, or deposition of the substance may not reason-  
18 ably be anticipated to cause any adverse effects on human  
19 health or adverse environmental effects.

20 (ii) CERTAIN UNIQUE CHEMICAL SUBSTANCES THAT CON-  
21 TAIN A LISTED HAZARDOUS AIR POLLUTANT NOT HAVING A  
22 CAS NUMBER.—The Administrator shall delete from the list  
23 1 or more unique chemical substances that contain a listed  
24 hazardous air pollutant not having a CAS number (other  
25 than coke oven emissions, mineral fibers, or polycyclic organic  
26 matter) on a showing by the petitioner or on the Administra-  
27 tor's own determination that the unique chemical substances  
28 that contain the named chemical of the listed hazardous air  
29 pollutant meet the deletion requirements of clause (i).

30 (4) FURTHER INFORMATION.—If the Administrator determines that  
31 information on the health or environmental effects of a substance is not  
32 sufficient to make a determination required by this subsection, the Ad-  
33 ministrator may use any authority available to the Administrator to ac-  
34 quire such information.

35 (5) TEST METHODS.—The Administrator may establish, by regula-  
36 tion, test measures and other analytic procedures for monitoring and  
37 measuring emissions, ambient concentrations, deposition, and bio-  
38 accumulation of hazardous air pollutants.

39 (6) PREVENTION OF SIGNIFICANT DETERIORATION.—Chapter 213  
40 shall not apply to a pollutant listed under this section.

1           (7) LEAD.—The Administrator may not list elemental lead as a haz-  
2           ardous air pollutant under this subsection.

3           (c) LIST OF SOURCE CATEGORIES.—

4           (1) PUBLICATION AND REVISION.—

5           (A) IN GENERAL.—The Administrator shall publish, and shall  
6           from time to time, but not less often than every 8 years, revise,  
7           if appropriate, in response to public comment or new information,  
8           a list of all categories and subcategories of major sources and area  
9           sources (listed under paragraph (3)) of the air pollutants listed  
10          pursuant to subsection (b).

11          (B) CONSISTENCY.—

12           (i) IN GENERAL.—To the extent practicable, the categories  
13           and subcategories listed under this subsection shall be con-  
14           sistent with the list of source categories established pursuant  
15           to section 211111 of this title and chapter 213.

16           (ii) EFFECT.—Nothing in clause (i) limits the Administra-  
17           tor's authority to establish subcategories under this section,  
18           as appropriate.

19          (2) REQUIREMENT FOR EMISSION STANDARDS.—For the categories  
20          and subcategories that the Administrator lists, the Administrator shall  
21          establish emission standards under subsection (d), according to the  
22          schedule in this subsection and subsection (e).

23          (3) AREA SOURCES.—The Administrator shall list under this sub-  
24          section each category or subcategory of area sources that the Adminis-  
25          trator finds presents a threat of adverse effects on human health or  
26          the environment (by such sources individually or in the aggregate) war-  
27          ranting regulation under this section. The Administrator shall, pursu-  
28          ant to subsection (j)(3)(B), list, based on actual or estimated aggregate  
29          emissions of a listed pollutant or pollutants, sufficient categories or  
30          subcategories of area sources to ensure that area sources representing  
31          90 percent of the area source emissions of the 30 hazardous air pollut-  
32          ants that present the greatest threat to public health in the largest  
33          number of urban areas are subject to regulation under this section.

34          (4) PREVIOUSLY REGULATED SOURCES.—The Administrator may list  
35          any category or subcategory of sources regulated under section 112 of  
36          the Clean Air Act (42 U.S.C. 7412) (as in effect before November 15,  
37          1990).

38          (5) ADDITIONAL CATEGORIES.—In addition to the categories and  
39          subcategories of sources listed for regulation pursuant to paragraphs  
40          (1) and (3), the Administrator may at any time list additional cat-  
41          egories and subcategories of sources of hazardous air pollutants accord-

1 ing to the criteria for listing applicable under those paragraphs. In the  
2 case of source categories and subcategories listed after publication of  
3 the initial list required under paragraph (1) or (3), emission standards  
4 under subsection (d) for the category or subcategory shall be promul-  
5 gated within 2 years after the date on which the category or sub-  
6 category is listed.

7 (6) SPECIFIC POLLUTANTS.—

8 (A) IN GENERAL.—With respect to alkylated lead compounds,  
9 polycyclic organic matter, hexachlorobenzene, mercury, polychlori-  
10 nated biphenyls, 2,3,7,8-tetrachlorodibenzofurans, and 2,3,7,8-  
11 tetrachlorodibenzo-p-dioxin, the Administrator shall list categories  
12 and subcategories of sources ensuring that sources accounting for  
13 not less than 90 percent of the aggregate emissions of each such  
14 pollutant are subject to standards under paragraph (2) or (4) of  
15 subsection (d).

16 (B) EFFECT OF PARAGRAPH.—This paragraph shall not be con-  
17 strued to require the Administrator to promulgate standards for  
18 pollutants described in subparagraph (A) emitted by electric utility  
19 steam generating units.

20 (7) RESEARCH OR LABORATORY FACILITIES.—

21 (A) DEFINITION OF RESEARCH OR LABORATORY FACILITY.—In  
22 this paragraph, the term “research or laboratory facility” means  
23 a stationary source the primary purpose of which is to conduct re-  
24 search and development into a new process or products, where if  
25 the source—

26 (i) is operated under the close supervision of technically  
27 trained personnel; and

28 (ii) is not engaged in the manufacture of a product for  
29 commercial sale in commerce, except in a de minimis manner.

30 (B) SEPARATE CATEGORY.—The Administrator shall establish a  
31 separate category covering research or laboratory facilities as nec-  
32 essary to ensure the equitable treatment of such facilities.

33 (8) BOAT MANUFACTURING.—When establishing emission standards  
34 for styrene, the Administrator shall list boat manufacturing as a sepa-  
35 rate subcategory unless the Administrator finds that such a listing  
36 would be inconsistent with the goals and requirements of this division.

37 (9) DELETION FROM LIST.—

38 (A) UNIQUE CHEMICAL SUBSTANCES.—Where the sole reason  
39 for the inclusion of a source category on the list required under  
40 this subsection is the emission of a unique chemical substance, the

1 Administrator shall delete the source category from the list if it  
2 is appropriate because of action taken under subsection (b)(3)(D).

3 (B) ANY SOURCE CATEGORY.—

4 (i) IN GENERAL.—The Administrator may delete any  
5 source category from the list under this subsection, on peti-  
6 tion of any person or on the Administrator's own motion,  
7 whenever the Administrator makes the following determina-  
8 tion or determinations, as applicable:

9 (I) In the case of hazardous air pollutants emitted by  
10 sources in the category that may result in cancer in hu-  
11 mans, a determination that no source in the category (or  
12 group of sources in the case of area sources) emits such  
13 hazardous air pollutants in quantities that may cause a  
14 lifetime risk of cancer greater than 1 in 1,000,000 to the  
15 individual in the population who is most exposed to emis-  
16 sions of the pollutants from the source (or group of  
17 sources in the case of an area source).

18 (II) In the case of hazardous air pollutants that may  
19 result in adverse health effects in humans (other than  
20 cancer) or adverse environmental effects, a determination  
21 that emissions from no source in the category or sub-  
22 category (or group of sources in the case of area sources)  
23 exceed a level that is adequate to protect public health  
24 with an ample margin of safety, and no adverse environ-  
25 mental effect will result from emissions from any source  
26 (or from a group of sources in the case of an area  
27 source).

28 (ii) GRANT OR DENIAL.—The Administrator shall grant or  
29 deny a petition under this subparagraph within 1 year after  
30 the petition is filed.

31 (d) EMISSION STANDARDS.—

32 (1) REGULATIONS.—

33 (A) IN GENERAL.—The Administrator shall promulgate regula-  
34 tions establishing emission standards for each category or sub-  
35 category of major sources and area sources of hazardous air pol-  
36 lutants listed for regulation pursuant to subsection (c).

37 (B) CLASSES, TYPES, AND SIZES.—The Administrator may dis-  
38 tinguish among classes, types, and sizes of sources within a cat-  
39 egory or subcategory in establishing the emission standards, ex-  
40 cept that there shall be no delay in the compliance date for any

1 standard applicable to any source under subsection (i) as the re-  
2 sult of the authority provided by this subparagraph.

3 (2) STANDARDS AND METHODS.—

4 (A) IN GENERAL.—Emission standards promulgated under this  
5 subsection and applicable to new sources or existing sources of  
6 hazardous air pollutants shall require the maximum degree of re-  
7 duction in emissions of hazardous air pollutants subject to this  
8 section (including a prohibition on such emissions, where achiev-  
9 able) that the Administrator, taking into consideration the cost of  
10 achieving such emission reduction, and any non-air-quality health  
11 and environmental impacts and energy requirements, determines is  
12 achievable for new sources or existing sources in the category or  
13 subcategory to which the emission standard applies, through appli-  
14 cation of measures, processes, methods, systems or techniques, in-  
15 cluding measures that—

16 (i) reduce the volume of, or eliminate emissions of, such  
17 pollutants through process changes, substitution of materials,  
18 or other modifications;

19 (ii) enclose systems or processes to eliminate emissions;

20 (iii) collect, capture, or treat such pollutants when released  
21 from a process, stack, storage, or fugitive emissions point;

22 (iv) are design, equipment, work practice, or operational  
23 standards (including requirements for operator training or  
24 certification) as provided in subsection (h); or

25 (v) are a combination of the measures described in clauses  
26 (i) through (iv).

27 (B) NO COMPROMISE OF INTELLECTUAL PROPERTY RIGHTS.—  
28 None of the measures described in clauses (i) through (iv) of sub-  
29 paragraph (A) shall, consistent with section 211114(e) of this  
30 title, in any way compromise any United States patent or United  
31 States trademark right, or confidential business information, trade  
32 secret, or other intellectual property right.

33 (3) NEW SOURCES AND EXISTING SOURCES.—

34 (A) NEW SOURCES.—The maximum degree of reduction in  
35 emissions that is considered achievable for new sources in a cat-  
36 egory or subcategory shall not be less stringent than the emission  
37 control that is achieved in practice by the best controlled similar  
38 source, as determined by the Administrator.

39 (B) EXISTING SOURCES.—An emission standard promulgated  
40 under this subsection for existing sources in a category or sub-  
41 category—

1 (i) may be less stringent than standards for new sources  
2 in the same category or subcategory; but

3 (ii) shall not be less stringent, and may be more stringent,  
4 than—

5 (I) the average emission limitation achieved by the  
6 best performing 12 percent of the existing sources (for  
7 which the Administrator has emissions information), ex-  
8 cluding sources that have, within 18 months before the  
9 emission standard is proposed or within 30 months be-  
10 fore the emission standard is promulgated, whichever is  
11 later, first achieved a level of emission rate or emission  
12 reduction that complies, or would comply if the source is  
13 not subject to the standard, with the lowest achievable  
14 emission rate (as defined in section 215101 of this title)  
15 applicable to the source category and prevailing at the  
16 time, in the category or subcategory for categories and  
17 subcategories with 30 or more sources; or

18 (II) the average emission limitation achieved by the  
19 best performing 5 sources (for which the Administrator  
20 has or could reasonably obtain emissions information) in  
21 the category or subcategory for categories or sub-  
22 categories with fewer than 30 sources.

23 (4) HEALTH THRESHOLD.—With respect to pollutants for which a  
24 health threshold has been established, the Administrator may consider  
25 that threshold level, with an ample margin of safety, when establishing  
26 emission standards under this subsection.

27 (5) ALTERNATIVE STANDARD FOR AREA SOURCES.—With respect  
28 only to categories and subcategories of area sources listed pursuant to  
29 subsection (c), the Administrator may, in lieu of the authorities pro-  
30 vided in paragraph (2) and subsection (f), elect to promulgate stand-  
31 ards or requirements applicable to sources in categories or sub-  
32 categories that provide for the use of generally available control tech-  
33 nologies or management practices by those sources to reduce emissions  
34 of hazardous air pollutants.

35 (6) REVIEW AND REVISION.—The Administrator shall review, and re-  
36 vise as necessary (taking into account developments in practices, proces-  
37 ses, and control technologies), emission standards promulgated under  
38 this section not less often than every 8 years.

39 (7) OTHER REQUIREMENTS.—No emission standard or other require-  
40 ment promulgated under this section shall be interpreted, construed, or  
41 applied to diminish or replace the requirements of—



1 (A) a more stringent emission limitation or other applicable re-  
2 quirement established pursuant to section 211111 of this title,  
3 chapter 213 or 215, or other authority of this division; or

4 (B) a standard issued under State authority.

5 (8) COKE OVENS.—

6 (A) REGULATIONS ESTABLISHING EMISSION STANDARDS.—

7 (i) IN GENERAL.—The Administrator shall promulgate reg-  
8 ulations establishing emission standards under paragraphs  
9 (2) and (3) for coke oven batteries.

10 (ii) EVALUATIONS.—In establishing such standards, the  
11 Administrator shall evaluate—

12 (I) the use of sodium silicate (or equivalent) luting  
13 compounds to prevent door leaks, and other operating  
14 practices and technologies for their effectiveness in re-  
15 ducing coke oven emissions, and their suitability for use  
16 on new and existing coke oven batteries, taking into ac-  
17 count costs and reasonable commercial door warranties;  
18 and

19 (II) as a basis for emission standards under this sub-  
20 section for new coke oven batteries that begin construc-  
21 tion after the date of proposal of the standards, the  
22 Jewell design Thompson non-recovery coke oven batteries  
23 and other non-recovery coke oven technologies, and other  
24 appropriate emission control and coke production tech-  
25 nologies, as to their effectiveness in reducing coke oven  
26 emissions and their capability for production of steel  
27 quality coke.

28 (iii) MINIMUM REQUIREMENTS.—The regulations shall re-  
29 quire at a minimum that coke oven batteries will not exceed  
30 8 percent leaking doors, 1 percent leaking lids, 5 percent  
31 leaking oftakes, and 16 seconds visible emissions per charge,  
32 with no exclusion for emissions during the period after the  
33 closing of self-sealing oven doors.

34 (B) WORK PRACTICE REGULATIONS.—The Administrator shall  
35 promulgate work practice regulations under this subsection for  
36 coke oven batteries requiring, as appropriate—

37 (i) the use of sodium silicate (or equivalent) luting com-  
38 pounds, if the Administrator determines that use of sodium  
39 silicate is an effective means of emission control and is  
40 achievable, taking into account costs and reasonable commer-  
41 cial warranties for doors and related equipment; and

1 (ii) door and jam cleaning practices.

2 (C) COKE OVEN BATTERIES ELECTING TO QUALIFY FOR COM-  
3 PLIANCE DATE EXTENSION.—For coke oven batteries electing to  
4 qualify for an extension of the compliance date for standards pro-  
5 mulgated under subsection (f) in accordance with subsection  
6 (i)(8), the emission standards under this subsection for coke oven  
7 batteries shall require that coke oven batteries not exceed—

8 (i) 8 percent leaking doors;

9 (ii) 1 percent leaking lids;

10 (iii) 5 percent leaking offtakes; and

11 (iv) 16 seconds visible emissions per charge;

12 with no exclusion for emissions during the period after the closing  
13 of self-sealing doors.

14 (9) SOURCES LICENSED BY THE NUCLEAR REGULATORY COMMIS-  
15 SION.—No standard for radionuclide emissions from any category or  
16 subcategory of facilities licensed by the Nuclear Regulatory Commission  
17 (or an Agreement State) is required to be promulgated under this sec-  
18 tion if the Administrator determines, by regulation, and after consulta-  
19 tion with the Nuclear Regulatory Commission, that the regulatory pro-  
20 gram established by the Nuclear Regulatory Commission pursuant to  
21 the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) for the cat-  
22 egory or subcategory provides an ample margin of safety to protect the  
23 public health. Nothing in this subsection precludes or denies the right  
24 of any State or political subdivision thereof to adopt or enforce any  
25 standard or limitation respecting emissions of radionuclides that is  
26 more stringent than the standard or limitation in effect under section  
27 211111 of this title or this section.

28 (10) EFFECTIVE DATE.—Emission standards or other regulations  
29 promulgated under this subsection shall be effective on promulgation.

30 (e) PRIORITIES; JUDICIAL REVIEW.—

31 (1) PRIORITIES.—In determining priorities for promulgating stand-  
32 ards under subsection (d), the Administrator shall consider—

33 (A) the known or anticipated adverse effects of pollutants on  
34 public health and the environment;

35 (B) the quantity and location of emissions or reasonably antici-  
36 pated emissions of hazardous air pollutants that each category or  
37 subcategory will emit; and

38 (C) the efficiency of grouping categories or subcategories ac-  
39 cording to the pollutants emitted, or the processes or technologies  
40 used.

1           (2) JUDICIAL REVIEW.—Notwithstanding section 203102 of this  
2 title, no action of the Administrator adding a pollutant to the list under  
3 subsection (b) or listing a source category or subcategory under sub-  
4 section (c) shall be a final agency action subject to judicial review, ex-  
5 cept that any such action may be reviewed under section 211113 of  
6 this title when the Administrator issues emission standards for such a  
7 pollutant or category.

8 (f) EMISSION STANDARDS TO PROTECT HEALTH AND ENVIRONMENT.—

9           (1) REPORT.—The Administrator shall investigate and report, after  
10 consultation with the Surgeon General and after opportunity for public  
11 comment, to Congress on—

12           (A) methods of calculating the risk to public health remaining,  
13 or likely to remain, from sources subject to regulation under this  
14 section after the application of standards under subsection (d);

15           (B) the public health significance of such estimated remaining  
16 risk and the technologically and commercially available methods  
17 and costs of reducing such risks;

18           (C) the actual health effects with respect to persons living in the  
19 vicinity of sources, any available epidemiological or other health  
20 studies, risks presented by background concentrations of hazard-  
21 ous air pollutants, any uncertainties in risk assessment methodol-  
22 ogy or other health assessment technique, and any negative health  
23 or environmental consequences to the community of efforts to re-  
24 duce such risks; and

25           (D) recommendations as to legislation regarding the remaining  
26 risk.

27 (2) EMISSION STANDARDS.—

28           (A) IN GENERAL.—If Congress does not act on any recom-  
29 mendation submitted under paragraph (1), the Administrator  
30 shall, within 8 years after promulgation of emission standards for  
31 each category or subcategory of sources pursuant to subsection  
32 (d), promulgate emission standards for the category or sub-  
33 category if promulgation of emission standards is required to pro-  
34 vide an ample margin of safety to protect public health in accord-  
35 ance with section 112 of the Clean Air Act (42 U.S.C. 7412) (as  
36 in effect before November 15, 1990) or to prevent, taking into  
37 consideration costs, energy, safety, and other relevant factors, an  
38 adverse environmental effect. Emission standards promulgated  
39 under this subsection shall provide an ample margin of safety to  
40 protect public health in accordance with section 112 of the Clean  
41 Air Act (42 U.S.C. 7412) (as in effect before November 15,

1 1990), unless the Administrator determines that a more stringent  
2 emission standard is necessary to prevent, taking into consider-  
3 ation costs, energy, safety, and other relevant factors, an adverse  
4 environmental effect. If emission standards promulgated pursuant  
5 to subsection (d) and applicable to a category or subcategory of  
6 sources emitting a pollutant (or pollutants) classified as a known,  
7 probable, or possible human carcinogen do not reduce lifetime ex-  
8 cess cancer risks to the individual most exposed to emissions from  
9 a source in the category or subcategory to less than 1 in  
10 1,000,000, the Administrator shall promulgate emission standards  
11 under this subsection for that source category.

12 (B) EFFECT OF SECTION.—Nothing in subparagraph (A) or in  
13 any other provision of this section shall be construed as affecting,  
14 or applying to the Administrator's interpretation of section 112 of  
15 the Clean Air Act (42 U.S.C. 7412) (as in effect before November  
16 15, 1990), and set forth in the Federal Register of September 14,  
17 1989 (54 Fed. Reg. 38044).

18 (C) DEADLINES.—

19 (i) IN GENERAL.—The Administrator shall determine  
20 whether or not to promulgate emission standards under sub-  
21 paragraph (A) and, if the Administrator decides to promul-  
22 gate emission standards, shall promulgate the emission stand-  
23 ards 8 years after promulgation of the emission standards  
24 under subsection (d) for each source category or subcategory  
25 concerned.

26 (ii) CATEGORIES OR SUBCATEGORIES FOR WHICH STAND-  
27 ARDS UNDER SUBSECTION (d) WERE REQUIRED TO BE PRO-  
28 MULGATED WITHIN 2 YEARS AFTER NOVEMBER 15, 1990.—In  
29 the case of categories or subcategories for which standards  
30 under subsection (d) were required to be promulgated within  
31 2 years after November 15, 1990, the Administrator shall  
32 have 9 years after promulgation of the emission standards  
33 under subsection (d) to make the determination under clause  
34 (i) and, if required, to promulgate the emission standards  
35 under this paragraph.

36 (3) EFFECTIVE DATE.—Any emission standard established pursuant  
37 to this subsection shall become effective on promulgation.

38 (4) PROHIBITION.—

39 (A) IN GENERAL.—Except as provided in subparagraph (B), no  
40 air pollutant to which an emission standard under this subsection

1 applies may be emitted from any stationary source in violation of  
2 the emission standard.

3 (B) EXISTING SOURCES.—In the case of an existing source—

4 (i) the emission standard shall not apply until 90 days  
5 after its effective date; and

6 (ii) the Administrator may grant a waiver permitting an  
7 existing source a period of up to 2 years after the effective  
8 date of an emission standard to comply with the emission  
9 standard if the Administrator finds that such a period is nec-  
10 essary for the installation of controls and that steps will be  
11 taken during the period of the waiver to ensure that the  
12 health of persons will be protected from imminent endangere-  
13 ment.

14 (5) AREA SOURCES.—The Administrator is not required to conduct  
15 any review under this subsection or promulgate emission limitations  
16 under this subsection for any category or subcategory of area sources  
17 that is listed pursuant to subsection (c)(3) and for which an emission  
18 standard is promulgated pursuant to subsection (d)(5).

19 (6) UNIQUE CHEMICAL SUBSTANCES.—In establishing emission  
20 standards for the control of unique chemical substances of listed pollut-  
21 ants without CAS numbers under this subsection, the Administrator  
22 shall establish the emission standards with respect to the health and  
23 environmental effects of the substances actually emitted by sources and  
24 direct transformation byproducts of such emissions in the categories  
25 and subcategories.

26 (g) MODIFICATIONS.—

27 (1) OFFSETS.—

28 (A) CHANGE NOT A MODIFICATION.—

29 (i) IN GENERAL.—A physical change in, or change in the  
30 method of operation of, a major source that results in a  
31 greater than de minimis increase in actual emissions of a haz-  
32 ardous air pollutant shall not be considered a modification, if  
33 the increase in the quantity of actual emissions of any haz-  
34 ardous air pollutant from the source will be offset by an equal  
35 or greater decrease in the quantity of emissions of another  
36 hazardous air pollutant (or pollutants) from the source that  
37 is considered more hazardous, pursuant to guidance issued by  
38 the Administrator under subparagraph (B).

39 (ii) SHOWING.—The owner or operator of the source shall  
40 submit a showing to the Administrator (or the State) that an

1           increase described in clause (i) has been offset as described  
2           in that clause.

3           (B) GUIDANCE.—The Administrator shall, after notice and op-  
4           portunity for comment, publish guidance with respect to imple-  
5           mentation of this subsection. The guidance shall include an identi-  
6           fication, to the extent practicable, of the relative hazard to human  
7           health resulting from emissions to the ambient air of each of the  
8           pollutants listed under subsection (b) sufficient to facilitate the  
9           offset showing authorized by subparagraph (A). The guidance  
10          shall not authorize offsets between pollutants where the increased  
11          pollutant (or more than 1 pollutant in a stream of pollutants)  
12          causes adverse effects on human health for which no safety thresh-  
13          old for exposure can be determined unless there are corresponding  
14          decreases in those types of pollutants.

15          (2) MODIFICATION; CONSTRUCTION OR RECONSTRUCTION.—

16           (A) MODIFICATION.—No person may modify a major source of  
17           hazardous air pollutants in a State unless the Administrator or  
18           the State determines that the maximum achievable control tech-  
19           nology emission limitation under this section for existing sources  
20           will be met. Such a determination shall be made on a case-by-case  
21           basis where no applicable emission limitations have been estab-  
22           lished by the Administrator.

23           (B) CONSTRUCTION OR RECONSTRUCTION.—No person may  
24           construct or reconstruct any major source of hazardous air pollut-  
25           ants in a State unless the Administrator or the State determines  
26           that the maximum achievable control technology emission limita-  
27           tion under this section for new sources will be met. Such a deter-  
28           mination shall be made on a case-by-case basis where no applica-  
29           ble emission limitations have been established by the Adminis-  
30           trator.

31          (3) PROCEDURES FOR MODIFICATION.—The Administrator (or the  
32          State) shall establish reasonable procedures for ensuring that the re-  
33          quirements applying to modifications under this section are reflected in  
34          the permit.

35          (h) WORK PRACTICE STANDARDS AND OTHER REQUIREMENTS.—

36           (1) IN GENERAL.—For purposes of this section, if it is not feasible  
37           in the judgment of the Administrator to prescribe or enforce an emis-  
38           sion standard for control of a hazardous air pollutant or pollutants, the  
39           Administrator may, in lieu of prescribing or enforcing an emission  
40           standard, promulgate a design, equipment, work practice, or oper-  
41           ational standard, or combination thereof, that in the Administrator's

1 judgment is consistent with subsection (d) or (f). If the Administrator  
2 promulgates a design or equipment standard under this subsection, the  
3 Administrator shall include as part of the design or equipment stand-  
4 ard such requirements as will ensure the proper operation and mainte-  
5 nance of any such element of design or equipment.

6 (2) EMISSION STANDARD NOT FEASIBLE.—For the purpose of this  
7 subsection, the Administrator may determine that it is not feasible to  
8 prescribe or enforce an emission standard in any situation in which the  
9 Administrator determines that—

10 (A)(i) a hazardous air pollutant or pollutants cannot be emitted  
11 through a conveyance designed and constructed to emit or capture  
12 the pollutant; or

13 (ii) any requirement for, or use of, such a conveyance would be  
14 inconsistent with any Federal, State, or local law; or

15 (B) the application of measurement methodology to a particular  
16 class of sources is not practicable due to technological and eco-  
17 nomic limitations.

18 (3) ALTERNATIVE STANDARD.—If after notice and opportunity for  
19 comment, the owner or operator of any source establishes to the satis-  
20 faction of the Administrator that an alternative means of emission limi-  
21 tation will achieve a reduction in emissions of any air pollutant at least  
22 equivalent to the reduction in emissions of the pollutant achieved under  
23 the requirements of paragraph (1), the Administrator shall permit the  
24 use of the alternative by the source for purposes of compliance with  
25 this section with respect to that pollutant.

26 (4) NUMERICAL STANDARD.—Any standard promulgated under para-  
27 graph (1) shall be promulgated in terms of an emission standard when-  
28 ever it is feasible to promulgate and enforce a standard in such terms.

29 (i) SCHEDULE FOR COMPLIANCE.—

30 (1) PRECONSTRUCTION AND OPERATING REQUIREMENTS.—After the  
31 effective date of any emission standard, limitation, or regulation under  
32 subsection (d), (f), or (h), no person may construct any new major  
33 source or reconstruct any existing major source subject to the emission  
34 standard, regulation, or limitation unless the Administrator (or a State  
35 with a permit program approved under subdivision 6) determines that  
36 the source, if properly constructed, reconstructed, and operated, will  
37 comply with the standard, regulation, or limitation.

38 (2) SPECIAL RULE.—Notwithstanding paragraph (1), a new source  
39 that commences construction or reconstruction after a standard, limita-  
40 tion, or regulation applicable to the source is proposed and before the  
41 standard, limitation, or regulation is promulgated shall not be required

1 to comply with the promulgated standard until the date that is 3 years  
2 after the date of promulgation if—

3 (A) the promulgated standard, limitation, or regulation is more  
4 stringent than the standard, limitation, or regulation proposed;  
5 and

6 (B) the source complies with the standard, limitation, or regula-  
7 tion as proposed during the 3-year period immediately after pro-  
8 mulgation.

9 (3) COMPLIANCE SCHEDULE FOR EXISTING SOURCES.—

10 (A) PROHIBITION.—After the effective date of any emission  
11 standard, limitation, or regulation promulgated under this section  
12 and applicable to a source, no person may operate the source in  
13 violation of the standard, limitation, or regulation except that, in  
14 the case of an existing source, the Administrator shall establish a  
15 compliance date or dates for each category or subcategory of exist-  
16 ing sources, which shall provide for compliance as expeditiously as  
17 practicable, but in no event later than 3 years after the effective  
18 date of the standard, limitation, or regulation, except as provided  
19 in subparagraph (B) and paragraphs (4) through (8).

20 (B) EXTENSION PERMIT.—The Administrator (or a State with  
21 a program approved under subdivision 6) may issue a permit that  
22 grants an extension permitting an existing source up to 1 addi-  
23 tional year to comply with standards under subsection (d) if such  
24 an additional period is necessary for the installation of controls.  
25 An additional extension of up to 3 years may be added for mining  
26 waste operations, if the 4-year compliance time is insufficient to  
27 dry and cover mining waste in order to reduce emissions of any  
28 pollutant listed under subsection (b).

29 (4) PRESIDENTIAL EXEMPTION.—The President may exempt any  
30 stationary source from compliance with any standard or limitation  
31 under this section for a period of not more than 2 years if the Presi-  
32 dent determines that the technology to implement the standard is not  
33 available and that it is in the national security interests of the United  
34 States to do so. An exemption under this paragraph may be extended  
35 for 1 or more additional periods, each period not to exceed 2 years.  
36 The President shall report to Congress with respect to each exemption  
37 (or extension thereof) made under this paragraph.

38 (5) EARLY REDUCTION.—

39 (A) IN GENERAL.—

40 (i) PERMIT.—The Administrator (or a State acting pursu-  
41 ant to a permit program approved under subdivision 6) shall



1 issue a permit allowing an existing source, for which the  
2 owner or operator demonstrates that the source has achieved  
3 a reduction of 90 percent or more in emissions of hazardous  
4 air pollutants (95 percent in the case of hazardous air pollut-  
5 ants that are particulates) from the source, to meet an alter-  
6 native emission limitation reflecting the reduction in lieu of  
7 an emission limitation promulgated under subsection (d) for  
8 a period of 6 years after the compliance date for the other-  
9 wise applicable standard, if reduction is achieved before the  
10 otherwise applicable standard under subsection (d) is first  
11 proposed.

12 (ii) EFFECT OF PARAGRAPH.—Nothing in this paragraph  
13 precludes a State from requiring reductions in excess of those  
14 specified in this subparagraph as a condition of granting the  
15 extension authorized by clause (i).

16 (B) REDUCTION DETERMINATION.—The reduction shall be de-  
17 termined with respect to verifiable and actual emissions in a base  
18 year not earlier than calendar year 1987, so long as there is no  
19 evidence that emissions in the base year are artificially or substan-  
20 tially greater than emissions in other years prior to implementa-  
21 tion of emissions reduction measures. The Administrator may  
22 allow a source to use a baseline year of 1985 or 1986 if the source  
23 can demonstrate to the satisfaction of the Administrator that  
24 emissions data for the source reflect verifiable data based on infor-  
25 mation for the source, received by the Administrator prior to No-  
26 vember 15, 1990, pursuant to an information request issued under  
27 section 211114 of this title.

28 (C) ENFORCEABLE EMISSION LIMITATION.—For each source  
29 granted an alternative emission limitation under this paragraph  
30 there shall be established by a permit issued pursuant to subdivi-  
31 sion 6 an enforceable emission limitation for hazardous air pollut-  
32 ants reflecting the reduction that qualifies the source for an alter-  
33 native emission limitation under this paragraph. An alternative  
34 emission limitation under this paragraph shall not be available  
35 with respect to standards or requirements promulgated pursuant  
36 to subsection (f), and the Administrator shall, for the purpose of  
37 determining whether a standard under subsection (f) is necessary,  
38 review emissions from sources granted an alternative emission lim-  
39 itation under this paragraph at the same time that other sources  
40 in the category or subcategory are reviewed.

1 (D) LIMITATION.—With respect to pollutants for which high  
2 risks of adverse public health effects may be associated with expo-  
3 sure to small quantities, including chlorinated dioxins and furans,  
4 the Administrator shall by regulation limit the use of offsetting re-  
5 ductions in emissions of other hazardous air pollutants from the  
6 source as counting toward the 90 percent reduction in such high-  
7 risk pollutants qualifying for an alternative emission limitation  
8 under this paragraph.

9 (6) OTHER REDUCTIONS.—Notwithstanding the requirements of this  
10 section, no existing source that has installed—

11 (A) best available control technology (as defined in section  
12 213102 of this title); or

13 (B) technology required to meet a lowest achievable emission  
14 rate (as defined in section 215101 of this title);

15 prior to the promulgation of a standard under this section applicable  
16 to the source and the same pollutant (or stream of pollutants) con-  
17 trolled pursuant to an action described in subparagraph (A) or (B)  
18 shall be required to comply with the standard under this section until  
19 the date that is 5 years after the date on which the installation or re-  
20 duction has been achieved, as determined by the Administrator. The  
21 Administrator may issue such regulations and guidance as are nec-  
22 essary to implement this paragraph.

23 (7) EXTENSION FOR NEW SOURCES.—A source for which construc-  
24 tion or reconstruction is commenced after the date an emission stand-  
25 ard applicable to the source is proposed pursuant to subsection (d) but  
26 before the date on which an emission standard applicable to the source  
27 is proposed pursuant to subsection (f) shall not be required to comply  
28 with the emission standard under subsection (f) until the date that is  
29 10 years after the date on which construction or reconstruction is com-  
30 menced.

31 (8) COKE OVENS.—

32 (A) DATE FOR ACHIEVEMENT OF EMISSION LIMITATIONS.—Any  
33 coke oven battery that complies with the emission limitations es-  
34 tablished under subsection (d)(8)(C) and subparagraph (B) shall  
35 not be required to achieve emission limitations promulgated under  
36 subsection (f) until January 1, 2020.

37 (B) INTERIM EMISSION LIMITATIONS.—

38 (i) IN GENERAL.—The Administrator shall promulgate  
39 emission limitations for coke oven emissions from coke oven  
40 batteries. The emission limitations shall reflect the lowest  
41 achievable emission rate (as defined in section 215101 of this

1 title) for a coke oven battery that is rebuilt or a replacement  
2 at a coke oven plant for an existing battery.

3 (ii) STRINGENCY.—The emission limitations under clause  
4 (i) shall be no less stringent than—

5 (I) 3 percent leaking doors (5 percent leaking doors  
6 for 6-meter batteries);

7 (II) 1 percent leaking lids;

8 (III) 4 percent leaking offtakes; and

9 (IV) 16 seconds visible emissions per charge;

10 with an exclusion for emissions during the period after the  
11 closing of self-sealing oven doors (or the total mass emissions  
12 equivalent).

13 (iii) MEASUREMENT METHODOLOGY; TERMS.—The rule-  
14 making in which the emission limitations are promulgated  
15 shall establish an appropriate measurement methodology for  
16 determining compliance with the emission limitations, and  
17 shall establish such emission limitations in terms of an equiv-  
18 alent level of mass emissions reduction from a coke oven bat-  
19 tery, unless the Administrator finds that such a mass emis-  
20 sion standard would not be practicable or enforceable. The  
21 measurement methodology, to the extent it measures leaking  
22 doors, shall take into consideration alternative test methods  
23 that reflect the best technology and practices actually applied  
24 in the affected industries, and shall ensure that the final test  
25 methods are consistent with the performance of such best  
26 technology and practices.

27 (iv) REVIEW AND REVISION.—The Administrator shall re-  
28 view the emission limitations promulgated under clause (i)  
29 and revise, as necessary, the emission limitations to reflect  
30 the lowest achievable emission rate (as defined in section  
31 215101 of this title) at the time for a coke oven battery that  
32 is rebuilt or a replacement at a coke oven plant for an exist-  
33 ing battery. Such emission limitations shall be no less strin-  
34 gent than the emission limitation promulgated under clause  
35 (i). Notwithstanding paragraph (2), the compliance date for  
36 such emission limitations for existing coke oven batteries shall  
37 be January 1, 2010.

38 (C) ELECTION TO COMPLY.—Prior to January 1, 1998, the  
39 owner or operator of any coke oven battery may elect to comply  
40 with emission limitations promulgated under subsection (f) by the  
41 date on which those emission limitations would otherwise apply to

1 the coke oven battery, in lieu of the emission limitations and the  
2 compliance dates provided under subparagraph (B). Any such  
3 owner or operator shall be legally bound to comply with the emis-  
4 sion limitations promulgated under subsection (f) with respect to  
5 that coke oven battery. If no such emission limitations have been  
6 promulgated for the coke oven battery, the Administrator shall  
7 promulgate such emission limitations in accordance with sub-  
8 section (f) for that coke oven battery.

9 (D) EFFECT OF RECONSTRUCTION.—

10 (i) DEFINITION OF RECONSTRUCTION.—In this subpara-  
11 graph, the term “reconstruction” includes the replacement of  
12 existing coke oven battery capacity with new coke oven bat-  
13 teries of comparable or lower capacity and lower potential  
14 emissions.

15 (ii) EFFECT.—Notwithstanding this section, reconstruction  
16 of any source of coke oven emissions qualifying for an exten-  
17 sion under this paragraph shall not subject the source to  
18 emission limitations under subsection (f) that are more strin-  
19 gent than those established under subparagraph (B) until  
20 January 1, 2020.

21 (j) AREA SOURCE PROGRAM.—

22 (1) FINDINGS AND PURPOSE.—Congress finds that emissions of haz-  
23 ardous air pollutants from area sources may individually, or in the ag-  
24 gregate, present significant risks to public health in urban areas. Con-  
25 sidering the large number of persons exposed and the risks of carcino-  
26 genic and other adverse health effects from hazardous air pollutants,  
27 ambient concentrations characteristic of large urban areas should be  
28 reduced to levels substantially below those currently experienced. It is  
29 the purpose of this subsection to achieve a substantial reduction in  
30 emissions of hazardous air pollutants from area sources and an equiva-  
31 lent reduction in the public health risks associated with area sources,  
32 including a reduction of not less than 75 percent in the incidence of  
33 cancer attributable to emissions from area sources.

34 (2) RESEARCH PROGRAM.—

35 (A) IN GENERAL.—The Administrator shall, after consultation  
36 with State and local air pollution control officials, conduct a pro-  
37 gram of research with respect to sources of hazardous air pollut-  
38 ants in urban areas that includes within the program—

39 (i) ambient monitoring for a broad range of hazardous air  
40 pollutants (including volatile organic compounds, metals, pes-

1           ticides, and products of incomplete combustion) in a rep-  
2           representative number of urban locations;

3           (ii) analysis to characterize the sources of such pollution  
4           with a focus on area sources and the contribution that area  
5           sources make to public health risks from hazardous air pollut-  
6           ants; and

7           (iii) consideration of atmospheric transformation and other  
8           factors that can elevate public health risks from such pollut-  
9           ants.

10           (B) HEALTH EFFECTS TO BE CONSIDERED.—The health effects  
11           considered under the program include carcinogenicity, mutagenic-  
12           ity, teratogenicity, neurotoxicity, reproductive dysfunction, and  
13           other acute and chronic effects, including the role of such pollut-  
14           ants as precursors of ozone or acid aerosol formation.

15           (3) NATIONAL STRATEGY.—

16           (A) IN GENERAL.—Considering information collected pursuant  
17           to the monitoring program authorized by paragraph (2), the Ad-  
18           ministrator shall, after notice and opportunity for public comment,  
19           submit to Congress a comprehensive strategy to control emissions  
20           of hazardous air pollutants from area sources in urban areas.

21           (B) CONTENTS.—

22           (i) IN GENERAL.—The strategy shall—

23           (I) identify not less than 30 hazardous air pollutants  
24           that, as the result of emissions from area sources,  
25           present the greatest threat to public health in the largest  
26           number of urban areas and that are or will be listed pur-  
27           suant to subsection (b); and

28           (II) identify the source categories or subcategories  
29           emitting such pollutants that are or will be listed pursu-  
30           ant to subsection (c).

31           (ii) PERCENTAGE OF SOURCES SUBJECT TO STANDARDS.—

32           When identifying categories and subcategories of sources  
33           under this subparagraph, the Administrator shall ensure that  
34           sources accounting for 90 percent or more of the aggregate  
35           emissions of each of the 30 identified hazardous air pollutants  
36           are subject to standards pursuant to subsection (d).

37           (C) REQUIREMENTS.—The strategy shall—

38           (i) include a schedule of specific actions to substantially re-  
39           duce the public health risks posed by the release of hazardous  
40           air pollutants from area sources that will be implemented by  
41           the Administrator under the authority of this division or

1 other laws (including the Toxic Substances Control Act (15  
2 U.S.C. 2601 et seq.), the Federal Insecticide, Fungicide, and  
3 Rodenticide Act (7 U.S.C. 136 et seq.), and the Solid Waste  
4 Disposal Act (42 U.S.C. 6901 et seq.)) or by the States; and

5 (ii) achieve a reduction in the incidence of cancer attrib-  
6 utable to exposure to hazardous air pollutants emitted by sta-  
7 tionary sources of not less than 75 percent, considering con-  
8 trol of emissions of hazardous air pollutants from all station-  
9 ary sources and resulting from measures implemented by the  
10 Administrator or by the States under this division or other  
11 laws.

12 (D) RESEARCH NEEDS.—The strategy may identify research  
13 needs in monitoring, analytical methodology, modeling, or pollution  
14 control techniques and make recommendations for changes in law  
15 that would further the goals and objectives of this subsection.

16 (E) EFFECT OF SUBSECTION.—Nothing in this subsection shall  
17 be interpreted to preclude or delay implementation of actions with  
18 respect to area sources of hazardous air pollutants under consider-  
19 ation pursuant to this or any other law and that may be promul-  
20 gated before the strategy is prepared.

21 (F) IMPLEMENTATION.—The Administrator shall implement the  
22 strategy as expeditiously as practicable, ensuring that all sources  
23 are in compliance with all requirements.

24 (G) AMBIENT MONITORING AND EMISSIONS MODELING.—As  
25 part of the strategy, the Administrator shall provide for ambient  
26 monitoring and emissions modeling in urban areas as appropriate  
27 to demonstrate that the goals and objectives of the strategy are  
28 being met.

29 (4) AREAWIDE ACTIVITIES.—The Administrator shall encourage and  
30 support areawide strategies developed by State or local air pollution  
31 control agencies that are intended to reduce risks from emissions by  
32 area sources within a particular urban area. From the funds available  
33 for grants under this section, the Administrator shall set aside not less  
34 than 10 percent to support areawide strategies addressing hazardous  
35 air pollutants emitted by area sources and shall award such funds on  
36 a demonstration basis to States with innovative and effective strategies.  
37 At the request of State or local air pollution control officials, the Ad-  
38 ministrator shall prepare guidelines for control technologies or manage-  
39 ment practices that may be applicable to various categories or sub-  
40 categories of area sources.

41 (k) STATE PROGRAMS.—

1 (1) IN GENERAL.—Each State may develop and submit to the Ad-  
2 ministrator for approval a program for the implementation and enforce-  
3 ment (including a review of enforcement delegations previously grant-  
4 ed) of emission standards and other requirements for air pollutants  
5 subject to this section or requirements for the prevention and mitiga-  
6 tion of accidental releases pursuant to subsection (q). A program sub-  
7 mitted by a State under this subsection may provide for partial or com-  
8 plete delegation of the Administrator’s authorities and responsibilities  
9 to implement and enforce emission standards and prevention require-  
10 ments but shall not include authority to set standards less stringent  
11 than those promulgated by the Administrator under this division.

12 (2) GUIDANCE.—The Administrator shall publish guidance that  
13 would be useful to States in developing programs for submittal under  
14 this subsection. The guidance shall provide for the registration of all  
15 facilities producing, processing, handling, or storing any substance list-  
16 ed pursuant to subsection (q) in amounts greater than the threshold  
17 quantity. The Administrator shall include as an element in such guid-  
18 ance an optional program begun in 1986 for the review of high-risk  
19 point sources of air pollutants including hazardous air pollutants listed  
20 pursuant to subsection (b).

21 (3) TECHNICAL ASSISTANCE.—The Administrator shall establish and  
22 maintain an air toxics clearinghouse and center to provide technical in-  
23 formation and assistance to State and local agencies and, on a cost re-  
24 covery basis, to others on control technology, health and ecological risk  
25 assessment, risk analysis, ambient monitoring and modeling, and emis-  
26 sions measurement and monitoring. The Administrator shall use the  
27 authority of section 211103 of this title to examine methods for pre-  
28 venting, measuring, and controlling emissions and evaluating associated  
29 health and ecological risks. Where appropriate, such activity shall be  
30 conducted with not-for-profit organizations. The Administrator may  
31 conduct research on methods for preventing, measuring, and controlling  
32 emissions and evaluating associated health and environment risks. All  
33 information collected under this paragraph shall be available to the  
34 public.

35 (4) GRANTS.—On application of a State, the Administrator may  
36 make grants, subject to such terms and conditions as the Adminis-  
37 trator considers appropriate, to the State for the purpose of assisting  
38 the State in developing and implementing a program for submittal and  
39 approval under this subsection. Programs assisted under this para-  
40 graph may include program elements addressing air pollutants or ex-  
41 tremely hazardous substances other than those specifically subject to

1 this section. Grants under this paragraph may include support for  
2 high-risk point source review as provided in paragraph (2) and support  
3 for the development and implementation of areawide area source pro-  
4 grams pursuant to subsection (j).

5 (5) APPROVAL OR DISAPPROVAL.—

6 (A) IN GENERAL.—Not later than 180 days after receiving a  
7 program submitted by a State, and after notice and opportunity  
8 for public comment, the Administrator shall approve or disapprove  
9 the program.

10 (B) DISAPPROVAL.—The Administrator shall disapprove any  
11 program submitted by a State, if the Administrator determines  
12 that—

13 (i) the authorities contained in the program are not ade-  
14 quate to ensure compliance by all sources within the State  
15 with each applicable standard, regulation, or requirement es-  
16 tablished by the Administrator under this section;

17 (ii) adequate authority does not exist, or adequate re-  
18 sources are not available, to implement the program;

19 (iii) the schedule for implementing the program and ensur-  
20 ing compliance by affected sources is not sufficiently expedi-  
21 tious; or

22 (iv) the program is otherwise not in compliance with the  
23 guidance issued by the Administrator under paragraph (2) or  
24 is not likely to satisfy, in whole or in part, the objectives of  
25 this division.

26 (C) NOTIFICATION OF DISAPPROVAL.—If the Administrator dis-  
27 approves a State program, the Administrator shall notify the State  
28 of any revisions or modifications necessary to obtain approval. The  
29 State may revise and resubmit the proposed program for review  
30 and approval pursuant to this subsection.

31 (6) WITHDRAWAL.—Whenever the Administrator determines, after  
32 public hearing, that a State is not administering and enforcing a pro-  
33 gram approved pursuant to this subsection in accordance with the guid-  
34 ance published pursuant to paragraph (2) or the requirements of para-  
35 graph (5), the Administrator shall so notify the State and, if action  
36 that will ensure prompt compliance is not taken within 90 days, the  
37 Administrator shall withdraw approval of the program. The Adminis-  
38 trator shall not withdraw approval of any program unless, prior to  
39 withdrawal, the State is notified and the reasons for withdrawal are  
40 stated in writing and made public.



1 (7) AUTHORITY TO ENFORCE.—Nothing in this subsection precludes  
2 the Administrator from enforcing any applicable emission standard or  
3 requirement under this section.

4 (8) LOCAL PROGRAM.—The Administrator may, after notice and op-  
5 portunity for public comment, approve a program developed and sub-  
6 mitted by a local air pollution control agency (after consultation with  
7 the State) pursuant to this subsection, and any such agency implement-  
8 ing an approved program may take any action authorized to be taken  
9 by a State under this section.

10 (9) PERMIT AUTHORITY.—Nothing in this subsection affects the au-  
11 thorities and obligations of the Administrator or the State under sub-  
12 division 6.

13 (I) ATMOSPHERIC DEPOSITION TO GREAT LAKES AND COASTAL  
14 WATER.—

15 (1) DEFINITION OF COASTAL WATER.—In this subsection, the term  
16 “coastal water” means—

17 (A) an estuary selected pursuant to subparagraph (A) or listed  
18 pursuant to subparagraph (B) of section 320(a)(2) of the Federal  
19 Water Pollution Control Act (33 U.S.C. 1330(a)(2)); or

20 (B) an estuarine research reserve designated pursuant to section  
21 315 of the Coastal Zone Management Act of 1972 (16 U.S.C.  
22 1461).

23 (2) DEPOSITION ASSESSMENT.—The Administrator, in cooperation  
24 with the Under Secretary of Commerce for Oceans and Atmosphere,  
25 shall conduct a program to identify and assess the extent of atmos-  
26 pheric deposition of hazardous air pollutants (and in the discretion of  
27 the Administrator, other air pollutants) to the Great Lakes, the Chesa-  
28 peake Bay, Lake Champlain, and coastal water. As part of the pro-  
29 gram, the Administrator shall—

30 (A) monitor the Great Lakes, the Chesapeake Bay, Lake Cham-  
31 plain, and coastal water, including monitoring of the Great Lakes  
32 through the monitoring network established pursuant to para-  
33 graph (3) and designing and deploying an atmospheric monitoring  
34 network for coastal waters pursuant to paragraph (5);

35 (B) investigate the sources and deposition rates of atmospheric  
36 deposition of air pollutants (and their atmospheric transformation  
37 precursors);

38 (C) conduct research to develop and improve monitoring meth-  
39 ods and to determine the relative contribution of atmospheric pol-  
40 lutants to total pollution loadings to the Great Lakes, the Chesa-  
41 peake Bay, Lake Champlain, and coastal water;

1 (D) evaluate any adverse effects on public health or the environ-  
2 ment caused by such deposition (including effects resulting from  
3 indirect exposure pathways) and assess the contribution of the  
4 deposition to violations of water quality standards established pur-  
5 suant to the Federal Water Pollution Control Act (33 U.S.C. 1251  
6 et seq.) and drinking water standards established pursuant to the  
7 Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

8 (E) sample for such pollutants in biota of the Great Lakes, the  
9 Chesapeake Bay, Lake Champlain, and coastal water and charac-  
10 terize the sources of the pollutants.

11 (3) GREAT LAKES MONITORING NETWORK.—

12 (A) IN GENERAL.—The Administrator shall oversee, in accord-  
13 ance with annex 15 of the Great Lakes Water Quality Agreement  
14 of 1978 (T.I.A.S. 11551; KAV 255), the establishment and oper-  
15 ation of a Great Lakes atmospheric deposition network to monitor  
16 atmospheric deposition of hazardous air pollutants (and in the Ad-  
17 ministrators discretion, other air pollutants) to the Great Lakes.

18 (B) MONITORING FACILITIES.—As part of the network provided  
19 for in this paragraph, the Administrator shall establish in each of  
20 the 5 Great Lakes at least 1 facility capable of monitoring the at-  
21 mospheric deposition of hazardous air pollutants in both dry and  
22 wet conditions.

23 (C) USE OF DATA.—The Administrator shall use the data pro-  
24 vided by the network to—

25 (i) identify and track the movement of hazardous air pol-  
26 lutants through the Great Lakes;

27 (ii) determine the portion of water pollution loadings attrib-  
28 utable to atmospheric deposition of such pollutants; and

29 (iii) support development of remedial action plans and  
30 other management plans as required by the Great Lakes  
31 Water Quality Agreement of 1978 (T.I.A.S. 11551; KAV  
32 255).

33 (D) FORMAT.—The Administrator shall ensure that the data  
34 collected by the Great Lakes atmospheric deposition monitoring  
35 network are in a format compatible with databases sponsored by  
36 the International Joint Commission, Canada, and the States of the  
37 Great Lakes region.

38 (4) MONITORING FOR THE CHESAPEAKE BAY AND LAKE CHAM-  
39 PLAIN.—

40 (A) ATMOSPHERIC DEPOSITION STATIONS.—The Administrator  
41 shall establish at the Chesapeake Bay and Lake Champlain atmos-

1           pheric deposition stations to monitor deposition of hazardous air  
2           pollutants (and in the Administrator's discretion, other air pollut-  
3           ants) within the Chesapeake Bay and Lake Champlain watersheds.

4           (B) ACTIVITIES.—The Administrator shall—

5                 (i) determine the role of air deposition in the pollutant  
6                 loadings of the Chesapeake Bay and Lake Champlain;

7                 (ii) investigate the sources of air pollutants deposited in the  
8                 watersheds;

9                 (iii) evaluate the health and environmental effects of such  
10                pollutant loadings; and

11                (iv) sample such pollutants in biota within the watersheds,  
12                as necessary to characterize such effects.

13           (5) MONITORING FOR COASTAL WATER.—The Administrator shall  
14           design and deploy atmospheric deposition monitoring networks for  
15           coastal water and watersheds of coastal water and shall make any in-  
16           formation collected through such networks available to the public. As  
17           part of that effort, the Administrator shall conduct research to develop  
18           and improve deposition monitoring methods, and to determine the re-  
19           lative contribution of atmospheric pollutants to pollutant loadings.

20           (m) MISCELLANEOUS PROVISIONS.—

21                (1) ELECTRIC UTILITY STEAM GENERATING UNITS.—The Adminis-  
22                trator shall perform a study of the hazards to public health reasonably  
23                anticipated to occur as a result of emissions by electric utility steam  
24                generating units of pollutants listed under subsection (b) after imposi-  
25                tion of the requirements of this division. The Administrator shall report  
26                the results of the study to Congress. The Administrator shall develop  
27                and describe in the report alternative control strategies for emissions  
28                that may warrant regulation under this section. The Administrator  
29                shall regulate electric utility steam generating units under this section  
30                if the Administrator finds that regulation is appropriate and necessary  
31                after considering the results of the study.

32                (2) PUBLICLY OWNED TREATMENT WORKS.—The Administrator may  
33                conduct, in cooperation with the owners and operators of publicly  
34                owned treatment works, studies to characterize emissions of hazardous  
35                air pollutants emitted by such facilities, to identify industrial, commer-  
36                cial, and residential discharges that contribute to such emissions, and  
37                to demonstrate control measures for such emissions. When promulgat-  
38                ing any standard under this section applicable to publicly owned treat-  
39                ment works, the Administrator may provide for control measures that  
40                include pretreatment of discharges causing emissions of hazardous air  
41                pollutants and process or product substitutions or limitations that may

1 be effective in reducing such emissions. The Administrator may pre-  
2 scribe uniform sampling, modeling, and risk assessment methods for  
3 use in implementing this subsection.

4 (3) OIL AND GAS WELLS; PIPELINE FACILITIES.—

5 (A) NO AGGREGATION OF UNITS.—Notwithstanding subsection

6 (a)—

7 (i) emissions from any oil or gas exploration or production  
8 well (with its associated equipment) and emissions from any  
9 pipeline compressor or pump station shall not be aggregated  
10 with emissions from other similar units, whether or not the  
11 units are in a contiguous area or under common control, to  
12 determine whether the units or stations are major sources;  
13 and

14 (ii) in the case of any oil or gas exploration or production  
15 well (with its associated equipment), the emissions from those  
16 units shall not be aggregated for any purpose under this sec-  
17 tion.

18 (B) NO LISTING AS AREA SOURCE CATEGORY.—

19 (i) IN GENERAL.—Except as provided in clause (ii), the Ad-  
20 ministrator shall not list oil and gas production wells (with  
21 their associated equipment) as an area source category under  
22 subsection (c).

23 (ii) EXCEPTION.—The Administrator may establish an area  
24 source category for oil and gas production wells located in  
25 any metropolitan statistical area or consolidated metropolitan  
26 statistical area with a population in excess of 1,000,000 if the  
27 Administrator determines that emissions of hazardous air pol-  
28 lutants from the wells present more than a negligible risk of  
29 adverse effects on public health.

30 (4) RCRA FACILITIES.—In the case of any category or subcategory  
31 of sources the air emissions of which are regulated under subtitle C  
32 of the Solid Waste Disposal Act (42 U.S.C. 6921 et seq.), the Adminis-  
33 trator shall—

34 (A) take into account any regulations of such emissions that are  
35 promulgated under that subtitle; and

36 (B) to the maximum extent practicable and consistent with this  
37 section, ensure that the requirements of that subtitle and this sec-  
38 tion are consistent.

39 (n) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—

40 (1) REQUEST OF THE ACADEMY.—The Administrator shall enter into  
41 appropriate arrangements with the National Academy of Sciences (re-

1           ferred to in this subsection as the “Academy”) to conduct a review  
2           of—

3                   (A) risk assessment methodology used by EPA to determine the  
4                   carcinogenic risk associated with exposure to hazardous air pollut-  
5                   ants from source categories and subcategories subject to the re-  
6                   quirements of this section; and

7                   (B) improvements in the methodology.

8           (2) **ELEMENTS TO BE STUDIED.**—In conducting the review, the  
9           Academy should consider—

10                   (A) the techniques used for estimating and describing the car-  
11                   cinogenic potency to humans of hazardous air pollutants; and

12                   (B) the techniques used for estimating exposure to hazardous  
13                   air pollutants (for hypothetical and actual maximally exposed indi-  
14                   viduals and other exposed individuals).

15           (3) **OTHER HEALTH EFFECTS OF CONCERN.**—To the extent prac-  
16           ticable, the Academy shall evaluate and report on the methodology for  
17           assessing the risk of adverse human health effects other than cancer  
18           for which safe thresholds of exposure may not exist, including inherit-  
19           able genetic mutations, birth defects, and reproductive dysfunctions.

20           (4) **REPORT.**—A report on the results of the review shall be submit-  
21           ted to the Committee on Environment and Public Works of the Senate,  
22           the Committee on Energy and Commerce of the House of Representa-  
23           tives, and the Administrator.

24           (5) **ASSISTANCE.**—The Administrator shall assist the Academy in  
25           gathering any information that the Academy considers necessary to  
26           carry out this subsection. The Administrator may use any authority  
27           under this division to obtain information from any person, and to re-  
28           quire any person to conduct tests, keep and produce records, and make  
29           reports respecting research or other activities conducted by the person  
30           as necessary to carry out this subsection.

31           (6) **AUTHORIZATION.**—Of the funds authorized to be appropriated to  
32           the Administrator by this division, such amounts as are required shall  
33           be available to carry out this subsection.

34           (7) **GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.**—The Ad-  
35           ministrator shall consider, but need not adopt, the recommendations  
36           contained in the report of the Academy and the views of the Science  
37           Advisory Board, with respect to the report. Prior to the promulgation  
38           of any standard under subsection (f), and after notice and opportunity  
39           for comment, the Administrator shall publish revised Guidelines for  
40           Carcinogenic Risk Assessment or a detailed explanation of the reasons  
41           that any recommendations contained in the report of the Academy will

1 not be implemented. The publication of the revised Guidelines shall be  
2 a final agency action for purposes of section 211113 of this title.

3 (o) MICKEY LELAND NATIONAL URBAN AIR TOXICS RESEARCH CEN-  
4 TER.—

5 (1) ESTABLISHMENT.—The Administrator shall oversee the estab-  
6 lishment of a national urban air toxics research center to be known as  
7 the Mickey Leland National Urban Air Toxics Research Center (re-  
8 ferred to in this subsection as the “Center”) and to be located at a  
9 university, hospital, or other facility capable of undertaking and main-  
10 taining similar research capabilities in the areas of epidemiology, oncol-  
11 ogy, toxicology, pulmonary medicine, pathology, and biostatistics. The  
12 geographic site of the Center should be directed to Harris County,  
13 Texas, to take full advantage of the well-developed scientific community  
14 presence onsite at the Texas Medical Center and the extensive data  
15 compiled for the comprehensive monitoring system.

16 (2) BOARD OF DIRECTORS.—The Center shall be governed by a  
17 Board of Directors (referred to in this subsection as the “Board”) to  
18 be comprised of 9 members, the appointment of whom shall be allo-  
19 cated pro rata among the Speaker of the House, the Majority Leader  
20 of the Senate, and the President. The members of the Board shall be  
21 selected based on their respective academic and professional back-  
22 grounds and expertise in matters relating to public health, environ-  
23 mental pollution, and industrial hygiene. The duties of the Board shall  
24 be to determine policy and research guidelines, submit views from Cen-  
25 ter sponsors and the public, and issue periodic reports of findings and  
26 activities of the Center.

27 (3) SCIENTIFIC ADVISORY PANEL.—The Board shall be advised by  
28 a Scientific Advisory Panel (referred to in this subsection as the  
29 “Panel”), the 13 members of which shall be appointed by the Board  
30 and include eminent members of the scientific and medical commu-  
31 nities. The Panel membership may include scientists with relevant ex-  
32 perience from the National Institute of Environmental Health Sciences,  
33 the Centers for Disease Control, EPA, the National Cancer Institute,  
34 and others. The Panel shall conduct peer review and evaluate research  
35 results. The Panel shall assist the Board in developing the research  
36 agenda and reviewing proposals and applications, and shall advise on  
37 the awarding of research grants.

38 (4) FUNDING.—The Center shall be established and funded with  
39 Federal funds and private funds.

40 (p) SAVINGS PROVISIONS.—

1 (1) STANDARDS PREVIOUSLY PROMULGATED.—Any standard under  
2 section 112 of the Clean Air Act (42 U.S.C. 7412) in effect before No-  
3 vember 15, 1990, shall remain in effect after that date unless modified  
4 as provided in that section before that date or under Public Law 101-  
5 549 (104 Stat. 2399) (commonly known as the Clean Air Act Amend-  
6 ments of 1990). Except as provided in paragraph (3), any standard  
7 under that section that had been promulgated, but had not taken ef-  
8 fect, before November 15, 1990, shall not be affected by Public Law  
9 101-549 unless modified as provided in that section before November  
10 15, 1990, or under Public Law 101-549. If a timely petition for review  
11 of any such standard under section 307 of the Clean Air Act (42  
12 U.S.C. 7607) was pending on November 15, 1990, the standard shall  
13 be upheld if it complies with section 112 of the Clean Air Act (42  
14 U.S.C. 7412) as in effect before that date. If any such standard is re-  
15 manded to the Administrator, the Administrator may apply the require-  
16 ments of this section or the requirements of section 112 of the Clean  
17 Air Act (42 U.S.C. 7412) as in effect before November 15, 1990.

18 (2) SPECIAL RULES FOR RADIONUCLIDE EMISSIONS.—

19 (A) NO STANDARD FOR CERTAIN CATEGORIES.—

20 (i) IN GENERAL.—Notwithstanding paragraph (1), no  
21 standard shall be established under this section for radio-  
22 nuclide emissions from—

23 (I) elemental phosphorous plants;

24 (II) grate calcination elemental phosphorous plants;

25 (III) phosphogypsum stacks; or

26 (IV) any subcategory of the foregoing.

27 (ii) CONTINUED EFFECTIVENESS OF PRIOR LAW.—Section  
28 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect prior  
29 to November 15, 1990) shall remain in effect for radionuclide  
30 emissions from plants and stacks described in clause (i).

31 (B) OTHER CATEGORIES.—Notwithstanding paragraph (1), sec-  
32 tion 112 of the Clean Air Act (42 U.S.C. 7412) (as in effect prior  
33 to November 15, 1990) shall remain in effect for radionuclide  
34 emissions from—

35 (i) non-Department of Energy Federal facilities that are  
36 not licensed by the Nuclear Regulatory Commission;

37 (ii) coal-fired utility and industrial boilers;

38 (iii) underground uranium mines;

39 (iv) surface uranium mines; and

40 (v) disposal of uranium mill tailings piles;

1           unless the Administrator, in the Administrator's discretion, applies  
2           the requirements of this section to the sources of radionuclides de-  
3           scribed in any of clauses (i) through (v).

4           (3) MEDICAL RESEARCH OR TREATMENT FACILITIES.—If the Admin-  
5           istrator determines that the regulatory program established by the Nu-  
6           clear Regulatory Commission for medical research or treatment facili-  
7           ties does not provide an ample margin of safety to protect public  
8           health, the requirements of this section shall fully apply to medical re-  
9           search or treatment facilities. If the Administrator determines that the  
10          regulatory program does provide an ample margin of safety to protect  
11          the public health, the Administrator is not required to promulgate a  
12          standard under this section for medical research or treatment facilities,  
13          as provided in subsection (d)(9).

14          (q) PREVENTION OF ACCIDENTAL RELEASES.—

15           (1) DEFINITIONS.—In this subsection:

16           (A) ACCIDENTAL RELEASE.—The term “accidental release”  
17           means an unanticipated emission of a regulated substance or other  
18           extremely hazardous substance into the ambient air from a sta-  
19           tionary source.

20           (B) REGULATED SUBSTANCE.—The term “regulated substance”  
21           means a substance listed under paragraph (3).

22           (C) RETAIL FACILITY.—The term “retail facility” means a sta-  
23           tionary source at which more than ½ of the income is obtained  
24           from direct sales to end users or at which more than ½ of the  
25           fuel sold, by volume, is sold through a cylinder exchange program.

26           (D) STATIONARY SOURCE.—The term “stationary source”  
27           means 1 or more buildings, structures, pieces of equipment, instal-  
28           lations, or substance-emitting stationary activities—

29                   (i) that belong to the same industrial group;

30                   (ii) that are located on a property or 2 or more contiguous  
31                   properties;

32                   (iii) that are under the control of the same person (or per-  
33                   sons under common control); and

34                   (iv) from which an accidental release may occur.

35           (2) PURPOSE AND GENERAL DUTY.—

36           (A) OBJECTIVE.—It shall be the objective of the regulations and  
37           programs authorized under this subsection to prevent, and mini-  
38           mize the consequences of, accidental releases.

39           (B) GENERAL DUTY.—The owners and operators of stationary  
40           sources producing, processing, handling, or storing regulated sub-  
41           stances have a general duty in the same manner and to the same



1 extent as under section 5 of the Occupational Safety and Health  
2 Act of 1970 (29 U.S.C. 654) to—

3 (i) identify hazards that may result from accidental re-  
4 leases using appropriate hazard assessment techniques;

5 (ii) design and maintain a safe facility taking such steps  
6 as are necessary to prevent accidental releases; and

7 (iii) minimize the consequences of accidental releases that  
8 do occur.

9 (C) NO CITIZEN SUITS.—For purposes of this paragraph, sec-  
10 tion 203104 of this title shall not be available to any person or  
11 otherwise be construed to be applicable to this paragraph.

12 (D) EFFECT OF PARAGRAPH.—Nothing in this section shall be  
13 interpreted, construed, or applied to create, or held to imply the  
14 creation of, any liability or basis for suit for compensation for bod-  
15 ily injury or any other injury or property damages to any person  
16 that may result from an accidental release.

17 (3) LIST OF SUBSTANCES.—

18 (A) IN GENERAL.—The Administrator shall promulgate an ini-  
19 tial list of 100 substances that, in the case of an accidental re-  
20 lease, are known to cause or may reasonably be anticipated to  
21 cause death or injury to humans or serious adverse effects on  
22 human health or the environment.

23 (B) USE OF LIST UNDER THE EMERGENCY PLANNING AND COM-  
24 MUNITY RIGHT-TO-KNOW ACT OF 1986.—For purposes of promul-  
25 gating the list under subparagraph (A), the Administrator shall  
26 use, but is not limited to, the list of extremely hazardous sub-  
27 stances published under the Emergency Planning and Community  
28 Right-To-Know Act of 1986 (42 U.S.C. 11001 et seq.), with such  
29 modifications as the Administrator considers appropriate.

30 (C) SUBSTANCES TO BE INCLUDED.—The initial list shall in-  
31 clude ammonia, anhydrous ammonia, anhydrous hydrogen chlo-  
32 ride, anhydrous sulfur dioxide, bromine, chlorine, ethylene oxide,  
33 hydrogen cyanide, hydrogen fluoride, hydrogen sulfide, methyl  
34 chloride, methyl isocyanate, phosgene, sulfur trioxide, toluene  
35 diisocyanate, and vinyl chloride.

36 (D) NUMBER OF SUBSTANCES.—The initial list shall include at  
37 least 100 substances that pose the greatest risk of causing death  
38 or injury to humans or serious adverse effects on human health  
39 or the environment from accidental releases.

40 (E) EXPLANATION.—Regulations establishing the list shall in-  
41 clude an explanation of the basis for establishing the list.

1 (F) REVISION; REVIEW.—The list—

2 (i) may be revised from time to time by the Administrator  
3 on the Administrator's own motion or by petition; and

4 (ii) shall be reviewed at least every 5 years.

5 (G) LIMITATIONS.—No air pollutant for which a primary  
6 NAAQS has been established shall be included on the list. No sub-  
7 stance, practice, process, or activity regulated under subdivision 7  
8 shall be subject to regulations under this subsection.

9 (H) ADDITION AND DELETION.—The Administrator shall estab-  
10 lish procedures for the addition and deletion of substances from  
11 the list established under this paragraph consistent with those ap-  
12 plicable to the list under subsection (b).

13 (4) FACTORS TO BE CONSIDERED.—In listing substances under  
14 paragraph (3), the Administrator—

15 (A) shall consider—

16 (i) the severity of any acute adverse health effects associ-  
17 ated with accidental releases of the substance;

18 (ii) the likelihood of accidental releases of the substance;  
19 and

20 (iii) the potential magnitude of human exposure to acciden-  
21 tal releases of the substance; and

22 (B) shall not list a flammable substance when used as a fuel  
23 or held for sale as a fuel at a retail facility under this subsection  
24 solely because of the explosive or flammable properties of the sub-  
25 stance, unless a fire or explosion caused by the substance will re-  
26 sult in acute adverse health effects from human exposure to the  
27 substance, including the unburned fuel or its combustion byprod-  
28 ucts, other than those caused by the heat of the fire or impact of  
29 the explosion.

30 (5) THRESHOLD QUANTITY.—At the time at which any substance is  
31 listed pursuant to paragraph (3), the Administrator shall establish by  
32 regulation a threshold quantity for the substance, taking into account  
33 the toxicity, reactivity, volatility, dispersibility, combustibility, or flam-  
34 mability of the substance and the amount of the substance that, as a  
35 result of an accidental release, is known to cause or may reasonably  
36 be anticipated to cause death or injury to humans or serious adverse  
37 effects on human health for which the substance was listed. The Ad-  
38 ministrator may establish a greater threshold quantity for, or to ex-  
39 empt entirely, any substance that is a nutrient used in agriculture  
40 when held by a farmer.

41 (6) CHEMICAL SAFETY BOARD.—

1 (A) ESTABLISHMENT.—There is established an independent  
2 safety board to be known as the Chemical Safety and Hazard In-  
3 vestigation Board (referred to in this paragraph as the “Board”).

4 (B) MEMBERSHIP.—The Board shall consist of 5 members, in-  
5 cluding a Chairperson, who shall be appointed by the President,  
6 by and with the advice and consent of the Senate. Members of the  
7 Board shall be appointed on the basis of technical qualification,  
8 professional standing, and demonstrated knowledge in the fields of  
9 accident reconstruction, safety engineering, human factors, toxi-  
10 cology, or air pollution regulation. The terms of office of members  
11 of the Board shall be 5 years. Any member of the Board, including  
12 the Chairperson, may be removed for inefficiency, neglect of duty,  
13 or malfeasance in office. The Chairperson shall be the Chief Exec-  
14 utive Officer of the Board and shall exercise the executive and ad-  
15 ministrative functions of the Board.

16 (C) DUTIES.—

17 (i) IN GENERAL.—The Board shall—

18 (I) investigate (or cause to be investigated), determine,  
19 and report to the public in writing the facts, conditions,  
20 circumstances and cause or probable cause of any acci-  
21 dental release resulting in a fatality, serious injury, or  
22 substantial property damages;

23 (II) issue periodic reports to Federal, State, and local  
24 agencies concerned with the safety of chemical produc-  
25 tion, processing, handling, and storage, and other inter-  
26 ested persons (including EPA and the Occupational  
27 Safety and Health Administration) that—

28 (aa) recommend measures to reduce the likelihood  
29 or the consequences of accidental releases and pro-  
30 pose corrective steps to make chemical production,  
31 processing, handling, and storage as safe and free  
32 from risk of injury as is possible; and

33 (bb) may include proposed regulations or orders  
34 that should be issued by the Administrator under  
35 this section or by the Secretary of Labor under the  
36 Occupational Safety and Health Act of 1970 (29  
37 U.S.C. 651 et seq.) to prevent or minimize the con-  
38 sequences of any release of substances that may  
39 cause death or injury to humans or other serious  
40 adverse effects on human health or substantial

1 property damage as the result of an accidental re-  
2 lease; and

3 (III) establish by regulation requirements binding on  
4 persons for reporting accidental releases into the ambient  
5 air subject to the Board's investigatory jurisdiction.

6 (ii) REPORTING.—Reporting releases to the National Re-  
7 sponse Center, in lieu of the Board directly, shall satisfy the  
8 regulations under clause (i)(III). The National Response Cen-  
9 ter shall promptly notify the Board of any releases that are  
10 within the Board's jurisdiction.

11 (D) EXPERTISE AND EXPERIENCE OF OTHER AGENCIES.—The  
12 Board may utilize the expertise and experience of other agencies.

13 (E) COORDINATION WITH OTHER AGENCIES.—The Board shall  
14 coordinate its activities with investigations and studies conducted  
15 by other agencies of the United States having a responsibility to  
16 protect public health and safety. The Board shall enter into a  
17 memorandum of understanding with the National Transportation  
18 Safety Board to ensure coordination of functions and to limit du-  
19 plication of activities, which shall designate the National Trans-  
20 portation Safety Board as the lead agency for the investigation of  
21 releases that are transportation-related. The Board shall not be  
22 authorized to investigate marine oil spills, which the National  
23 Transportation Safety Board is authorized to investigate. The  
24 Board shall enter into a memorandum of understanding with the  
25 Occupational Safety and Health Administration to limit duplica-  
26 tion of activities. In no event shall the Board forgo an investiga-  
27 tion where an accidental release causes a fatality or serious injury  
28 among the general public, or had the potential to cause substantial  
29 property damage or a number of deaths or injuries among the  
30 general public.

31 (F) RESEARCH; STUDIES.—The Board may conduct research  
32 and studies with respect to the potential for accidental releases,  
33 whether or not an accidental release has occurred, where there is  
34 evidence that indicates the presence of a potential hazard or haz-  
35 ards. To the extent practicable, the Board shall conduct such stud-  
36 ies in cooperation with other Federal agencies having emergency  
37 response authorities, State and local governmental agencies, and  
38 associations and organizations from the industrial, commercial,  
39 and nonprofit sectors.

40 (G) NO ADMISSION INTO EVIDENCE.—No part of the conclu-  
41 sions, findings, or recommendations of the Board relating to any

1 accidental release or the investigation thereof shall be admitted as  
2 evidence or used in any action or suit for damages arising out of  
3 any matter mentioned in the report.

4 (H) RECOMMENDATIONS TO THE ADMINISTRATOR ON THE USE  
5 OF HAZARD ASSESSMENTS.—

6 (i) RECOMMENDATIONS.—The Board shall publish a report  
7 accompanied by recommendations to the Administrator on the  
8 use of hazard assessments in preventing the occurrence and  
9 minimizing the consequences of accidental releases of ex-  
10 tremely hazardous substances. The recommendations shall in-  
11 clude a list of extremely hazardous substances that are not  
12 regulated substances (including threshold quantities for such  
13 substances) and categories of stationary sources for which  
14 hazard assessments would be an appropriate measure to aid  
15 in the prevention of accidental releases and to minimize the  
16 consequences of releases that do occur and a description of  
17 the information and analysis that would be appropriate to in-  
18 clude in any hazard assessment. The Board shall make rec-  
19 ommendations with respect to the role of risk management  
20 plans as required by paragraph (7)(B)(ii) in preventing acci-  
21 dental releases. The Board may from time to time review and  
22 revise its recommendations under this subparagraph.

23 (ii) RESPONSE BY THE ADMINISTRATOR.—

24 (I) IN GENERAL.—Whenever the Board submits a rec-  
25 ommendation with respect to accidental releases to the  
26 Administrator, the Administrator shall respond to the  
27 recommendation formally and in writing not later than  
28 180 days after receipt of the recommendation. The re-  
29 sponse to the Board's recommendation by the Adminis-  
30 trator shall indicate whether the Administrator will—

31 (aa) initiate a rulemaking or issue such orders as  
32 are necessary to implement the recommendation in  
33 full or in part, pursuant to any timetable contained  
34 in the recommendation; or

35 (bb) decline to initiate a rulemaking or issue or-  
36 ders as recommended.

37 (II) REASONS.—Any determination by the Adminis-  
38 trator not to implement a recommendation of the Board  
39 or to implement a recommendation only in part, includ-  
40 ing any variation from the schedule contained in the rec-  
41 ommendation, shall be accompanied by a statement from

1 the Administrator setting forth the reasons for the deter-  
2 mination.

3 (I) RECOMMENDATIONS TO THE SECRETARY OF LABOR WITH  
4 RESPECT TO ACCIDENTAL RELEASES.—

5 (i) RECOMMENDATIONS.—The Board may make recom-  
6 mendations with respect to accidental releases to the Sec-  
7 retary of Labor.

8 (ii) RESPONSE BY THE SECRETARY OF LABOR.—

9 (I) IN GENERAL.—Whenever the Board submits a rec-  
10 ommendation with respect to accidental releases to the  
11 Secretary of Labor, the Secretary shall respond to the  
12 recommendation formally and in writing not later than  
13 180 days after receipt of the recommendation. The re-  
14 sponse to the Board's recommendation by the Secretary  
15 shall indicate whether the Secretary will—

16 (aa) initiate a rulemaking or issue such orders as  
17 are necessary to implement the recommendation in  
18 full or in part, pursuant to any timetable contained  
19 in the recommendation; or

20 (bb) decline to initiate a rulemaking or issue or-  
21 ders as recommended.

22 (II) REASONS.—Any determination by the Secretary  
23 not to implement a recommendation or to implement a  
24 recommendation only in part, including any variation  
25 from the schedule contained in the recommendation,  
26 shall be accompanied by a statement from the Secretary  
27 setting forth the reasons for the determination.

28 (J) RECOMMENDATIONS TO THE ADMINISTRATOR AND THE AD-  
29 MINISTRATOR OF THE OCCUPATIONAL SAFETY AND HEALTH AD-  
30 MINISTRATION RELATING TO RISK MANAGEMENT PLANS, GENERAL  
31 REQUIREMENTS FOR THE PREVENTION OF ACCIDENTAL RE-  
32 LEASES, AND MITIGATION OF POTENTIAL ADVERSE EFFECTS.—  
33 The Board shall issue a report to the Administrator and to the  
34 Administrator of the Occupational Safety and Health Administra-  
35 tion recommending the adoption of regulations for the preparation  
36 of risk management plans and general requirements for the pre-  
37 vention of accidental releases of regulated substances into the am-  
38 bient air (including recommendations for listing substances under  
39 paragraph (3)) and for the mitigation of the potential adverse ef-  
40 fect on human health or the environment as a result of accidental  
41 releases that should be applicable to any stationary source han-

1 dling any regulated substance in more than threshold amounts.  
2 The Board may include proposed regulations or orders that should  
3 be issued by the Administrator under this subsection or by the  
4 Secretary of Labor under the Occupational Safety and Health Act  
5 of 1970 (29 U.S.C. 651 et seq.). Any such recommendations shall  
6 be specific and shall identify the regulated substance or class of  
7 regulated substances (or other substances) to which the recom-  
8 mendations apply. The Administrator shall consider the recom-  
9 mendations before promulgating regulations required by paragraph  
10 (7)(B).

11 (K) POWERS.—

12 (i) IN GENERAL.—The Board, or on authority of the  
13 Board, any member thereof, any administrative law judge em-  
14 ployed by or assigned to the Board, or any officer or em-  
15 ployee duly designated by the Board, may for the purpose of  
16 carrying out duties authorized by subparagraph (C)—

17 (I) hold such hearings, sit and act at such times and  
18 places, administer such oaths, and require by subpoena  
19 or otherwise attendance and testimony of such witnesses  
20 and the production of evidence;

21 (II) require by order that any person engaged in the  
22 production, processing, handling, or storage of extremely  
23 hazardous substances submit written reports and re-  
24 sponses to requests and questions within such time and  
25 in such form as the Board may require;

26 (III) on presenting appropriate credentials and a writ-  
27 ten notice of inspection authority—

28 (aa) enter any property where an accidental re-  
29 lease causing a fatality, serious injury, or substan-  
30 tial property damage has occurred and do all things  
31 therein necessary for a proper investigation pursu-  
32 ant to subparagraph (C); and

33 (bb) inspect at reasonable times records, proc-  
34 esses, controls, and facilities and take such samples  
35 as are relevant to the investigation; and

36 (IV) use any information-gathering authority of the  
37 Administrator under this division, including the sub-  
38 poena power provided in section 203102(a)(1) of this  
39 title.

40 (ii) RIGHTS TO PARTICIPATE.—Whenever the Adminis-  
41 trator or the Board conducts an inspection of a facility pursu-

1 ant to this subsection, employees and their representatives  
2 shall have the same rights to participate in the inspection as  
3 are provided under the Occupational Safety and Health Act  
4 of 1970 (29 U.S.C. 651 et seq.).

5 (L) RULES; TRANSACTIONS.—The Board may establish such  
6 procedural and administrative rules as are necessary to the exer-  
7 cise of its functions and duties. The Board may, without regard  
8 to section 6101 of title 5, enter into contracts, leases, cooperative  
9 agreements, or other transactions as may be necessary in the con-  
10 duct of the duties and functions of the Board with any other agen-  
11 cy, institution, or person.

12 (M) ENFORCEMENT.—After the effective date of any reporting  
13 requirement promulgated pursuant to subparagraph (C)(i)(III) it  
14 shall be unlawful for any person to fail to report any release of  
15 any extremely hazardous substance as required by that subpara-  
16 graph. The Administrator may enforce any regulation or require-  
17 ments established by the Board pursuant to subparagraph  
18 (C)(i)(III) using the authorities of sections 211113 and 211114 of  
19 this title. Any request for information from the owner or operator  
20 of a stationary source made by the Board or by the Administrator  
21 under this section shall be treated, for purposes of sections  
22 203102, 203103, 203104, 211113, 211114, 211116, and 211119  
23 of this title and any other enforcement provision of this division,  
24 as a request made by the Administrator under section 211114 of  
25 this title and may be enforced by the Chairperson of the Board  
26 or by the Administrator as provided in that section.

27 (N) SUPPORT AND FACILITIES.—The Administrator shall pro-  
28 vide to the Board such support and facilities as may be necessary  
29 for operation of the Board.

30 (O) AVAILABILITY OF RECORDS, REPORTS, AND INFORMA-  
31 TION.—

32 (i) IN GENERAL.—Consistent with subparagraph (G) and  
33 section 211114(c) of this title and except as provided in  
34 clause (ii), any records, reports, or information obtained by  
35 the Board shall be available to the Administrator, the Sec-  
36 retary of Labor, Congress, and the public.

37 (ii) SUBSTANTIAL HARM TO COMPETITIVE POSITION.—On a  
38 showing satisfactory to the Board by any person that records,  
39 reports, or information or any particular part thereof (other  
40 than release data or emission data) to which the Board has  
41 access, if made public, is likely to cause substantial harm to



1 the person's competitive position, the Board shall consider the  
2 record, report, or information or particular portion thereof  
3 confidential in accordance with section 1905 of title 18, ex-  
4 cept that such a record, report, or information may be dis-  
5 closed to other officers, employees, and authorized representa-  
6 tives of the United States concerned with carrying out this  
7 division or when relevant under any proceeding under this di-  
8 vision. This subparagraph does not constitute authority to  
9 withhold records, reports, or information from Congress.

10 (P) SUBMISSIONS AND TRANSMITTALS BY THE BOARD; RE-  
11 PORTS; PERFORMANCE OF FUNCTIONS.—

12 (i) COPY TO CONGRESS.—Whenever the Board submits or  
13 transmits any budget estimate, budget request, supplemental  
14 budget request, or other budget information, legislative rec-  
15 ommendation, prepared testimony for congressional hearings,  
16 recommendation, or study to the President, the Secretary of  
17 Labor, the Administrator, or the Director of the Office of  
18 Management and Budget, the Board shall concurrently trans-  
19 mit a copy thereof to Congress.

20 (ii) REPORTS NOT SUBJECT TO REVIEW.—No report of the  
21 Board shall be subject to review by the Administrator or any  
22 Federal agency or to judicial review in any court.

23 (iii) NO AUTHORITY TO REQUIRE PRIOR APPROVAL OR RE-  
24 VIEW OF SUBMISSIONS.—No officer or agency of the United  
25 States shall have authority to require the Board to submit its  
26 budget requests or estimates, legislative recommendations,  
27 prepared testimony, comments, recommendations, or reports  
28 to any officer or agency of the United States for approval or  
29 review prior to the submission of the recommendations, testi-  
30 mony, comments, or reports to Congress.

31 (iv) PERFORMANCE OF FUNCTIONS.—In the performance of  
32 their functions established by this division, in carrying out  
33 any duties under this subsection, the members, officers, and  
34 employees of the Board shall not be responsible to or subject  
35 to supervision or direction of any officer or employee or agent  
36 of EPA, the Department of Labor, or any other agency of the  
37 United States, except that the President may remove any  
38 member, officer, or employee of the Board for inefficiency, ne-  
39 glect of duty, or malfeasance in office.

40 (v) TITLE 5.—Nothing in this section shall affect the appli-  
41 cation of title 5 to officers or employees of the Board.

1 (Q) ANNUAL REPORT.—The Board shall annually submit to the  
2 President and Congress a report that includes—

3 (i) information on accidental releases that have been inves-  
4 tigated by or reported to the Board during the previous year;

5 (ii) recommendations for legislative or administrative action  
6 that the Board has made;

7 (iii) the actions that have been taken by the Administrator  
8 or the Secretary of Labor or the heads of other agencies to  
9 implement those recommendations;

10 (iv) an identification of priorities for study and investiga-  
11 tion in the succeeding year;

12 (v) a description of progress in the development of risk-re-  
13 duction technologies; and

14 (vi) a description of the response to and implementation of  
15 significant research findings on chemical safety in the public  
16 and private sector.

17 (7) PREVENTION OF ACCIDENTAL RELEASES OF REGULATED SUB-  
18 STANCES.—

19 (A) REQUIREMENTS TO PREVENT ACCIDENTAL RELEASES.—To  
20 prevent accidental releases of regulated substances, the Adminis-  
21 trator may promulgate release prevention, detection, and correc-  
22 tion requirements that may include monitoring, recordkeeping, re-  
23 porting, training, vapor recovery, secondary containment, and  
24 other design, equipment, work practice, and operational require-  
25 ments. Regulations promulgated under this subparagraph shall  
26 have an effective date, as determined by the Administrator, ensur-  
27 ing compliance as expeditiously as practicable.

28 (B) REASONABLE REGULATIONS AND APPROPRIATE GUIDANCE  
29 FOR THE PREVENTION AND DETECTION OF ACCIDENTAL RE-  
30 LEASES OF REGULATED SUBSTANCES.—

31 (i) IN GENERAL.—

32 (I) PROMULGATION.—The Administrator shall promul-  
33 gate reasonable regulations and appropriate guidance to  
34 provide, to the greatest extent practicable, for the pre-  
35 vention and detection of accidental releases of regulated  
36 substances and for response to such releases by the own-  
37 ers or operators of the sources of such releases. The Ad-  
38 ministrator shall utilize the expertise of the Secretary of  
39 Transportation and Secretary of Labor in promulgating  
40 the regulations.

41 (II) CONTENTS.—The regulations shall—

1 (aa) as appropriate, cover the use, operation, re-  
2 pair, replacement, and maintenance of equipment to  
3 monitor, detect, inspect, and control such accidental  
4 releases, including training of persons in the use  
5 and maintenance of such equipment and in the con-  
6 duct of periodic inspections;

7 (bb) include procedures and measures for emer-  
8 gency response after an accidental release of a regu-  
9 lated substance to protect human health and the en-  
10 vironment;

11 (cc) cover storage and operations;

12 (dd) as appropriate, recognize differences in size,  
13 operations, processes, class, and categories of  
14 sources and the voluntary actions of sources to pre-  
15 vent such accidental releases and respond to such  
16 accidental releases; and

17 (ee) be applicable to a stationary source 3 years  
18 after the date of promulgation, or 3 years after the  
19 date on which a regulated substance present at a  
20 source in more than threshold amounts is first listed  
21 under paragraph (3), whichever is later.

22 (ii) RISK MANAGEMENT PLANS.—

23 (I) IN GENERAL.—The regulations under this sub-  
24 paragraph shall require the owner or operator of a sta-  
25 tionary source at which a regulated substance is present  
26 in more than a threshold quantity to prepare and imple-  
27 ment a risk management plan to detect and prevent or  
28 minimize accidental releases of regulated substances  
29 from the stationary source, and to provide a prompt  
30 emergency response to any such releases in order to pro-  
31 tect human health and the environment.

32 (II) CONTENTS.—A risk management plan shall pro-  
33 vide for compliance with the requirements of this sub-  
34 section and include—

35 (aa) a hazard assessment to assess the potential  
36 effects of an accidental release of any regulated sub-  
37 stance;

38 (bb) a program for preventing accidental releases  
39 of regulated substances, including safety pre-  
40 cautions and maintenance, monitoring, and em-

1           ployee training measures to be used at the source;  
2           and

3           (cc) a response program providing for specific ac-  
4           tions to be taken in response to an accidental re-  
5           lease of a regulated substance so as to protect  
6           human health and the environment, including proce-  
7           dures for informing the public and local agencies re-  
8           sponsible for responding to accidental releases,  
9           emergency health care, and employee training meas-  
10          ures.

11          (III) HAZARD ASSESSMENTS.—A hazard assessment  
12          under subclause (II)(aa) shall include an estimate of po-  
13          tential release quantities, a determination of downwind  
14          effects (including potential exposures to affected popu-  
15          lations), a previous release history of the past 5 years  
16          (including the size, concentration, and duration of re-  
17          leases), and an evaluation of worst case accidental re-  
18          leases.

19          (IV) GUIDELINES.—At the time at which regulations  
20          are promulgated under this subparagraph, the Adminis-  
21          trator shall promulgate guidelines to assist stationary  
22          sources in the preparation of risk management plans.  
23          The guidelines shall, to the extent practicable, include  
24          model risk management plans.

25          (iii) AVAILABILITY OF RISK MANAGEMENT PLANS.—The  
26          owner or operator of a stationary source covered by clause (ii)  
27          shall—

28           (I) register a risk management plan prepared under  
29           this subparagraph with the Administrator before the ef-  
30           fective date of regulations under clause (i) in such form  
31           and manner as the Administrator shall, by regulation,  
32           require; and

33           (II) submit the risk management plan to—

34           (aa) the Chemical Safety and Hazard Investiga-  
35           tion Board;

36           (bb) the State in which the stationary source is  
37           located; and

38           (cc) any local agency or entity having responsibil-  
39           ity for planning for or responding to accidental re-  
40           leases that may occur at the source.

1 (iv) PUBLIC AVAILABILITY.—A risk management plan shall  
2 be available to the public under section 211114(e) of this  
3 title.

4 (v) AUDITING.—The Administrator shall establish, by regu-  
5 lation, an auditing system to regularly review and, if nec-  
6 essary, require revision in risk management plans to ensure  
7 that the risk management plans comply with this subpara-  
8 graph. Each risk management plan shall be updated periodi-  
9 cally as required by the Administrator, by regulation.

10 (C) CONSULTATION; COORDINATION.—In carrying out this  
11 paragraph, the Administrator shall—

12 (i) consult with the Secretary of Labor and the Secretary  
13 of Transportation; and

14 (ii) coordinate any requirements under this paragraph with  
15 any requirements established for comparable purposes by the  
16 Occupational Safety and Health Administration or the De-  
17 partment of Transportation.

18 (D) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS IN-  
19 FORMATION.—

20 (i) DEFINITIONS.—In this subparagraph:

21 (I) COVERED PERSON.—The term “covered person”  
22 means—

23 (aa) an officer or employee of the United States;

24 (bb) an officer or employee of an agent or con-  
25 tractor of the Federal Government;

26 (cc) an officer or employee of a State or local gov-  
27 ernment;

28 (dd) an officer or employee of an agent or con-  
29 tractor of a State or local government;

30 (ee) an individual affiliated with an entity that  
31 has been given, by a State or local government, re-  
32 sponsibility for preventing, planning for, or respond-  
33 ing to accidental releases;

34 (ff) an officer or employee or an agent or contrac-  
35 tor of an entity described in item (ee); and

36 (gg) a qualified researcher under clause (vi).

37 (II) OFFICIAL USE.—The term “official use” means  
38 an action of a Federal, State, or local government agency  
39 or an entity described in subclause (I)(ee) intended to  
40 carry out a function relevant to preventing, planning for,  
41 or responding to accidental releases.

1 (III) OFF-SITE CONSEQUENCE ANALYSIS INFORMA-  
2 TION.—The term “off-site consequence analysis informa-  
3 tion” means the portions of a risk management plan, ex-  
4 cluding the executive summary of the plan, consisting of  
5 an evaluation of 1 or more worst-case release scenarios  
6 or alternative release scenarios, and any electronic data-  
7 base created by the Administrator from those portions.

8 (IV) RISK MANAGEMENT PLAN.—The term “risk man-  
9 agement plan” means a risk management plan submitted  
10 to the Administrator by an owner or operator of a sta-  
11 tionary source under subparagraph (B)(iii).

12 (ii) REGULATIONS.—The President shall—

13 (I) assess—

14 (aa) the increased risk of terrorist and other  
15 criminal activity associated with the posting of off-  
16 site consequence analysis information on the Inter-  
17 net; and

18 (bb) the incentives created by public disclosure of  
19 off-site consequence analysis information for reduc-  
20 tion in the risk of accidental releases; and

21 (II) based on the assessment under subclause (I), pro-  
22 mulgate regulations governing the distribution of off-site  
23 consequence analysis information in a manner that, in  
24 the opinion of the President, minimizes the likelihood of  
25 accidental releases and the risk described in subclause  
26 (I)(aa) and the likelihood of harm to public health and  
27 welfare, and—

28 (aa) allows access by any member of the public  
29 to paper copies of off-site consequence analysis in-  
30 formation for a limited number of stationary  
31 sources located anywhere in the United States, with-  
32 out any geographical restriction;

33 (bb) allows other public access to off-site con-  
34 sequence analysis information as appropriate;

35 (cc) allows access for official use by a covered  
36 person described in any of items (cc) through (ff)  
37 of clause (i)(I) (referred to in this subclause as a  
38 “State or local covered person”) to off-site con-  
39 sequence analysis information relating to stationary  
40 sources located in the person’s State;

1 (dd) allows a State or local covered person to pro-  
2 vide, for official use, off-site consequence analysis  
3 information relating to stationary sources located in  
4 the person's State to a State or local covered person  
5 in a contiguous State; and

6 (ee) allows a State or local covered person to ob-  
7 tain for official use, by request to the Adminis-  
8 trator, off-site consequence analysis information  
9 that is not available to the person under item (ce).

10 (iii) AVAILABILITY UNDER FREEDOM OF INFORMATION  
11 ACT.—

12 (I) IN GENERAL.—Off-site consequence analysis infor-  
13 mation covered by the regulations, and any ranking of  
14 stationary sources derived from the information, shall  
15 not be made available under section 552 of title 5.

16 (II) APPLICABILITY.—Subclause (I) applies to off-site  
17 consequence analysis information submitted to the Ad-  
18 ministrator at any time.

19 (iv) PROHIBITION OF UNAUTHORIZED DISCLOSURE OF IN-  
20 FORMATION BY COVERED PERSONS.—

21 (I) IN GENERAL.—A covered person shall not disclose  
22 to the public off-site consequence analysis information in  
23 any form, or any statewide or national ranking of identi-  
24 fied stationary sources derived from such information,  
25 except as authorized by this subparagraph (including the  
26 regulations promulgated under clause (ii)).

27 (II) CRIMINAL PENALTIES.—Notwithstanding section  
28 211113 of this title, a covered person that willfully vio-  
29 lates a restriction or prohibition established by this sub-  
30 paragraph (including the regulations promulgated under  
31 clause (ii)) shall, on conviction, be fined for an infraction  
32 under section 3571 of title 18 (but shall not be subject  
33 to imprisonment) for each unauthorized disclosure of off-  
34 site consequence analysis information, except that section  
35 3571(d) of title 18 shall not apply to a case in which the  
36 offense results in pecuniary loss unless the defendant  
37 knew that the loss would occur. The disclosure of off-site  
38 consequence analysis information for each specific sta-  
39 tionary source shall be considered a separate offense.  
40 The total of all penalties that may be imposed on a sin-  
41 gle person or organization under this subclause shall not

1 exceed \$1,000,000 for violations committed during any 1  
2 calendar year.

3 (III) APPLICABILITY.—If the owner or operator of a  
4 stationary source makes off-site consequence analysis in-  
5 formation relating to that stationary source available to  
6 the public without restriction—

7 (aa) subclauses (I) and (II) shall not apply with  
8 respect to the information; and

9 (bb) the owner or operator shall notify the Ad-  
10 ministrator of the public availability of the informa-  
11 tion.

12 (IV) LIST.—The Administrator shall maintain and  
13 make publicly available a list of all stationary sources  
14 that have provided notification under subclause (III)(bb).

15 (v) NOTICE.—The Administrator shall provide notice of the  
16 definition of official use as provided in clause (i) and exam-  
17 ples of actions that would and would not meet that definition,  
18 and notice of the restrictions on further dissemination and  
19 the penalties established by this division to each covered per-  
20 son who receives off-site consequence analysis information for  
21 an official use under the regulations promulgated under  
22 clause (ii).

23 (vi) QUALIFIED RESEARCHERS.—

24 (I) IN GENERAL.—The Administrator, in consultation  
25 with the Attorney General, shall develop and implement  
26 a system for providing off-site consequence analysis in-  
27 formation, including facility identification, to any quali-  
28 fied researcher, including a qualified researcher from in-  
29 dustry or any public interest group.

30 (II) LIMITATION ON DISSEMINATION.—The system  
31 shall not allow a qualified researcher to disseminate, or  
32 make available on the internet, the off-site consequence  
33 analysis information, or any portion of the off-site con-  
34 sequence analysis information, received under this clause.

35 (vii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In  
36 consultation with the Attorney General and the heads of other  
37 appropriate Federal agencies, the Administrator shall estab-  
38 lish an information technology system that provides for the  
39 availability to the public of off-site consequence analysis infor-  
40 mation by means of a central database under the control of  
41 the Federal Government that contains information that users



1 may read, but that provides no means by which an electronic  
2 or mechanical copy of the information may be made.

3 (viii) VOLUNTARY INDUSTRY ACCIDENT PREVENTION  
4 STANDARDS.—EPA, the Department of Justice, and other  
5 appropriate agencies may provide technical assistance to own-  
6 ers and operators of stationary sources and participate in the  
7 development of voluntary industry standards that will help  
8 achieve the objectives set forth in paragraph (2).

9 (ix) EFFECT ON STATE OR LOCAL LAW.—

10 (I) IN GENERAL.—Subject to subclause (II), this sub-  
11 paragraph (including the regulations promulgated under  
12 this subparagraph) shall supersede any provision of  
13 State or local law that is inconsistent with this subpara-  
14 graph (including the regulations).

15 (II) AVAILABILITY OF INFORMATION UNDER STATE  
16 LAW.—Nothing in this subparagraph precludes a State  
17 from making available data on the off-site consequences  
18 of chemical releases collected in accordance with State  
19 law.

20 (x) REPORT ON RESULT OF REGULATIONS.—

21 (I) IN GENERAL.—The Attorney General, in consulta-  
22 tion with appropriate Federal, State, and local govern-  
23 ment agencies, affected industry, and the public, shall  
24 submit to Congress a report that describes the extent to  
25 which regulations promulgated under this paragraph  
26 have resulted in actions, including the design and main-  
27 tenance of safe facilities, that are effective in detecting,  
28 preventing, and minimizing the consequences of releases  
29 of regulated substances that may be caused by criminal  
30 activity. As part of the report, the Attorney General,  
31 using available data to the extent possible, and a sam-  
32 pling of covered stationary sources selected at the discre-  
33 tion of the Attorney General, and in consultation with  
34 appropriate Federal, State, and local government agen-  
35 cies, affected industry, and the public, shall review the  
36 vulnerability of covered stationary sources to criminal  
37 and terrorist activity, current industry practices regard-  
38 ing site security, and security of transportation of regu-  
39 lated substances. The Attorney General shall submit the  
40 report, containing the results of the review, together with  
41 recommendations, if any, for reducing vulnerability of

1 covered stationary sources to criminal and terrorist activ-  
2 ity, to the Committee on Energy and Commerce of the  
3 House of Representatives and the Committee on Envi-  
4 ronment and Public Works of the Senate and other rel-  
5 evant committees of Congress.

6 (II) NONAVAILABILITY OF INFORMATION DEVELOPED  
7 OR RECEIVED FOR REPORT.—Information developed by  
8 the Attorney General or requested by the Attorney Gen-  
9 eral and received from a covered stationary source for  
10 the purpose of conducting the review under subclause (I)  
11 shall be exempt from disclosure under section 552 of  
12 title 5 if disclosure of the information would pose a  
13 threat to national security.

14 (xi) SCOPE.—This subparagraph—

15 (I) applies only to covered persons; and

16 (II) does not restrict the dissemination of off-site con-  
17 sequence analysis information by any covered person in  
18 any manner or form except in the form of a risk man-  
19 agement plan or an electronic data base created by the  
20 Administrator from off-site consequence analysis infor-  
21 mation.

22 (xii) AUTHORIZATION OF APPROPRIATIONS.—There are au-  
23 thorized to be appropriated to the Administrator and the At-  
24 torney General such sums as are necessary to carry out this  
25 subparagraph (including the regulations promulgated under  
26 clause (ii)), to remain available until expended.

27 (E) DISTINCTIONS.—Regulations promulgated under this para-  
28 graph may make distinctions between various types, classes, and  
29 kinds of facilities, devices, and systems, taking into consideration  
30 factors that include the size, location, process, process controls,  
31 quantity of substances handled, potency of substances, and re-  
32 sponse capabilities present at any stationary source.

33 (8) RESEARCH ON HAZARD ASSESSMENTS.—The Administrator may  
34 collect and publish information on accident scenarios and consequences  
35 covering a range of possible events for substances listed under para-  
36 graph (3). The Administrator shall establish a program of long-term  
37 research to develop and disseminate information on methods and tech-  
38 niques for hazard assessment that may be useful in improving and vali-  
39 dating the procedures employed in the preparation of hazard assess-  
40 ments under this subsection.

41 (9) ORDER AUTHORITY.—

1 (A) IN GENERAL.—In addition to any other action taken, when  
2 the Administrator determines that there may be an imminent and  
3 substantial endangerment to the human health or welfare or the  
4 environment because of an actual or threatened accidental release  
5 of a regulated substance, the Administrator may secure such relief  
6 as may be necessary to abate the danger or threat, and the district  
7 court of the United States for the district in which the threat oc-  
8 curs shall have jurisdiction to grant such relief as the public inter-  
9 est and the equities of the case may require. The Administrator  
10 may also, after notice to the State in which the stationary source  
11 is located, take other action under this paragraph including issu-  
12 ing such orders as may be necessary to protect human health. The  
13 Administrator shall take action under section 203103 of this title  
14 rather than this paragraph whenever the authority of that section  
15 is adequate to protect human health and the environment.

16 (B) ENFORCEMENT.—An order issued pursuant to this para-  
17 graph may be enforced in an action brought in the appropriate  
18 United States district court as if the order were issued under sec-  
19 tion 203103 of this title.

20 (C) GUIDANCE.—The Administrator shall publish guidance for  
21 using the order authorities established by this paragraph. The  
22 guidance shall provide for the coordinated use of the authorities  
23 of this paragraph with other emergency powers authorized by sec-  
24 tion 106 of the Comprehensive Environmental Response, Com-  
25 pensation, and Liability Act of 1980 (42 U.S.C. 9606), sections  
26 308, 309, 311(c), and 504(a) of the Federal Water Pollution Con-  
27 trol Act (33 U.S.C. 1318, 1319, 1321(c), 1364(a)), sections 3007,  
28 3008, 3013, and 7003 of the Solid Waste Disposal Act (42 U.S.C.  
29 6927, 6928, 6934, 6973), sections 1431 and 1445 of the Safe  
30 Drinking Water Act (42 U.S.C. 300i, 300j–4), sections 5 and 7  
31 of the Toxic Substances Control Act (15 U.S.C. 2604, 2606), and  
32 sections 203103, 211113, and 211114 of this title.

33 (10) STATE AUTHORITY.—Nothing in this subsection shall preclude,  
34 deny, or limit any right of a State or political subdivision thereof to  
35 adopt or enforce any regulation, requirement, limitation, or standard  
36 (including any procedural requirement) that is more stringent than a  
37 regulation, requirement, limitation, or standard in effect under this  
38 subsection or that applies to a substance not subject to this subsection.

39 (11) CONSISTENCY WITH ASME, ASNI, AND ASTM STANDARDS AND  
40 RECOMMENDATIONS.—Any regulations promulgated pursuant to this  
41 subsection shall, to the maximum extent practicable, consistent with

1 this subsection, be consistent with the recommendations and standards  
2 established by the American Society of Mechanical Engineers, the  
3 American National Standards Institute, or ASTM International.

4 (12) CONCERNS OF SMALL BUSINESS.—The Administrator shall take  
5 into consideration the concerns of small business in promulgating regu-  
6 lations under this subsection.

7 (13) RADIONUCLIDES.—Nothing in this subsection shall be inter-  
8 preted, construed, or applied to impose requirements affecting, or to  
9 grant the Administrator, the Chemical Safety and Hazard Investigation  
10 Board, or any other agency any authority to regulate (including re-  
11 quirements for hazard assessment), the accidental release of radio-  
12 nuclides arising from the construction and operation of facilities li-  
13 censed by the Nuclear Regulatory Commission.

14 (14) PROHIBITION.—It shall be unlawful for any person to operate  
15 any stationary source subject to a regulation or requirement imposed  
16 under this subsection in violation of the regulation or requirement.  
17 Each regulation or requirement under this subsection shall, for pur-  
18 poses of sections 203102, 203104, 211113, 211114, 211116, and  
19 211119 of this title and other enforcement provisions of this division,  
20 be treated as a standard in effect under subsection (d).

21 (15) PERMITS.—Notwithstanding subdivision 6 or this section, no  
22 stationary source shall be required to apply for, or operate pursuant  
23 to, a permit issued under that subdivision solely because the source is  
24 subject to regulations or requirements under this subsection.

25 (16) OCCUPATIONAL SAFETY AND HEALTH.—In exercising any au-  
26 thority under this subsection, the Administrator shall not, for purposes  
27 of section 4(b)(1) of the Occupational Safety and Health Act of 1970  
28 (29 U.S.C. 653(b)(1)), be considered to be exercising statutory author-  
29 ity to prescribe or enforce standards or regulations affecting occupa-  
30 tional safety and health.

31 **§211113. Federal enforcement**

32 (a) DEFINITIONS.—In this section:

33 (1) OPERATOR.—

34 (A) IN GENERAL.—The term “operator” includes any person  
35 who is a part of senior management personnel or is a corporate  
36 officer.

37 (B) EXCLUSIONS.—Except in the case of a knowing and willful  
38 violation, the term “operator” does not include any person who is  
39 a stationary engineer or technician responsible for the operation,  
40 maintenance, repair, or monitoring of equipment and facilities and

1           who often has supervisory and training duties but who is not a  
2           part of senior management personnel and not a corporate officer.

3           (2) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—The term  
4           “period of federally assumed enforcement” means a period described in  
5           subsection (b)(2)(C).

6           (b) IN GENERAL.—

7           (1) ORDER TO COMPLY WITH SIP.—Whenever, on the basis of any  
8           information available to the Administrator, the Administrator finds  
9           that any person has violated or is in violation of any requirement or  
10          prohibition of an applicable implementation plan or permit, the Admin-  
11          istrator shall notify the person and the State in which the plan applies  
12          of the finding. At any time after the expiration of 30 days following  
13          the date on which the notice of violation is issued, the Administrator  
14          may, without regard to the period of violation (subject to section 2462  
15          of title 28)—

16           (A) issue an order requiring the person to comply with the re-  
17           quirements or prohibitions of the plan or permit;

18           (B) issue an administrative penalty order in accordance with  
19           subsection (e); or

20           (C) bring a civil action in accordance with subsection (e).

21          (2) STATE FAILURE TO ENFORCE SIP OR PERMIT PROGRAM.—

22           (A) NOTICE TO STATE.—Whenever, on the basis of information  
23           available to the Administrator, the Administrator finds that viola-  
24           tions of an applicable implementation plan or an approved permit  
25           program under subdivision 6 are so widespread that the violations  
26           appear to result from a failure of the State in which the plan or  
27           permit program applies to enforce the plan or permit program ef-  
28           fectively, the Administrator shall so notify the State. In the case  
29           of a permit program, the notice shall be made in accordance with  
30           subdivision 6.

31           (B) PUBLIC NOTICE.—If the Administrator finds that the fail-  
32           ure extends beyond the 30th day after the notice (90 days in the  
33           case of such a permit program), the Administrator shall give pub-  
34           lic notice of that finding.

35           (C) PERIOD OF FEDERALLY ASSUMED ENFORCEMENT.—During  
36           the period beginning with the public notice under subparagraph  
37           (B) and ending when the State satisfies the Administrator that  
38           the State will enforce the plan or permit program, the Adminis-  
39           trator may enforce any requirement or prohibition of the plan or  
40           permit program with respect to any person by—

1 (i) issuing an order requiring the person to comply with the  
2 requirement or prohibition;

3 (ii) issuing an administrative penalty order in accordance  
4 with subsection (e); or

5 (iii) bringing a civil action in accordance with subsection  
6 (c).

7 (3) EPA ENFORCEMENT OF OTHER REQUIREMENTS.—Except for a  
8 requirement or prohibition enforceable under paragraph (1) or (2),  
9 when, on the basis of any information available to the Administrator,  
10 the Administrator finds that any person has violated, or is in violation  
11 of, any other requirement or prohibition of this subdivision, section  
12 203103 of this title, subdivision 5, 6, or 7 (including a requirement or  
13 prohibition of any regulation, plan, order, waiver, or permit promul-  
14 gated, issued, or approved under those provisions, or for the payment  
15 of any fee owed to the United States under this division, other than  
16 subdivision 3), the Administrator may—

17 (A) issue an administrative penalty order in accordance with  
18 subsection (b);

19 (B) issue an order requiring the person to comply with the re-  
20 quirement or prohibition;

21 (C) bring a civil action in accordance with subsection (c) or sec-  
22 tion 203105 of this title; or

23 (D) request the Attorney General to commence a criminal action  
24 in accordance with subsection (d).

25 (4) REQUIREMENTS FOR ORDERS.—

26 (A) OPPORTUNITY TO CONFER.—An order issued under this  
27 subsection (other than an order relating to a violation of section  
28 211112 of this title) shall not take effect until the person to which  
29 it is issued has had an opportunity to confer with the Adminis-  
30 trator concerning the alleged violation.

31 (B) COPY TO STATE AIR POLLUTION CONTROL AGENCY.—A  
32 copy of any order issued under this subsection shall be sent to the  
33 State air pollution control agency of any State in which the viola-  
34 tion occurs.

35 (C) CORPORATIONS.—In any case in which an order under this  
36 subsection (or notice to a violator under paragraph (1)) is issued  
37 to a corporation, a copy of the order (or notice) shall be issued  
38 to appropriate corporate officers.

39 (D) CONTENTS.—Any order issued under this subsection  
40 shall—

1 (i) state with reasonable specificity the nature of the viola-  
2 tion;

3 (ii) specify a time for compliance that the Administrator  
4 determines is reasonable, taking into account the seriousness  
5 of the violation and any good faith efforts to comply with ap-  
6 plicable requirements; and

7 (iii) require the person to which it is issued to comply with  
8 the requirement as expeditiously as practicable, but in no  
9 event longer than 1 year after the date the order is issued.

10 (E) NONRENEWABILITY.—An order issued under this subsection  
11 shall be nonrenewable.

12 (F) EFFECT.—No order issued under this subsection shall—

13 (i) preclude the State or the Administrator from assessing  
14 any penalties or otherwise affect or limit the authority of the  
15 State or the United States to enforce under other provisions  
16 of this division; or

17 (ii) affect any person's obligations to comply with any sec-  
18 tion of this division or with a term or condition of any permit  
19 or applicable implementation plan promulgated or approved  
20 under this division.

21 (5) FAILURE TO COMPLY WITH NEW SOURCE REQUIREMENTS.—

22 (A) IN GENERAL.—Whenever, on the basis of any available in-  
23 formation, the Administrator finds that a State is not acting in  
24 compliance with any requirement or prohibition of this division re-  
25 lating to the construction of new sources or the modification of ex-  
26 isting sources, the Administrator may—

27 (i) issue an order prohibiting the construction or modifica-  
28 tion of any major stationary source in any area to which the  
29 requirement or prohibition applies;

30 (ii) issue an administrative penalty order in accordance  
31 with subsection (e); or

32 (iii) bring a civil action under subsection (e).

33 (B) CRIMINAL ACTION.—Nothing in this subsection shall pre-  
34 clude the United States from commencing a criminal action under  
35 subsection (d) at any time for any violation described in subpara-  
36 graph (A).

37 (e) CIVIL JUDICIAL ENFORCEMENT.—

38 (1) IN GENERAL.—The Administrator shall, as appropriate, in the  
39 case of any person that is the owner or operator of an affected source,  
40 a major emitting facility, or a major stationary source, and may, in the  
41 case of any other person, commence a civil action for a permanent or

1 temporary injunction, or to assess and recover a civil penalty of not  
2 more than \$25,000 per day for each violation, or both—

3 (A) whenever the person has violated, or is in violation of, any  
4 requirement or prohibition of an applicable implementation plan or  
5 permit;

6 (B) whenever the person has violated, or is in violation of, any  
7 other requirement or prohibition of this subdivision, section  
8 203103 of this title, or subdivision 5, 6, or 7 (including a require-  
9 ment or prohibition of any regulation, order, waiver or permit pro-  
10 mulgated, issued, or approved under this division, or for the pay-  
11 ment of any fee owed the United States under this division (other  
12 than subdivision 3); or

13 (C) whenever the person attempts to construct or modify a  
14 major stationary source in any area with respect to which a find-  
15 ing under subsection (b)(5)(A) has been made.

16 (2) TIME FOR ACTION.—An action under paragraph (1)(A) shall be  
17 commenced—

18 (A) during any period of federally assumed enforcement; or

19 (B) more than 30 days following the date of the Administrator's  
20 notification under subsection (b)(1) that the person has violated,  
21 or is in violation of, the requirement or prohibition.

22 (3) PLACE FOR ACTION.—Any action under this subsection may be  
23 brought in the United States district court for the district in which the  
24 violation is alleged to have occurred, or is occurring, or in which the  
25 defendant resides, or where the defendant's principal place of business  
26 is located, and the court shall have jurisdiction to restrain the violation,  
27 to require compliance, to assess a civil penalty, to collect any fees owed  
28 the United States under this division (other than subdivision 3) and  
29 any noncompliance assessment and nonpayment penalty owed under  
30 section 211119 of this title, and to award any other appropriate relief.

31 (4) NOTICE TO STATE AIR POLLUTION CONTROL AGENCY.—Notice of  
32 the commencement of an action under this subsection shall be given to  
33 the appropriate State air pollution control agency.

34 (5) COSTS.—In the case of any action brought by the Administrator  
35 under this subsection, the court may award costs of litigation (includ-  
36 ing reasonable attorney's fees and expert witness's fees) to the party  
37 or parties against which the action was brought if the court finds that  
38 the action was unreasonable.

39 (d) CRIMINAL PENALTIES.—

40 (1) DEFINITIONS.—In this subsection:

41 (A) ORGANIZATION.—



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 (B) PERSON.—

9 (i) IN GENERAL.—The term “person” includes, in addition  
10 to the entities described in section 201101(19) of this title,  
11 any responsible corporate officer.

12 (ii) FOR PURPOSES OF PARAGRAPHS (2), (3), (4), AND  
13 (6).—Except in the case of a knowing and willful violation,  
14 for purposes of paragraphs (2), (3), (4), and (6), the term  
15 “person” does not include an employee who is carrying out  
16 the normal activities of the employee and who is acting under  
17 orders from the employer of the employee.

18 (iii) FOR PURPOSES OF PARAGRAPH (5).—Except in the  
19 case of knowing and willful violations, for purposes of para-  
20 graph (5), the term “person” does not include an employee  
21 who is carrying out the normal activities of the employee and  
22 who is not a part of senior management personnel or a cor-  
23 porate officer.

24 (C) SERIOUS BODILY INJURY.—The term “serious bodily in-  
25 jury” means bodily injury that involves—

- 26 (i) a substantial risk of death;  
27 (ii) unconsciousness;  
28 (iii) extreme physical pain;  
29 (iv) protracted and obvious disfigurement; or  
30 (v) protracted loss or impairment of the function of a bod-  
31 ily member, organ, or mental faculty.

32 (2) VIOLATIONS.—

33 (A) IN GENERAL.—Any person that knowingly violates—

34 (i) an order under subsection (a) of this section or under  
35 section 203103 or 213109 of this title;

36 (ii) any requirement or prohibition of—

37 (I) an applicable implementation plan (during any pe-  
38 riod of federally assumed enforcement or more than 30  
39 days after having been notified under subsection (b)(1)  
40 by the Administrator that the person is violating the re-  
41 quirement or prohibition);

1 (II) section 211111(j) of this title; or  
2 (III) subdivision 5 or 7; or  
3 (iii) section 211112, 211114, 211128, 213107(a),  
4 235102(a), or 235103(e) of this title;

5 including a requirement of any regulation, order, waiver, or permit  
6 promulgated or approved under those sections or subdivisions, and  
7 including any requirement for the payment of any fee owed the  
8 United States under this division (other than subdivision 3), shall  
9 be fined under title 18, imprisoned not more than 5 years, or both.

10 (B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFEND-  
11 ERS.—If a conviction of any person under this paragraph is for  
12 a violation committed after a 1st conviction of the person under  
13 this paragraph, the maximum penalty shall be doubled with re-  
14 spect to both the fine and imprisonment.

15 (3) NOTICES, APPLICATIONS, RECORDS, REPORTS, PLANS, OR OTHER  
16 DOCUMENTS; REQUIRED NOTIFICATIONS AND REPORTS; REQUIRED  
17 MONITORING DEVICES AND METHOD.—

18 (A) IN GENERAL.—Any person that knowingly—

19 (i) makes any false material statement, representation, or  
20 certification in, or omits material information from, or know-  
21 ingly alters, conceals, or fails to file or maintain any notice,  
22 application, record, report, plan, or other document required  
23 pursuant to this division to be filed or maintained (whether  
24 with respect to the requirements imposed by the Adminis-  
25 trator or with respect to the requirements imposed by a  
26 State);

27 (ii) fails to notify or report as required under this division;  
28 or

29 (iii) falsifies, tampers with, renders inaccurate, or fails to  
30 install any monitoring device or method required to be main-  
31 tained or followed under this division;

32 shall be fined under title 18, imprisoned not more than 2 years,  
33 or both.

34 (B) DOUBLING OF MAXIMUM PENALTY.—If a conviction of any  
35 person under this paragraph is for a violation committed after a  
36 1st conviction of the person under this paragraph, the maximum  
37 penalty shall be doubled with respect to both the fine and impris-  
38 onment.

39 (4) FEES.—

40 (A) IN GENERAL.—Any person that knowingly fails to pay any  
41 fee owed the United States under this subdivision or subdivision

1 1, 5, 6, or 7 shall be fined under title 18, imprisoned not more  
2 than 1 year, or both.

3 (B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFEND-  
4 ERS.—If a conviction of any person under this paragraph is for  
5 a violation committed after a 1st conviction of the person under  
6 this paragraph, the maximum penalty shall be doubled with re-  
7 spect to both the fine and imprisonment.

8 (5) NEGLIGENT RELEASE.—

9 (A) IN GENERAL.—Any person that—

10 (i) negligently releases into the ambient air any hazardous  
11 air pollutant listed pursuant to section 211112 of this title or  
12 any extremely hazardous substance listed pursuant to section  
13 302(a)(2) of the Emergency Planning and Community Right-  
14 To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not  
15 listed in section 211112 of this title; and

16 (ii) at the time negligently places another person in immi-  
17 nent danger of death or serious bodily injury;

18 shall be fined under title 18, imprisoned not more than 1 year,  
19 or both.

20 (B) DOUBLING OF MAXIMUM PENALTY FOR REPEAT OFFEND-  
21 ERS.—If a conviction of any person under this paragraph is for  
22 a violation committed after a 1st conviction of the person under  
23 this paragraph, the maximum penalty shall be doubled with re-  
24 spect to both the fine and imprisonment.

25 (C) RELEASE IN ACCORDANCE WITH STANDARD OR PERMIT.—  
26 For any air pollutant for which the Administrator has set an emis-  
27 sion standard or for any source for which a permit has been issued  
28 under subdivision 6, a release of the pollutant in accordance with  
29 that standard or permit shall not constitute a violation of this  
30 paragraph.

31 (6) KNOWING RELEASE.—

32 (A) IN GENERAL.—Any person that—

33 (i) knowingly releases into the ambient air any hazardous  
34 air pollutant listed pursuant to section 211112 of this title or  
35 any extremely hazardous substance listed pursuant to section  
36 302(a)(2) of the Emergency Planning and Community Right-  
37 To-Know Act of 1986 (42 U.S.C. 11002(a)(2)) that is not  
38 listed in section 211112 of this title; and

39 (ii) knows at the time that the person thereby places an-  
40 other person in imminent danger of death or serious bodily  
41 injury;

1 shall be fined under title 18, imprisoned not more than 15 years,  
2 or both.

3 (B) ORGANIZATIONS.—Any organization that commits a viola-  
4 tion under subparagraph (A) shall be subject to a fine of not more  
5 than \$1,000,000 for each violation.

6 (C) DOUBLING OF MAXIMUM PENALTY.—If a conviction of any  
7 person under this paragraph is for a violation committed after a  
8 1st conviction of the person under this paragraph, the maximum  
9 penalty shall be doubled with respect to both the fine and impris-  
10 onment.

11 (D) RELEASE IN ACCORDANCE WITH STANDARD OR PERMIT.—  
12 For any air pollutant for which the Administrator has set an emis-  
13 sion standard or for any source for which a permit has been issued  
14 under subdivision 6, a release of the pollutant in accordance with  
15 that standard or permit shall not constitute a violation of this  
16 paragraph.

17 (E) KNOWLEDGE.—

18 (i) IN GENERAL.—Except as provided in clause (ii), in de-  
19 termining whether a defendant that is an individual knew  
20 that the violation placed another person in imminent danger  
21 of death or serious bodily injury—

22 (I) the defendant is responsible only for actual aware-  
23 ness or actual belief possessed; and

24 (II) knowledge possessed by a person other than the  
25 defendant, but not by the defendant, may not be attrib-  
26 uted to the defendant.

27 (ii) CIRCUMSTANTIAL EVIDENCE.—In proving a defendant's  
28 possession of actual knowledge, circumstantial evidence may  
29 be used, including evidence that the defendant took affirma-  
30 tive steps to be shielded from relevant information.

31 (F) AFFIRMATIVE DEFENSE.—

32 (i) IN GENERAL.—It is an affirmative defense to a prosecu-  
33 tion under this paragraph that—

34 (I) the conduct charged was freely consented to by the  
35 person endangered;

36 (II) the danger and conduct charged were reasonably  
37 foreseeable hazards of—

38 (aa) an occupation, a business, or a profession; or

39 (bb) medical treatment or medical or scientific ex-  
40 perimentation conducted by professionally approved  
41 methods; and

1 (III) the person endangered had been made aware of  
2 the risks involved prior to giving consent.

3 (ii) PREPONDERANCE OF THE EVIDENCE.—The defendant  
4 may establish an affirmative defense under this subparagraph  
5 by a preponderance of the evidence.

6 (G) OTHER DEFENSES AND BARS TO PROSECUTION; CONCEPTS  
7 OF JUSTIFICATION AND EXCUSE.—All general defenses, affirma-  
8 tive defenses, and bars to prosecution that may apply with respect  
9 to other Federal criminal offenses may apply under subparagraph  
10 (A) and shall be determined by the courts of the United States  
11 according to the principles of common law as they may be inter-  
12 preted in the light of reason and experience. Concepts of justifica-  
13 tion and excuse applicable under this section may be developed in  
14 the light of reason and experience.

15 (e) ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES.—

16 (1) IN GENERAL.—

17 (A) ISSUANCE OF ADMINISTRATIVE ORDER.—The Administrator  
18 may issue an administrative order against any person assessing a  
19 civil administrative penalty of up to \$25,000 per day of violation  
20 whenever, on the basis of any available information, the Adminis-  
21 trator finds that the person—

22 (i) has violated or is violating any requirement or prohibi-  
23 tion of an applicable implementation plan; or

24 (ii) has violated or is violating any other requirement or  
25 prohibition of this subdivision or subdivision 1, 5, 6, or 7, in-  
26 cluding a requirement or prohibition of any regulation, order,  
27 waiver, permit, or plan promulgated, issued, or approved  
28 under this division;

29 (iii) has failed to pay any fee owed the United States under  
30 this division (other than subdivision 3); or

31 (iv) attempts to construct or modify a major stationary  
32 source in any area with respect to which a finding under sub-  
33 section (b)(5) has been made.

34 (B) TIME FOR ISSUANCE.—An administrative order under sub-  
35 paragraph (A)(i) shall be issued—

36 (i) during any period of federally assumed enforcement; or

37 (ii) more than 30 days following the date of the Adminis-  
38 trator's notification under subsection (b)(1) of a finding that  
39 the person has violated or is violating the requirement or pro-  
40 hibition.

1 (C) LIMITATION.—The Administrator’s authority under this  
2 paragraph shall be limited to matters where the total penalty  
3 sought does not exceed \$200,000 and the 1st alleged date of viola-  
4 tion occurred not more than 12 months prior to the initiation of  
5 the administrative action, except where the Administrator and the  
6 Attorney General jointly determine that a matter involving a larg-  
7 er penalty amount or longer period of violation is appropriate for  
8 administrative penalty action. Any such determination by the Ad-  
9 ministrator and the Attorney General shall not be subject to judi-  
10 cial review.

11 (2) PROCEDURE.—

12 (A) OPPORTUNITY FOR A HEARING.—An administrative order  
13 under paragraph (1) shall be issued after opportunity for a hear-  
14 ing on the record in accordance with sections 554 and 556 of title  
15 5. The Administrator shall issue reasonable rules for discovery and  
16 other procedures for hearings under this paragraph. Before issu-  
17 ing such an order, the Administrator shall give to the person to  
18 be assessed an administrative penalty written notice of the Admin-  
19 istrator’s proposal to issue the order and provide the person an  
20 opportunity to request a hearing on the order, within 30 days  
21 after the date on which the notice is received by the person.

22 (B) COMPROMISE, MODIFICATION, OR REMISSION OF ADMINIS-  
23 TRATIVE PENALTY.—The Administrator may compromise, modify,  
24 or remit, with or without conditions, any administrative penalty  
25 that may be imposed under this subsection.

26 (3) FIELD CITATION PROGRAM.—

27 (A) IN GENERAL.—The Administrator may implement, after  
28 consultation with the Attorney General and the States, a field cita-  
29 tion program through regulations establishing appropriate minor  
30 violations for which field citations assessing civil penalties not to  
31 exceed \$5,000 per day of violation may be issued by officers or  
32 employees designated by the Administrator.

33 (B) ELECTION TO PAY OR REQUEST HEARING.—Any person to  
34 whom a field citation is assessed may, within a reasonable time  
35 as prescribed by the Administrator by regulation, elect to pay the  
36 penalty assessment or to request a hearing on the field citation.  
37 If a request for a hearing is not made within the time specified  
38 in the regulation, the penalty assessment in the field citation shall  
39 be final. Such a hearing shall not be subject to section 554 or 556  
40 of title 5, but shall provide a reasonable opportunity to be heard  
41 and to present evidence.

1 (C) NO DEFENSE TO FURTHER ENFORCEMENT.—Payment of a  
2 civil penalty required by a field citation shall not be a defense to  
3 further enforcement by the United States or a State to correct a  
4 violation, or to assess the statutory maximum penalty pursuant to  
5 other authorities in this division, if the violation continues.

6 (4) JUDICIAL REVIEW.—

7 (A) IN GENERAL.—Any person against which a civil penalty is  
8 assessed under paragraph (3) or to which an administrative pen-  
9 alty order is issued under paragraph (1) may seek review of the  
10 assessment in the United States District Court for the District of  
11 Columbia or for the district in which the violation is alleged to  
12 have occurred, in which the person resides, or where the person's  
13 principal place of business is located, by filing in the court within  
14 30 days after the date on which the administrative penalty order  
15 becomes final under paragraph (2), the assessment becomes final  
16 under paragraph (3), or a final decision following a hearing under  
17 paragraph (3) is rendered, and by simultaneously sending a copy  
18 of the filing by certified mail to the Administrator and the Attor-  
19 ney General.

20 (B) RECORD.—Within 30 days after the date of a filing under  
21 subparagraph (A), the Administrator shall file in the court a cer-  
22 tified copy, or certified index, as appropriate, of the record on  
23 which the administrative penalty order or assessment was issued.

24 (C) SCOPE OF REVIEW.—The court shall not set aside or re-  
25 mand the order or assessment unless there is not substantial evi-  
26 dence in the record, taken as a whole, to support the finding of  
27 a violation or unless the order or penalty assessment constitutes  
28 an abuse of discretion.

29 (D) NO OTHER JUDICIAL REVIEW.—An order or penalty assess-  
30 ment described in subparagraph (A) shall not be subject to review  
31 by any court except as provided in this paragraph.

32 (E) RECOVERY OF CIVIL PENALTIES.—In any proceeding under  
33 this paragraph, the United States may seek to recover civil pen-  
34 alties ordered or assessed under this section.

35 (5) FAILURE TO PAY ASSESSMENT OR COMPLY WITH ADMINISTRA-  
36 TIVE ORDER.—

37 (A) IN GENERAL.—If any person fails to pay an assessment of  
38 a civil penalty or fails to comply with an administrative penalty  
39 order—

40 (i) after the order or assessment has become final; or

1 (ii) after a court in an action brought under paragraph (4)  
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 United States district court to en-  
5 force the order or to recover the amount ordered or assessed (plus  
6 interest at rates established pursuant to section 6621(a)(2) of the  
7 Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) from the  
8 date of the final order or decision or the date of the final judg-  
9 ment, as the case may be).

10 (B) VALIDITY, AMOUNT, AND APPROPRIATENESS NOT SUBJECT  
11 TO REVIEW.—In a civil action under subparagraph (A), the valid-  
12 ity, amount, and appropriateness of the order or assessment shall  
13 not be subject to review.

14 (C) ENFORCEMENT EXPENSES.—Any person that fails to pay  
15 on a timely basis a civil penalty ordered or assessed under this  
16 section shall be required to pay, in addition to the civil penalty  
17 and interest, the enforcement expenses of the United States, in-  
18 cluding attorney's fees and costs incurred by the United States for  
19 collection proceedings and a quarterly nonpayment penalty for  
20 each quarter during which the failure to pay persists. The non-  
21 payment penalty shall be 10 percent of the aggregate amount of  
22 the person's outstanding penalties and nonpayment penalties ac-  
23 crued as of the beginning of each such quarter.

24 (f) PENALTY ASSESSMENT CRITERIA.—

25 (1) FACTORS.—In determining the amount of any civil penalty to be  
26 assessed under this section, the Administrator or the court, as appro-  
27 priate, shall take into consideration (in addition to such other factors  
28 as justice may require)—

29 (A) the size of the business;

30 (B) the economic impact of the civil penalty on the business;

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

33 (D) the duration of the violation as established by any credible  
34 evidence (including evidence other than the applicable test meth-  
35 od);

36 (E) payment by the violator of penalties previously assessed for  
37 the same violation;

38 (F) the economic benefit of noncompliance; and

39 (G) the seriousness of the violation.

40 (2) LIMITATION.—The court shall not assess a penalty for non-  
41 compliance with an administrative subpoena under section 203102(a)



1 of this title, or an action under section 211114 of this title, where the  
2 violator had sufficient cause to violate or fail or refuse to comply with  
3 the subpoena or action.

4 (3) CIVIL PENALTY FOR EACH DAY OF VIOLATION.—A civil penalty  
5 may be assessed for each day of violation. For purposes of determining  
6 the number of days of violation for which a civil penalty may be as-  
7 sessed under subsection (c) or (e)(1) or section 203104(b) of this title,  
8 where the Administrator or an air pollution control agency has notified  
9 the source of the violation, and the plaintiff makes a prima facie show-  
10 ing that the conduct or events giving rise to the violation are likely to  
11 have continued or recurred past the date of notice, the days of violation  
12 shall be presumed to include the date of the notice and each day there-  
13 after until the violator establishes that continuous compliance has been  
14 achieved, except to the extent that the violator can prove by a prepon-  
15 derance of the evidence that there were intervening days during which  
16 no violation occurred or that the violation was not continuing in nature.

17 (g) AWARDS.—

18 (1) IN GENERAL.—The Administrator may pay an award, not to ex-  
19 ceed \$10,000, to any person that furnishes information or services that  
20 lead to a criminal conviction or a judicial or administrative civil penalty  
21 for any violation of this subdivision or subdivision 1, 5, 6, or 7 enforced  
22 under this section.

23 (2) AVAILABILITY OF APPROPRIATIONS.—A payment under para-  
24 graph (1) is subject to available appropriations for such payments as  
25 provided in annual appropriation Acts.

26 (3) INELIGIBILITY OF GOVERNMENT OFFICERS AND EMPLOYEES.—  
27 Any officer or employee of the United States or any State or local gov-  
28 ernment who furnishes information or renders service in the perform-  
29 ance of an official duty is ineligible for payment under this subsection.

30 (4) ADDITIONAL CRITERIA.—The Administrator may, by regulation,  
31 prescribe additional criteria for eligibility for an award under this sub-  
32 section.

33 (h) SETTLEMENTS; PUBLIC PARTICIPATION.—

34 (1) OPPORTUNITY TO COMMENT.—At least 30 days before a consent  
35 order or settlement agreement of any kind under this division to which  
36 the United States is a party (other than an enforcement action under  
37 this section, section 211119 of this title, or subdivision 3, whether or  
38 not involving civil or criminal penalties, or judgments subject to De-  
39 partment of Justice policy on public participation) is final or filed with  
40 a court, the Administrator shall provide a reasonable opportunity by

1 notice in the Federal Register to persons that are not named as parties  
2 or intervenors to the action or matter to comment in writing.

3 (2) CONSIDERATION OF COMMENTS; WITHHOLDING OR WITHDRAWAL  
4 OF CONSENT.—The Administrator or the Attorney General, as appro-  
5 priate—

6 (A) shall promptly consider any such written comments; and

7 (B) may withdraw or withhold consent to the proposed order or  
8 agreement if the comments disclose facts or considerations that in-  
9 dicate that consent is inappropriate, improper, inadequate, or in-  
10 consistent with the requirements of this division.

11 (3) EFFECT OF SUBSECTION.—Nothing in this subsection shall apply  
12 to civil or criminal penalties under this division.

13 **§ 211114. Recordkeeping, inspections, monitoring, and entry**

14 (a) AUTHORITY OF ADMINISTRATOR OR AUTHORIZED REPRESENTA-  
15 TIVE.—

16 (1) PURPOSES.—The Administrator may take the actions described  
17 in paragraph (2) for the purpose of—

18 (A) developing or assisting in the development of—

19 (i) any implementation plan under section 211110 or  
20 211111(d) of this title;

21 (ii) any standard of performance under section 211111 of  
22 this title;

23 (iii) any emission standard under section 211112 of this  
24 title; or

25 (iv) any regulation of solid waste combustion under section  
26 211128 of this title;

27 (B) determining whether any person is in violation of any such  
28 standard or any requirement of such a plan; or

29 (C) carrying out any provision of this division (except a provi-  
30 sion of subdivision 3 with respect to a manufacturer of new motor  
31 vehicles or new motor vehicle engines).

32 (2) ACTIONS.—For any of the purposes stated in paragraph (1)—

33 (A) the Administrator may require any person that owns or op-  
34 erates any emission source, that manufactures emission control  
35 equipment or process equipment, that the Administrator believes  
36 may have information necessary for the purposes set forth in this  
37 subsection, or that is subject to any requirement of this division  
38 (other than a manufacturer subject to the provisions of section  
39 221106(c) or 221108 of this title with respect to a provision of  
40 subdivision 3) on a one-time, periodic, or continuous basis to—

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- 1 (i) establish and maintain such records as the Adminis-  
2 trator may reasonably require;
- 3 (ii) make such reports as the Administrator may reason-  
4 ably require;
- 5 (iii) install, use, and maintain such monitoring equipment,  
6 and use such audit procedures, or methods, as the Adminis-  
7 trator may reasonably require;
- 8 (iv) sample such emissions (in accordance with such proce-  
9 dures or methods, at such locations, at such intervals, during  
10 such periods and in such manner as the Administrator shall  
11 prescribe);
- 12 (v) keep records on control equipment parameters, produc-  
13 tion variables or other indirect data when direct monitoring  
14 of emissions is impractical;
- 15 (vi) submit compliance certifications in accordance with  
16 paragraph (3); and
- 17 (vii) provide such other information as the Administrator  
18 may reasonably require; and
- 19 (B) the Administrator or an authorized representative of the  
20 Administrator, on presentation of his or her credentials—
- 21 (i) shall have a right of entry to, on, or through any prem-  
22 ises of a person described in subparagraph (A) or in which  
23 any records required to be maintained under subparagraph  
24 (A) are located; and
- 25 (ii) may at reasonable times have access to and copy any  
26 records, inspect any monitoring equipment or method re-  
27 quired under subparagraph (A), and sample any emissions  
28 that a person is required to sample under subparagraph (A).
- 29 (3) ENHANCED MONITORING; SUBMISSION OF COMPLIANCE CERTIFI-  
30 CATIONS.—
- 31 (A) IN GENERAL.—The Administrator shall, in the case of any  
32 person that is the owner or operator of a major stationary source,  
33 and may, in the case of any other person, require enhanced mon-  
34 itoring and submission of compliance certifications.
- 35 (B) COMPLIANCE CERTIFICATIONS.—A compliance certification  
36 shall include—
- 37 (i) identification of the applicable requirement that is the  
38 basis of the certification;
- 39 (ii) the method used for determining the compliance status  
40 of the source;
- 41 (iii) the compliance status;

1 (iv) whether compliance is continuous or intermittent; and  
2 (v) such other facts as the Administrator may require.

3 (C) EFFECT OF SUBMISSION OF COMPLIANCE CERTIFICATE.—  
4 Submission of a compliance certification shall in no way limit the  
5 Administrator's authorities to investigate or otherwise implement  
6 this division.

7 (D) REGULATIONS.—The Administrator shall promulgate regu-  
8 lations to provide guidance and to implement this paragraph.

9 (b) STATE ENFORCEMENT.—

10 (1) IN GENERAL.—A State may develop and submit to the Adminis-  
11 trator a procedure for carrying out this section in the State. If the Ad-  
12 ministrator finds that the State procedure is adequate, the Adminis-  
13 trator may delegate to the State any authority that the Administrator  
14 has to carry out this section.

15 (2) EFFECT OF SUBSECTION.—Nothing in this subsection precludes  
16 the Administrator from carrying out this section in a State.

17 (c) PUBLIC AVAILABILITY OF RECORDS, REPORTS, AND INFORMATION.—

18 (1) IN GENERAL.—Except as provided in paragraph (2), any records,  
19 reports or information obtained under subsection (a) shall be available  
20 to the public.

21 (2) TRADE SECRETS.—On a showing satisfactory to the Adminis-  
22 trator by any person that records, reports, or information, or any par-  
23 ticular part thereof (other than emission data), to which the Adminis-  
24 trator has access under this section, if made public, would divulge  
25 methods or processes entitled to protection as trade secrets of the per-  
26 son, the Administrator shall consider the record, report, or information  
27 or particular part thereof confidential in accordance with section 1905  
28 of title 18, except that the record, report, or information may be dis-  
29 closed to other officers, employees, or authorized representatives of the  
30 United States concerned with carrying out this division or when rel-  
31 evant in any proceeding under this division.

32 (d) NOTICE OF PROPOSED ENTRY, INSPECTION, OR MONITORING.—

33 (1) IN GENERAL.—In the case of any emission standard or limitation  
34 or other requirement that is adopted by a State as part of an applica-  
35 ble implementation plan, before carrying out an entry, inspection, or  
36 monitoring under subsection (a)(2)(B) with respect to the emission  
37 standard, limitation, or other requirement, the Administrator (or the  
38 Administrator's representative) shall provide the State air pollution  
39 control agency with reasonable prior notice of that action, indicating  
40 the purpose of the action.

1           (2) PROHIBITION OF USE OF INFORMATION TO INFORM AFFECTED  
2           PERSON.—No State air pollution control agency that receives notice  
3           under paragraph (1) of an action proposed to be taken may use the  
4           information contained in the notice to inform the person whose prop-  
5           erty is proposed to be affected of the proposed action. If the Adminis-  
6           trator has a reasonable basis for believing that a State air pollution  
7           control agency is so using or will so use such information, notice to  
8           the State air pollution control agency under paragraph (1) is not re-  
9           quired until such time as the Administrator determines that the State  
10          air pollution control agency will no longer so use information contained  
11          in a notice under paragraph (1).

12          (3) EFFECT OF SECTION.—Nothing in this section shall be construed  
13          to require notification to any State air pollution control agency of any  
14          action taken by the Administrator with respect to any standard, limita-  
15          tion, or other requirement that is not part of an applicable implementa-  
16          tion plan or that was promulgated by the Administrator under section  
17          211110(c) of this title.

18          (4) EFFECT OF SUBSECTION.—Nothing in this subsection shall be  
19          construed to provide that any failure of the Administrator to comply  
20          with the requirements of this subsection shall be a defense in any en-  
21          forcement action brought by the Administrator or shall make inadmis-  
22          sible as evidence in any such action any information or material ob-  
23          tained notwithstanding the failure to comply with those requirements.

24       **§211115. International air pollution**

25          (a) ENDANGERMENT OF PUBLIC HEALTH OR WELFARE IN FOREIGN  
26          COUNTRIES FROM POLLUTION EMITTED IN UNITED STATES.—Whenever  
27          the Administrator, on receipt of reports, surveys, or studies from any duly  
28          constituted international agency, has reason to believe that any air pollutant  
29          or pollutants emitted in the United States cause or contribute to air pollu-  
30          tion that may reasonably be anticipated to endanger public health or welfare  
31          in a foreign country or whenever the Secretary of State requests the Admin-  
32          istrator to do so with respect to such pollution that the Secretary of State  
33          alleges is of such a nature, the Administrator shall give formal notification  
34          thereof to the Governor of the State in which the emissions originate.

35          (b) PREVENTION OR ELIMINATION OF ENDANGERMENT.—The notice of  
36          the Administrator shall be deemed to be a finding under section  
37          211110(a)(3)(H)(ii) of this title that requires a plan revision with respect  
38          to so much of the applicable implementation plan as is inadequate to pre-  
39          vent or eliminate the endangerment described in subsection (a). Any foreign  
40          country so affected by the emission of the pollutant or pollutants shall be

1 invited to appear at any public hearing associated with any revision of the  
2 appropriate portion of the applicable implementation plan.

3 (c) RECIPROCITY.—This section shall apply only to a foreign country that  
4 the Administrator determines has given the United States essentially the  
5 same rights with respect to the prevention or control of air pollution occur-  
6 ring in that country as is given that country by this section.

7 (d) RECOMMENDATIONS.—Recommendations issued following any abate-  
8 ment conference conducted prior to August 7, 1977, shall remain in effect  
9 with respect to any pollutant for which no NAAQS has been established  
10 under section 211109 of this title unless the Administrator, after consulta-  
11 tion with all agencies that were party to the conference, rescinds any such  
12 recommendation on grounds of obsolescence.

### 13 **§ 211116. Retention of State authority**

14 (a) IN GENERAL.—Except as otherwise provided in subsections (c), (e),  
15 and (f) of section 119 of the Clean Air Act (42 U.S.C. 1857e–10) (as in  
16 effect before August 7, 1977) and in sections 221109, 221111(d)(4), and  
17 223104 of this title, and subject to subsection (b), nothing in this division  
18 shall preclude or deny the right of any State or political subdivision thereof  
19 to adopt or enforce—

- 20 (1) any standard or limitation respecting emissions of air pollutants;  
21 or  
22 (2) any requirement respecting control or abatement of air pollution.

23 (b) STRINGENCY.—If an emission standard or limitation is in effect under  
24 an applicable implementation plan or under section 211111 or 211112 of  
25 this title, a State or political subdivision may not adopt or enforce any emis-  
26 sion standard or limitation that is less stringent than the standard or limi-  
27 tation under the plan or section.

### 28 **§ 211117. Advisory committees**

29 (a) ESTABLISHMENT.—The Administrator shall from time to time estab-  
30 lish advisory committees—

- 31 (1) to obtain assistance in the development and implementation of  
32 this division, including air quality criteria, recommended control tech-  
33 niques, standards, research and development; and  
34 (2) to encourage continued efforts on the part of industry to improve  
35 air quality and to develop economically feasible methods for the control  
36 and abatement of air pollution.

37 (b) MEMBERSHIP.—Committee members shall include persons who are  
38 knowledgeable concerning air quality from the standpoint of health, welfare,  
39 economics, or technology.

40 (c) COMPENSATION.—The members of any advisory committee appointed  
41 pursuant to this division who are not officers or employees of the United

1 States while attending conferences or meetings or while otherwise serving  
2 at the request of the Administrator shall be entitled to receive compensation  
3 at a rate to be fixed by the Administrator, but not exceeding \$100 per diem,  
4 including traveltime, and while away from their homes or regular places of  
5 business they may be allowed travel expenses, including per diem in lieu of  
6 subsistence, as authorized by section 5703 of title 5 for persons in the Gov-  
7 ernment service employed intermittently.

8 (d) CONSULTATION.—The Administrator shall, to the maximum extent  
9 practicable within the time provided, consult with appropriate advisory com-  
10 mittees, independence experts, and Federal departments and agencies be-  
11 fore—

12 (1) issuing criteria for an air pollutant under section 211108(a)(2)  
13 of this title;

14 (2) publishing any list under section 211111(b)(1) or 211112(b)(1)  
15 of this title;

16 (3) publishing any standard under section 211111 or 211112 of this  
17 title; or

18 (4) publishing any regulation under section 221102(a) of this title.

19 **§ 211118. Control of pollution from Federal facilities**

20 (a) GENERAL COMPLIANCE.—

21 (1) IN GENERAL.—Each department, agency, and instrumentality of  
22 the executive, legislative, and judicial branches of the Federal Govern-  
23 ment—

24 (A) having jurisdiction over any property or facility; or

25 (B) engaged in any activity resulting, or which may result, in  
26 the discharge of air pollutants;

27 and each officer, agent, or employee thereof, shall be subject to, and  
28 comply with, all Federal, State, interstate, and local requirements, ad-  
29 ministrative authority, and process and sanctions respecting the control  
30 and abatement of air pollution in the same manner and to the same  
31 extent as any nongovernmental entity.

32 (2) APPLICABILITY.—Paragraph (1) shall apply—

33 (A) to any requirement whether substantive or procedural (in-  
34 cluding any recordkeeping or reporting requirement, any require-  
35 ment respecting permits, and any other requirement);

36 (B) to any requirement to pay a fee or charge imposed by any  
37 State or local agency to defray the costs of its air pollution regu-  
38 latory program;

39 (C) to the exercise of any Federal, State, or local administrative  
40 authority; and

1 (D) to any process and sanction, whether enforced in Federal,  
2 State, or local courts or in any other manner.

3 (3) IMMUNITY.—This subsection shall apply notwithstanding any im-  
4 munity of agencies, officers, agents, or employees described in para-  
5 graph (1) under any law or rule of law.

6 (4) PERSONAL LIABILITY.—No officer, agent, or employee of the  
7 United States shall be personally liable for any civil penalty for which  
8 he or she is not otherwise liable.

9 (b) EXEMPTIONS.—

10 (1) EXEMPTION OF PARTICULAR EMISSION SOURCES.—

11 (A) IN GENERAL.—The President may exempt any emission  
12 source of any department, agency, or instrumentality in the execu-  
13 tive branch from compliance with a requirement described in sub-  
14 section (a) if the President determines it to be in the paramount  
15 interest of the United States to do so, except that—

16 (i) no exemption may be granted from section 211111 of  
17 this title; and

18 (ii) an exemption from section 211112 of this title may be  
19 granted only in accordance with subsection (i)(4) of that sec-  
20 tion.

21 (B) LACK OF APPROPRIATION.—No exemption under subpara-  
22 graph (A) shall be granted due to lack of appropriation unless the  
23 President specifically requests such an appropriation as a part of  
24 the budgetary process and Congress fails to make available the re-  
25 quested appropriation.

26 (C) EXEMPTION PERIOD.—Any exemption under subparagraph  
27 (A) shall be for a period of not more than 1 year, but additional  
28 exemptions may be granted for periods of not more than 1 year  
29 on the President's making a new determination.

30 (2) EXEMPTION OF WEAPONRY, EQUIPMENT, AIRCRAFT, VEHICLES,  
31 OR OTHER CLASSES OR CATEGORIES OF PROPERTY.—

32 (A) IN GENERAL.—The President may, if the President deter-  
33 mines it to be in the paramount interest of the United States to  
34 do so, issue regulations exempting from compliance with the re-  
35 quirements of this section any weaponry, equipment, aircraft, vehi-  
36 cles, or other classes or categories of property that are owned or  
37 operated by the Armed Forces of the United States (including the  
38 Coast Guard) or by the National Guard of any State and that are  
39 uniquely military in nature.

40 (B) RECONSIDERATION.—The President shall reconsider the  
41 need for such regulations at 3-year intervals.



1           (3) REPORTS.—The President shall report each January to Congress  
2 all exemptions from the requirements of this section granted during the  
3 preceding calendar year, together with the President’s reason for grant-  
4 ing each such exemption.

5           (e) GOVERNMENT VEHICLES.—Each department, agency, and instrumen-  
6 tality of the executive, legislative, and judicial branches of the Federal Govern-  
7 ment shall comply with all applicable provisions of a valid inspection and  
8 maintenance program established under subchapter II or III of chapter 215  
9 except for such vehicles as are considered military tactical vehicles.

10          (d) VEHICLES OPERATED ON FEDERAL INSTALLATIONS.—

11           (1) IN GENERAL.—Each department, agency, and instrumentality of  
12 the executive, legislative, and judicial branches of the Federal Govern-  
13 ment having jurisdiction over any property or facility shall require all  
14 employees that operate a motor vehicle on the property or facility to  
15 furnish proof of compliance with the applicable requirements of any ve-  
16 hicle inspection and maintenance program established under subchapter  
17 II or III of chapter 215 for the State in which the property or facility  
18 is located (without regard to whether the vehicle is registered in the  
19 State).

20           (2) PROOF OF COMPLIANCE.—A department, agency, and instrumen-  
21 tality shall use 1 of the following methods to establish proof of compli-  
22 ance with paragraph (1):

23           (A) Presentation by the vehicle owner of a valid certificate of  
24 compliance from the vehicle inspection and maintenance program.

25           (B) Presentation by the vehicle owner of proof of vehicle reg-  
26 istration within the geographic area covered by the vehicle inspec-  
27 tion and maintenance program (except for any program whose en-  
28 forcement mechanism is not through the denial of vehicle registra-  
29 tion).

30           (C) Another method approved by the vehicle inspection and  
31 maintenance program administrator.

32 **§ 211119. Noncompliance penalty**

33          (a) DEFINITION OF OPERATOR.—In this section:

34           (1) IN GENERAL.—The term “operator” includes any person who is  
35 a part of senior management personnel or is a corporate officer.

36           (2) EXCLUSIONS.—Except in the case of a knowing and willful viola-  
37 tion, the term “operator” does not include any person who is a station-  
38 ary engineer or technician responsible for the operation, maintenance,  
39 repair, or monitoring of equipment and facilities and who often has su-  
40 pervisory and training duties but who is not a part of senior manage-  
41 ment personnel and not a corporate officer.

1 (b) ASSESSMENT AND COLLECTION.—

2 (1) IN GENERAL.—

3 (A) REGULATIONS.—After notice and opportunity for a public  
4 hearing, the Administrator shall promulgate regulations requiring  
5 the assessment and collection of a noncompliance penalty against  
6 a person described in paragraph (2)(A).

7 (B) DELEGATION OF AUTHORITY TO A STATE.—

8 (i) IN GENERAL.—A State may develop and submit to the  
9 Administrator a plan for carrying out this section in the  
10 State. If the Administrator finds that the State plan meets  
11 the requirements of this section, the Administrator may dele-  
12 gate to the State any authority that the Administrator has  
13 to carry out this section.

14 (ii) AUTHORITY OF THE ADMINISTRATOR.—Notwithstand-  
15 ing a delegation to a State under clause (i), the Adminis-  
16 trator may carry out this section in the State under the cir-  
17 cumstances described in subsection (c)(2)(B).

18 (2) AUTHORITY.—

19 (A) ASSESSMENT AND COLLECTION.—

20 (i) IN GENERAL.—Except as provided in subparagraph (B)  
21 or (C), a State to which authority has been delegated under  
22 paragraph (1) or the Administrator shall assess and collect a  
23 noncompliance penalty against every person that owns or op-  
24 erates—

25 (I) a major stationary source (other than a primary  
26 nonferrous smelter that received a primary nonferrous  
27 smelter order under section 119 of the Clean Air Act (42  
28 U.S.C. 7419) (as in effect before the repeal of that sec-  
29 tion)) that is not in compliance with any emission limita-  
30 tion, emission standard, or compliance schedule under  
31 any applicable implementation plan (whether or not the  
32 source is subject to a Federal or State consent decree);

33 (II) a stationary source that is not in compliance with  
34 an emission limitation, emission standard, standard of  
35 performance, or other requirement established under sec-  
36 tion 203103, 211111, 211112, or 213109 of this title;

37 (III) a stationary source that is not in compliance with  
38 any requirement of subdivision 5, 6, or 7; or

39 (IV) any source described in subclause (I), (II), or  
40 (III) (for which an extension, order, or suspension de-  
41 scribed in subparagraph (B) or a Federal or State con-

1 sent decree is in effect) or a primary nonferrous smelter  
2 that received a primary nonferrous smelter order under  
3 section 119 of the Clean Air Act (42 U.S.C. 7419) (as  
4 in effect before the repeal of that section) that is not in  
5 compliance with any interim emission control require-  
6 ment or schedule of compliance under the extension,  
7 order, suspension, or consent decree.

8 (ii) COSTS.—For purposes of subsection (g)(1), in the case  
9 of a penalty assessed with respect to a source described in  
10 clause (i)(III), the costs described in subsection (g)(1) shall  
11 be the economic value of noncompliance with the interim  
12 emission control requirement or the remaining steps in the  
13 schedule of compliance described in clause (i)(III).

14 (B) EXEMPTIONS IF FAILURE TO COMPLY IS DUE TO CERTAIN  
15 EXTENSIONS, ORDERS, OR SUSPENSIONS.—

16 (i) IN GENERAL.—Notwithstanding the requirements of  
17 subclauses (I) and (II) of subparagraph (A)(i), the owner or  
18 operator of any source shall be exempted from the duty to  
19 pay a noncompliance penalty under those requirements with  
20 respect to that source if, in accordance with the procedures  
21 in subsection (c)(5), the owner or operator demonstrates that  
22 the failure of the source to comply with any such requirement  
23 is due solely to—

24 (I) a conversion by the source from the burning of pe-  
25 troleum products or natural gas, or both, as the perma-  
26 nent primary energy source to the burning of coal pursu-  
27 ant to an order under section 113(d)(5) of the Clean Air  
28 Act (42 U.S.C. 7413(d)(5)) (as in effect before Novem-  
29 ber 15, 1990) or section 119 of the Clean Air Act (42  
30 U.S.C. 7419) (as in effect before August 7, 1977);

31 (II) in the case of a coal-burning source granted an  
32 extension under the 2d sentence of section 119(c)(1) of  
33 the Clean Air Act (42 U.S.C. 1857c-10(c)(1)) (as in ef-  
34 fect before August 7, 1977), a prohibition from using pe-  
35 troleum products or natural gas or both, by reason of an  
36 order under subsections (a) and (b) of section 2 of the  
37 Energy Supply and Environmental Coordination Act of  
38 1974 (15 U.S.C. 792) or under any legislation that su-  
39 persedes those subsections;

40 (III) the use of innovative technology sanctioned by an  
41 enforcement order under section 113(d)(4) of the Clean

1 Air Act (42 U.S.C. 7413(d)(4)) (as in effect before No-  
2 vember 15, 1990);

3 (IV) an inability to comply with any such requirement,  
4 for which inability the source received an order under  
5 section 113(d) of the Clean Air Act (42 U.S.C. 7413(d))  
6 (as in effect before November 15, 1990) or an order  
7 under section 113 of the Clean Air Act (42 U.S.C. 7413)  
8 (as in effect before August 7, 1977) that has the effect  
9 of permitting a delay or violation of any requirement of  
10 this division (including a requirement of an applicable  
11 implementation plan), which inability results from rea-  
12 sons entirely beyond the control of the owner or operator  
13 of the source or of any entity controlling, controlled by,  
14 or under common control with the owner or operator of  
15 the source; or

16 (V) the conditions by reason of which a temporary  
17 emergency suspension is authorized under subsection (d)  
18 or (e) of section 211110 of this title.

19 (ii) CESSATION OF EFFECTIVENESS.—An exemption under  
20 this subparagraph shall cease to be effective if the source fails  
21 to comply with the interim emission control requirements or  
22 schedules of compliance (including increments of progress)  
23 under any such extension, order, or suspension.

24 (C) EXEMPTION IF FAILURE TO COMPLY IS DE MINIMIS IN NA-  
25 TURE AND IN DURATION.—The Administrator may, after notice  
26 and opportunity for public hearing, exempt any source from the  
27 requirements of this section with respect to a particular instance  
28 of noncompliance if the Administrator finds that the instance of  
29 noncompliance is de minimis in nature and in duration.

30 (c) CONTENTS OF REGULATIONS.—Regulations under subsection (b)  
31 shall—

32 (1) permit the assessment and collection of a penalty by a State if  
33 the State has a delegation of authority in effect under subsection  
34 (b)(1)(B)(i);

35 (2) provide for the assessment and collection of a penalty by the Ad-  
36 ministrator, if—

37 (A) a State does not have a delegation of authority in effect  
38 under subsection (b)(1)(B)(i); or

39 (B) a State has such a delegation in effect but fails with respect  
40 to any particular person or source to assess or collect the penalty  
41 in accordance with the requirements of this section;

1           (3) require a State, or if a State fails to do so, the Administrator,  
2           to give a brief but reasonably specific notice of noncompliance under  
3           this section to each person described in subsection (b)(2)(A)(i) with re-  
4           spect to each source owned or operated by the person that is not in  
5           compliance as provided in subsection (b) not later than 30 days after  
6           the discovery of the noncompliance;

7           (4) require each person to which notice is given under paragraph (3)  
8           to—

9                   (A) calculate the amount of the penalty owed (determined in ac-  
10                  cordance with subsection (g)(1)) and the schedule of payments  
11                  (determined in accordance with subsection (g)(2)) for each such  
12                  source and, within 45 days after the issuance of the notice or after  
13                  the denial of a petition under subparagraph (B), to submit that  
14                  calculation and proposed schedule, together with the information  
15                  necessary for an independent verification of the calculation, to the  
16                  State and to the Administrator; or

17                  (B) submit a petition, within 45 days after the issuance of the  
18                  notice, challenging the notice or alleging entitlement to an exemp-  
19                  tion under subsection (b)(2)(B) with respect to a particular  
20                  source;

21           (5) require the Administrator to provide a hearing on the record  
22           (within the meaning of subchapter II of chapter 5 of title 5) and to  
23           make a decision on the petition (including findings of fact and conclu-  
24           sions of law) not later than 90 days after the receipt of any petition  
25           under paragraph (4)(B), unless the State agrees to provide a hearing  
26           that is substantially similar to such a hearing on the record and to  
27           make a decision on the petition (including findings and conclusions)  
28           within the 90-day period;

29           (6)(A) authorize the Administrator on the Administrator's initiative  
30           to review the decision of the State under paragraph (5) and disapprove  
31           the decision if it is not in accordance with the requirements of this sec-  
32           tion; and

33                  (B) on petition for such a review, require the Administrator to do  
34                  so not later than 60 days after receipt of the petition, notice, and pub-  
35                  lic hearing and a showing by the petitioner that the State decision  
36                  under paragraph (5) is not in accordance with the requirements of this  
37                  section;

38           (7) require payment, in accordance with subsections (f) and (g), of  
39           the penalty by each person to which notice of noncompliance is given  
40           under paragraph (3) with respect to each noncomplying source for

1 which the notice is given unless there has been a final determination  
2 granting a petition under paragraph (4)(B) with respect to the source;

3 (8) authorize a State or the Administrator to adjust (and from time  
4 to time to readjust) the amount of the penalty assessment calculated  
5 or the payment schedule proposed by an owner or operator under para-  
6 graph (4) if the Administrator finds, after notice and opportunity for  
7 a hearing on the record, that the penalty or schedule does not meet  
8 the requirements of this section; and

9 (9) require a final adjustment of the penalty within 180 days after  
10 a source comes into compliance in accordance with subsection (g)(3).

11 (d) NONCOMPLIANCE PENALTY ESTABLISHED BY A STATE.—

12 (1) NOTICE.—In any case in which a State establishes a noncompli-  
13 ance penalty under this section, the State shall provide notice of the  
14 noncompliance penalty to the Administrator.

15 (2) APPLICABILITY.—A noncompliance penalty established by a  
16 State under this section shall apply unless the Administrator, within  
17 90 days after the date of receipt of notice of the State penalty assess-  
18 ment under this section, objects in writing to the amount of the penalty  
19 as less than would be required to comply with guidelines established  
20 by the Administrator.

21 (3) OBJECTION.—If the Administrator objects, the Administrator  
22 shall immediately establish a substitute noncompliance penalty applica-  
23 ble to the source.

24 (e) CONTRACT TO ASSIST IN DETERMINING AMOUNT OF PENALTY AS-  
25 SESSMENT OR PAYMENT SCHEDULE.—

26 (1) IN GENERAL.—If the owner or operator of any stationary source  
27 to which a notice is issued under subsection (c)(3)—

28 (A)(i) does not submit a timely petition under subsection  
29 (c)(4)(B); or

30 (ii) submits a petition under subsection (c)(4)(B) that is denied;  
31 and

32 (B) fails to submit a calculation of the penalty assessment, a  
33 schedule for payment, and the information necessary for independ-  
34 ent verification of the calculation;

35 the State (or the Administrator, as the case may be) may enter into  
36 a contract with any person that has no financial interest in the owner  
37 or operator of the source (or in any person controlling, controlled by,  
38 or under common control with the source) to assist in determining the  
39 amount of the penalty assessment or payment schedule with respect to  
40 the source.

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1           (2) COST.—The cost of carrying out a contract under paragraph (1)  
2           may be added to the penalty to be assessed against the owner or opera-  
3           tor of the source.

4           (f) PAYMENT.—All penalties assessed by the Administrator under this  
5           section shall be paid to the Treasury. All penalties assessed by a State  
6           under this section shall be paid to the State.

7           (g) AMOUNT OF PENALTY.—

8           (1) AMOUNT.—

9           (A) IN GENERAL.—The amount of the penalty that shall be as-  
10           sessed and collected with respect to any source under this section  
11           shall be equal to—

12           (i) the amount determined in accordance with regulations  
13           promulgated by the Administrator under subsection (b),  
14           which is not less than the economic value that a delay in com-  
15           pliance may have for the owner of the source, including—

16           (I) the quarterly equivalent of the capital costs of com-  
17           pliance and debt service over a normal amortization pe-  
18           riod, not to exceed 10 years;

19           (II) operation and maintenance costs forgone as a re-  
20           sult of noncompliance; and

21           (III) any additional economic value that such a delay  
22           may have for the owner or operator of the source; minus

23           (ii) the amount of any expenditure made by the owner or  
24           operator of the source during any such quarter for the pur-  
25           pose of bringing the source into, and maintaining compliance  
26           with, the requirement, to the extent that the expenditure is  
27           not taken into account in the calculation of the penalty under  
28           clause (i).

29           (B) SUBTRACTION OF EXPENDITURE.—To the extent that any  
30           expenditure under subparagraph (A)(ii) made during any quarter  
31           is not subtracted for that quarter from the costs under subpara-  
32           graph (A)(i), the expenditure may be subtracted for any subse-  
33           quent quarter from those costs.

34           (C) MINIMUM AMOUNT.—In no event shall the amount paid be  
35           less than the quarterly payment minus the amount attributed to  
36           actual cost of construction.

37           (2) PAYMENT IN INSTALLMENTS.—

38           (A) DEFINITION OF PERIOD OF COVERED NONCOMPLIANCE.—

39           In this paragraph, the term “period of covered noncompliance”  
40           means the period that begins on the date of issuance of a notice  
41           of noncompliance under subsection (c)(3) and ending on the date

1 on which the source comes into (or for the purpose of establishing  
2 the schedule of payments, is estimated to come into) compliance  
3 with the requirement.

4 (B) IN GENERAL.—The assessed penalty required under this  
5 section shall be paid in quarterly installments for the period of  
6 covered noncompliance. All quarterly payments (determined with-  
7 out regard to any adjustment or any subtraction under paragraph  
8 (1)(A)(ii) after the 1st payment shall be equal.

9 (C) 1ST PAYMENT.—The 1st payment shall be due on the date  
10 that is 6 months after the date of issuance of the notice of non-  
11 compliance under subsection (b)(3) with respect to any source.  
12 The 1st payment shall be in the amount of the quarterly install-  
13 ment for the upcoming quarter, plus the amount owed for any pre-  
14 ceding period within the period of covered noncompliance for the  
15 source.

16 (3) REVIEW OF ACTUAL EXPENDITURES.—On making a determina-  
17 tion that a source with respect to which a penalty has been paid under  
18 this section is in compliance and is maintaining compliance with the  
19 applicable requirement, a State (or the Administrator as the case may  
20 be) shall—

21 (A) review the actual expenditures made by the owner or opera-  
22 tor of the source for the purpose of attaining and maintaining  
23 compliance; and

24 (B) within 180 days after the source comes into compliance—

25 (i) provide reimbursement with interest (to be paid by the  
26 State or Secretary of the Treasury, as the case may be) at  
27 appropriate prevailing rates (as determined by the Secretary  
28 of the Treasury) for any overpayment by the owner or opera-  
29 tor; or

30 (ii) assess and collect an additional payment with interest  
31 at appropriate prevailing rates (as determined by the Sec-  
32 retary of the Treasury) for any underpayment by the owner  
33 or operator.

34 (4) QUARTERLY NONPAYMENT PENALTY.—An owner or operator  
35 that fails to pay the amount of any penalty with respect to any source  
36 under this section on a timely basis shall be required to pay in addition  
37 a quarterly nonpayment penalty for each quarter during which the fail-  
38 ure to pay persists. The nonpayment penalty shall be in an amount  
39 equal to 20 percent of the aggregate amount of the owner or operator's  
40 penalties and nonpayment penalties with respect to the source that are  
41 unpaid as of the beginning of the quarter.



1 (h) JUDICIAL REVIEW.—Any action pursuant to this section, including  
2 any objection of the Administrator under subsection (d)(3), shall be consid-  
3 ered a final action for purposes of judicial review of any penalty under sec-  
4 tion 211113 of this title.

5 (i) OTHER ORDERS, PAYMENTS, SANCTIONS, OR REQUIREMENTS.—Any  
6 orders, payments, sanctions, or other requirements under this section shall  
7 be in addition to any other permits, orders, payments, sanctions, or other  
8 requirements established under this division and shall in no way affect any  
9 civil or criminal enforcement proceedings brought under any provision of  
10 this division or State or local law.

11 (j) MORE STRINGENT EMISSION LIMITATIONS OR OTHER REQUIRE-  
12 MENTS.—In the case of any emission limitation or other requirement ap-  
13 proved or promulgated by the Administrator under this division after Au-  
14 gust 7, 1977, that is more stringent than the emission limitation or require-  
15 ment for the source in effect prior to such approval or promulgation, if any,  
16 or where there was no emission limitation or requirement approved or pro-  
17 mulgated before August 7, 1977, the date for imposition of the noncompli-  
18 ance penalty under this section shall be the date on which the source is re-  
19 quired to be in full compliance with the emission limitation or requirement,  
20 but in no event later than 3 years after the approval or promulgation of  
21 the emission limitation or requirement.

22 (k) DETERMINATION OF NUMBER OF DAYS.—For purposes of determin-  
23 ing the number of days of violation for which an assessment may be made  
24 under this section, where the Administrator or an air pollution control agen-  
25 cy has notified the source of the violation, and the plaintiff makes a prima  
26 facie showing that the conduct or events giving rise to the violation are like-  
27 ly to have continued or recurred past the date of notice, the days of viola-  
28 tion shall be presumed to include the date of the notice and each day there-  
29 after until the violator establishes that continuous compliance has been  
30 achieved, except to the extent that the violator can prove by a preponder-  
31 ance of the evidence that there were intervening days during which no viola-  
32 tion occurred or that the violation was not continuing in nature.

33 **§ 211120. Consultation**

34 (a) PROCESS.—In carrying out the requirements of this division requiring  
35 applicable implementation plans to contain—

36 (1) any transportation controls, air quality maintenance plan re-  
37 quirements, or preconstruction review of direct sources of air pollution;

38 or

39 (2) any measure described in chapter 213 or 215;

40 a State shall provide a satisfactory process of consultation with general pur-  
41 pose local governments, designated organizations of elected officials of local

1 governments, and any Federal land manager having authority over Federal  
2 land to which the State plan applies, as part of the plan.

3 (b) REGULATIONS.—The process provided under subsection (a) shall be  
4 in accordance with regulations promulgated by the Administrator to ensure  
5 adequate consultation.

6 (c) JUDICIAL REVIEW.—Only a general purpose unit of local government,  
7 regional agency, or council of governments adversely affected by action of  
8 the Administrator approving any portion of a plan described in subsection  
9 (a) may petition for judicial review of an action described in subsection (a)  
10 on the basis of a violation of the requirements of this section.

11 **§ 211121. Listing of certain unregulated pollutants**

12 (a) RADIOACTIVE POLLUTANTS, CADMIUM, ARSENIC, AND POLYCYCLIC  
13 ORGANIC MATTER.—

14 (1) REVIEW AND DETERMINATION.—After notice and opportunity for  
15 public hearing, the Administrator shall review all available relevant in-  
16 formation and determine whether emissions of radioactive pollutants  
17 (including source material, special nuclear material, and byproduct ma-  
18 terial), cadmium, arsenic, and polycyclic organic matter into the ambi-  
19 ent air will cause, or contribute to, air pollution that may reasonably  
20 be anticipated to endanger public health.

21 (2) AFFIRMATIVE DETERMINATION.—If the Administrator makes an  
22 affirmative determination with respect to a substance described in  
23 paragraph (1), the Administrator, simultaneously with the determina-  
24 tion, shall—

25 (A) include the substance in the list published under section  
26 211108(a)(1) or 211112(b)(1) of this title (in the case of a sub-  
27 stance that, in the judgment of the Administrator, causes, or con-  
28 tributes to, air pollution that may reasonably be anticipated to re-  
29 sult in an increase in mortality or an increase in serious irrevers-  
30 ible, or incapacitating reversible, illness);

31 (B) include each category of stationary sources emitting the  
32 substance in significant amounts in the list published under sec-  
33 tion 211111(b)(1) of this title, or take any combination of such  
34 actions; or

35 (C) take both such actions.

36 (b) REVISION AUTHORITY.—Nothing in subsection (a) shall be construed  
37 to affect the authority of the Administrator to revise any list described in  
38 subsection (a) with respect to any substance (whether or not enumerated  
39 in subsection (a)).

40 (c) SOURCE MATERIAL, SPECIAL NUCLEAR MATERIAL, AND BYPRODUCT  
41 MATERIAL.—

1 (1) CONSULTATION.—Before listing any source material, special nu-  
2 clear material, or byproduct material (or component or derivative there-  
3 of) as provided in subsection (a), the Administrator shall consult with  
4 the Nuclear Regulatory Commission.

5 (2) INTERAGENCY AGREEMENT.—Not later than 6 months after list-  
6 ing any source material, special nuclear material, or byproduct material  
7 (or component or derivative thereof), the Administrator and the Nu-  
8 clear Regulatory Commission shall enter into an interagency agreement  
9 with respect to sources and facilities that are under the jurisdiction of  
10 the Nuclear Regulatory Commission. The agreement shall, to the maxi-  
11 mum extent practicable consistent with this division, minimize duplica-  
12 tion of effort and conserve administrative resources in the establish-  
13 ment, implementation, and enforcement of emission limitations, stand-  
14 ards of performance, and other requirements and authorities (sub-  
15 stantive and procedural) under this division respecting the emission of  
16 source material, special nuclear material, or byproduct material (and  
17 components and derivatives thereof) from those sources or facilities.

18 (3) PUBLIC HEALTH AND SAFETY.—In case of any standard or emis-  
19 sion limitation promulgated by the Administrator, under this division  
20 or by any State (or the Administrator) under any applicable implemen-  
21 tation plan under this division, if the Nuclear Regulatory Commission  
22 determines, after notice and opportunity for public hearing that the ap-  
23 plication of the standard or limitation to a source or facility under the  
24 jurisdiction of the Nuclear Regulatory Commission would endanger  
25 public health or safety, the standard or limitation shall not apply to  
26 those facilities or sources unless the President determines otherwise  
27 within 90 days after the date of the determination.

28 **§ 211122. Stack heights**

29 (a) DEFINITIONS.—In this section:

30 (1) DISPERSION TECHNIQUE.—The term “dispersion technique” in-  
31 cludes any intermittent or supplemental control of an air pollutant  
32 varying with atmospheric conditions.

33 (2) GOOD ENGINEERING PRACTICE.—

34 (A) IN GENERAL.—The term “good engineering practice”, with  
35 respect to the height of a stack at a source, means the height nec-  
36 essary to ensure that emissions from the stack do not result in ex-  
37 cessive concentrations of any air pollutant in the immediate vicin-  
38 ity of the source as a result of atmospheric downwash, eddies, and  
39 wakes that may be created by the source itself, nearby structures,  
40 or nearby terrain obstacles (as determined by the Administrator).

1 (B) LIMITATION.—For purposes of subparagraph (A), stack  
2 height consistent with good engineering practice shall not exceed  
3 2½ times the height of a source unless the owner or operator of  
4 the source demonstrates, after notice and opportunity for public  
5 hearing, to the satisfaction of the Administrator, that a greater  
6 height is necessary as provided under subparagraph (A).

7 (b) HEIGHTS IN EXCESS OF GOOD ENGINEERING PRACTICE; OTHER DIS-  
8 PERSION TECHNIQUES.—

9 (1) IN GENERAL.—The degree of emission limitation required for  
10 control of any air pollutant under an applicable implementation plan  
11 under this subdivision shall not be affected in any manner by—

12 (A) so much of the stack height of any source as exceeds good  
13 engineering practice (as determined under regulations promulgated  
14 by the Administrator); or

15 (B) any other dispersion technique.

16 (2) APPLICABILITY.—Paragraph (1) shall not apply with respect to  
17 stack heights in existence before December 31, 1970, or dispersion  
18 techniques implemented before that date.

19 (3) EMISSION LIMITATION FOR CERTAIN COAL-FIRED STEAM ELEC-  
20 TRIC GENERATING UNITS.—In establishing an emission limitation for  
21 coal-fired steam electric generating units are subject to section 211118  
22 of this title and that commenced operation before July 1, 1957, the ef-  
23 fect of the entire stack height of stacks for which a construction con-  
24 tract was awarded before February 8, 1974, may be taken into ac-  
25 count.

26 (c) LIMITATION.—In no event may the Administrator prohibit any in-  
27 crease in any stack height or restrict in any manner the stack height of any  
28 source.

29 (d) REGULATIONS.—After notice and opportunity for public hearing, the  
30 Administrator shall promulgate regulations to carry out this section.

31 **§ 211123. Assurance of adequacy of State plans**

32 (a) STATE REVIEW OF IMPLEMENTATION PLANS THAT RELATE TO  
33 MAJOR FUEL BURNING SOURCES.—Each State shall review the provisions  
34 of its implementation plan that relate to major fuel burning sources and  
35 shall determine—

36 (1) the extent to which compliance with requirements of the imple-  
37 mentation plan is dependent on the use by major fuel burning station-  
38 ary sources of petroleum products or natural gas;

39 (2) the extent to which the implementation plan may reasonably be  
40 anticipated to be inadequate to meet the requirements of this division

1 in the State on a reliable and long-term basis by reason of its depend-  
2 ence on the use of petroleum products or natural gas; and

3 (3) the extent to which compliance with the requirements of the im-  
4 plementation plan is dependent on use of coal or coal derivatives that  
5 is not locally or regionally available.

6 (b) SUBMISSION TO ADMINISTRATOR.—Each State shall submit the re-  
7 sults of its review and its determination under subsection (a) to the Admin-  
8 istrator promptly on completion of the review.

9 (c) PLAN REVISION.—

10 (1) REVISION.—The Administrator shall review the submissions of  
11 the States under subsection (b) and shall require a State to revise its  
12 implementation plan if, in the judgment of the Administrator, revision  
13 is necessary to ensure that the implementation plan will be adequate  
14 to ensure compliance with the requirements of this division in the State  
15 on a reliable and long-term basis, taking into account the actual or po-  
16 tential prohibitions on use of petroleum products or natural gas, or  
17 both, under any other authority of law.

18 (2) CONSIDERATIONS; CONSULTATION.—Before requiring an imple-  
19 mentation plan revision under this subsection with respect to any  
20 State, the Administrator shall—

21 (A) take into account the report of the review conducted by the  
22 State under paragraph (1); and

23 (B) consult with the Governor of the State respecting the re-  
24 quired revision.

25 **§ 211124. Measures to prevent economic disruption or unem-**  
26 **ployment**

27 (a) DEFINITION OF LOCALLY OR REGIONALLY AVAILABLE COAL OR  
28 COAL DERIVATIVES.—In this section, the term “locally or regionally avail-  
29 able coal or coal derivative” means coal or a coal derivative that is, or in  
30 the judgment of a State or the Administrator can feasibly be, mined or pro-  
31 duced in the local or regional area (as determined by the Administrator) in  
32 which a major fuel burning stationary source is located.

33 (b) DETERMINATION THAT ACTION IS NECESSARY.—After notice and op-  
34 portunity for a public hearing, the Governor of any State in which a major  
35 fuel burning stationary source described in this subsection (or class or cat-  
36 egory thereof) is located, the Administrator or the President (or a designee  
37 of the President) may determine that action under subsection (c) is nec-  
38 essary to prevent or minimize significant local or regional economic disrup-  
39 tion or unemployment that would otherwise result from use by the source  
40 (or class or category) of—

1 (1) coal or coal derivatives other than locally or regionally available  
2 coal;  
3 (2) petroleum products;  
4 (3) natural gas; or  
5 (4) any combination of fuels described in paragraphs (1) through  
6 (3);  
7 to comply with the requirements of a State implementation plan.

8 (e) USE OF LOCALLY OR REGIONALLY AVAILABLE COAL OR COAL DE-  
9 RIVATIVES TO COMPLY WITH IMPLEMENTATION PLAN REQUIREMENTS.—

10 (1) IN GENERAL.—On a determination under subsection (b)—

11 (A) the Governor, with the written consent of the President or  
12 a designee of the President;

13 (B) a designee of the President, with the written consent of the  
14 Governor; or

15 (C) the President;

16 may by regulation or order prohibit any such major fuel burning sta-  
17 tionary source (or class or category thereof) from using fuels other  
18 than locally or regionally available coal or coal derivatives to comply  
19 with implementation plan requirements.

20 (2) CONSIDERATION OF FINAL COST.—In taking any action under  
21 this subsection, the Governor, the President, or the President's des-  
22 ignee, as the case may be, shall take into account the final cost to the  
23 consumer of such an action.

24 (d) CONTRACTS; SCHEDULES.—

25 (1) IN GENERAL.—The Governor, in the case of an action under sub-  
26 section (e)(1)(A), or the Administrator, in the case of an action under  
27 subparagraph (B) or (C) of subsection (c)(1), shall, by regulation or  
28 order, require each source to which the action applies to—

29 (A) enter into long-term contracts of at least 10 years in dura-  
30 tion (except as the President or the President's designee may  
31 otherwise permit or require by regulation or order for good cause)  
32 for supplies of regionally available coal or coal derivatives;

33 (B) enter into contracts to acquire any additional means of  
34 emission limitation that the Administrator or the State determines  
35 may be necessary to comply with the requirements of this division  
36 while using such coal or coal derivatives as fuel; and

37 (C) comply with such schedules (including increments of  
38 progress), timetables, and other requirements as may be necessary  
39 to ensure compliance with the requirements of this division.

1           (2) TIMING.—Requirements under this subsection shall be estab-  
2           lished simultaneously with, and as a condition of, any action under sub-  
3           section (c).

4           (e) EXISTING OR NEW MAJOR FUEL BURNING STATIONARY SOURCES.—  
5           This section applies only to existing or new major fuel burning stationary  
6           sources that—

7           (1) have the design capacity to produce 250,000,000 British thermal  
8           units per hour (or the equivalent), as determined by the Administrator;  
9           and

10          (2) are not in compliance with the requirements of an applicable im-  
11          plementation plan or are prohibited from burning oil or natural gas,  
12          or both, under any other authority of law.

13          (f) ACTIONS NOT TO BE DEEMED MODIFICATIONS OF MAJOR FUEL  
14          BURNING STATIONARY SOURCES.—Except as may otherwise be provided by  
15          regulation by a State or the Administrator for good cause, any action re-  
16          quired to be taken by a major fuel burning stationary source under this sec-  
17          tion shall not be deemed to constitute a modification for purposes of para-  
18          graphs (2) and (3) of section 211111(a) of this title.

19          (g) TREATMENT OF PROHIBITIONS, REGULATIONS, OR ORDERS AS RE-  
20          QUIREMENTS OR PARTS OF PLANS UNDER OTHER PROVISIONS.—For pur-  
21          poses of sections 211113 and 211119 of this title, a prohibition under sub-  
22          section (c), and a corresponding regulation or order under subsection (d),  
23          shall be treated as a requirement of section 211113 of this title. For pur-  
24          poses of any plan (or portion thereof) promulgated under section 211110(c)  
25          of this title, any regulation or order under subsection (d) corresponding to  
26          a prohibition under subsection (c) shall be treated as a part of the plan.  
27          For purposes of section 211113 of this title, a prohibition under subsection  
28          (c), applicable to any source, and a corresponding regulation or order under  
29          subsection (d), shall be treated as part of the applicable implementation  
30          plan for the State in which the subject source is located.

31          (h) DELEGATION OF PRESIDENTIAL AUTHORITY.—The President may  
32          delegate the President's authority under this section to an officer or em-  
33          ployee of the United States designated by the President on a case-by-case  
34          basis or in any other manner that the President considers suitable.

35        **§ 211125. Interstate pollution abatement**

36          (a) WRITTEN NOTICE TO ALL NEARBY STATES.—Each applicable imple-  
37          mentation plan shall require each major proposed new (or modified)  
38          source—

39          (1) that is subject to chapter 213; or

1 (2) that may significantly contribute to levels of air pollution in ex-  
2 cess of the NAAQSEs in any air quality control region outside the State  
3 in which the source intends to locate (or make the modification);  
4 to provide written notice to all nearby States the air pollution levels of  
5 which may be affected by the source at least 60 days prior to the date on  
6 which commencement of construction is to be permitted by the State provid-  
7 ing notice.

8 (b) PETITION FOR FINDING THAT MAJOR SOURCES EMIT OR WOULD  
9 EMIT PROHIBITED AIR POLLUTANTS.—Any State or political subdivision  
10 may petition the Administrator for a finding that any major source or group  
11 of stationary sources emits or would emit any air pollutant in violation of  
12 section 211110(a)(3)(D)(ii) of this title or this section. Within 60 days after  
13 receipt of any petition under this subsection and after public hearing, the  
14 Administrator shall make such a finding or deny the petition.

15 (c) VIOLATIONS.—

16 (1) IN GENERAL.—Notwithstanding any permit granted by a State  
17 in which a source is located (or intends to locate), it shall be a violation  
18 of this section and the applicable implementation plan in that State—

19 (A) for any major proposed new (or modified) source with re-  
20 spect to which a finding has been made under subsection (b) to  
21 be constructed or to operate in violation of section  
22 211110(a)(3)(D)(ii) of this title or this section; or

23 (B) for any major existing source to operate more than 3  
24 months after such a finding has been made with respect to it.

25 (2) CONTINUED OPERATION.—The Administrator may permit the  
26 continued operation of a source described in paragraph (1)(B) beyond  
27 the expiration of the 3-month period if the source complies with such  
28 emission limitations and compliance schedules (containing increments  
29 of progress) as the Administrator may provide to bring about compli-  
30 ance with the requirements contained in section 211110(a)(3)(D)(ii) of  
31 this title or this section as expeditiously as practicable, but in no case  
32 later than 3 years after the date of the finding.

33 **§ 211126. Public notification**

34 (a) IN GENERAL.—A State implementation plan shall contain measures  
35 that will be effective to notify the public during any calendar year on a reg-  
36 ular basis of instances or areas in which any primary NAAQS is exceeded  
37 or was exceeded during any portion of the preceding calendar year to—

38 (1) advise the public of the health hazards associated with such pol-  
39 lution; and

40 (2) enhance public awareness of—



1 (A) the measures that can be taken to prevent those standards  
2 from being exceeded; and

3 (B) the ways in which the public can participate in regulatory  
4 efforts and other efforts to improve air quality.

5 (b) MEASURES.—Measures under subsection (a) may include—

6 (1) the posting of warning signs on interstate highway access points  
7 to metropolitan areas; or

8 (2) television, radio, or press notices or information.

9 (c) GRANTS.—The Administrator may make grants to States to assist in  
10 carrying out this section.

### 11 **§ 211127. State boards**

12 (a) IN GENERAL.—An applicable implementation plan shall contain re-  
13 quirements that—

14 (1) any board or body that approves permits or enforcement orders  
15 under this division have at least a majority of members who represent  
16 the public interest and do not derive any significant portion of their  
17 income from persons subject to permits or enforcement orders under  
18 this division; and

19 (2) any potential conflicts of interest by members of such a board  
20 or body or the head of an executive agency with similar powers be ade-  
21 quately disclosed.

22 (b) REQUIREMENTS RESPECTING CONFLICTS OF INTEREST.—A State  
23 may adopt any requirements respecting conflicts of interest for boards or  
24 bodies or heads of executive agencies described in subsection (a), or any  
25 other entities, that are more stringent than the requirements of paragraphs  
26 (1) and (2) of subsection (a), and the Administrator shall approve any such  
27 more stringent requirements submitted as part of an implementation plan.

### 28 **§ 211128. Solid waste combustion**

29 (a) DEFINITIONS.—In this section:

30 (1) EXISTING SOLID WASTE INCINERATION UNIT.—The term “exist-  
31 ing solid waste incineration unit” means a solid waste unit that is not  
32 a new solid waste incineration unit or modified solid waste incineration  
33 unit.

34 (2) EXISTING UNIT.—The term “existing unit” means an existing  
35 solid waste incineration unit.

36 (3) MEDICAL WASTE.—The term “medical waste” has the meaning  
37 established by the Administrator pursuant to the Solid Waste Disposal  
38 Act (42 U.S.C. 6901 et seq.).

39 (4) MODIFIED SOLID WASTE INCINERATION UNIT.—The term “modi-  
40 fied solid waste incineration unit” means a solid waste incineration unit

1 at which modifications have occurred after the effective date of a stand-  
2 ard under subsection (b) if—

3 (A) the cumulative cost of the modifications, over the life of the  
4 unit, exceed 50 percent of the original cost of construction and in-  
5 stallation of the unit (not including the cost of any land purchased  
6 in connection with the construction or installation) updated to cur-  
7 rent costs; or

8 (B) the modification is a physical change in or change in the  
9 method of operation of the unit that increases the amount of any  
10 air pollutant emitted by the unit for which standards have been  
11 established under this section or section 211111 of this title.

12 (5) MUNICIPAL WASTE.—

13 (A) IN GENERAL.—The term “municipal waste” means refuse  
14 (and refuse-derived fuel) collected from the general public and  
15 from residential, commercial, institutional, and industrial sources  
16 consisting of paper, wood, yard waste, food waste, plastic, leather,  
17 rubber, and other combustible material and noncombustible mate-  
18 rial such as metal, glass, and rock.

19 (B) EXCLUSIONS.—The term “municipal waste” does not in-  
20 clude industrial process waste or medical waste that is segregated  
21 from other waste described in subparagraph (A).

22 (C) INCINERATION UNITS.—An incineration unit shall not be  
23 considered to be combusting municipal waste for purposes of this  
24 section if the incineration unit combusts a fuel feed stream 30 per-  
25 cent or less of the weight of which is comprised, in aggregate, of  
26 municipal waste.

27 (6) NEW SOLID WASTE INCINERATION UNIT.—The term “new solid  
28 waste incineration unit”, with respect to any requirement that the Ad-  
29 ministrator proposes under this section establishing an emission stand-  
30 ard or other requirement that would be applicable to the unit or a  
31 modified solid waste incineration unit, means a solid waste incineration  
32 unit the construction of which is commenced after the date on which  
33 the Administrator proposes the requirement.

34 (7) NEW UNIT.—The term “new unit” means a new solid waste in-  
35 cineration unit.

36 (8) SOLID WASTE.—The term “solid waste” has the meaning estab-  
37 lished by the Administrator pursuant to the Solid Waste Disposal Act  
38 (42 U.S.C. 6901 et seq.).

39 (9) SOLID WASTE INCINERATION UNIT.—

40 (A) IN GENERAL.—The term “solid waste incineration unit”  
41 means a distinct operating unit of any facility that combusts any

1 solid waste material from commercial or industrial establishments  
2 or the general public (including single and multiple residences, ho-  
3 tels, and motels).

4 (B) EXCLUSIONS.—The term “solid waste incineration unit”  
5 does not include—

6 (i) an incinerator or other unit required to have a permit  
7 under section 3005 of the Solid Waste Disposal Act (42  
8 U.S.C. 6925);

9 (ii) a materials recovery facility (including a primary or  
10 secondary smelter) that combusts waste for the primary pur-  
11 pose of recovering metal;

12 (iii) a qualifying small power production facility (as defined  
13 in section 3(17)(C) of the Federal Power Act (16 U.S.C.  
14 796(17)(C)) or qualifying cogeneration facility (as defined in  
15 section 3(18)(B) of the Federal Power Act (16 U.S.C.  
16 796(18)(B)) that burns homogeneous waste (such as a unit  
17 that burns tires or used oil, but not including refuse-derived  
18 fuel) for the production of electric energy or in the case of  
19 a qualifying cogeneration facility that burns homogeneous  
20 waste for the production of electric energy and steam or  
21 forms of useful energy (such as heat) that are used for indus-  
22 trial, commercial, heating or cooling purposes; or

23 (iv) an air curtain incinerator, if the air curtain incinerator  
24 burns only wood waste, yard waste, and clean lumber and  
25 complies with opacity limitations established by the Adminis-  
26 trator by regulation.

27 (10) UNIT.—The term “unit” means a solid waste incineration unit.

28 (b) NEW SOURCE PERFORMANCE STANDARDS.—

29 (1) IN GENERAL.—The Administrator shall establish performance  
30 standards and other requirements pursuant to this section and section  
31 211111 of this title for each category of solid waste incineration units.  
32 The standards shall include emission limitations and other require-  
33 ments applicable to new units and guidelines (under section 211111(d)  
34 of this title and this section) and other requirements applicable to ex-  
35 isting units.

36 (2) EMISSION STANDARD.—

37 (A) MAXIMUM DEGREE OF REDUCTION IN EMISSIONS.—Stand-  
38 ards applicable to solid waste incineration units promulgated  
39 under this section and section 211111 of this title shall reflect the  
40 maximum degree of reduction in emissions of air pollutants listed  
41 under paragraph (4) that the Administrator, taking into consider-

1           ation the cost of achieving such emission reduction, and any non-  
2           air-quality health and environmental impacts and energy require-  
3           ments, determines is achievable for new units or existing units in  
4           each category.

5           (B) CLASSES, TYPES, AND SIZES OF UNITS.—The Administrator  
6           may distinguish among classes, types (including mass-burn,  
7           refuse-derived fuel, modular, and other types of units), and sizes  
8           of units within a category in establishing the standards.

9           (C) STRINGENCY.—The degree of reduction in emissions that is  
10          considered achievable for new units in a category shall not be less  
11          stringent than the emission control that is achieved in practice by  
12          the best controlled similar unit, as determined by the Adminis-  
13          trator. Emission standards for existing units in a category may be  
14          less stringent than standards for new units in the same category  
15          but shall not be less stringent than the average emission limitation  
16          achieved by the best performing 12 percent of units in the cat-  
17          egory (excluding units that first met lowest achievable emission  
18          rates 18 months before the date on which the emission standards  
19          are proposed or 30 months before the date on which the emission  
20          standards are promulgated, whichever is later).

21          (3) CONTROL METHODS AND TECHNOLOGIES.—Standards under this  
22          section and section 211111 of this title applicable to solid waste incin-  
23          eration units shall—

24                (A) be based on methods and technologies for removal or de-  
25                struction of pollutants before, during, or after combustion; and

26                (B) incorporate for new units siting requirements that minimize,  
27                on a site-specific basis, to the maximum extent practicable, poten-  
28                tial risks to public health or the environment.

29          (4) NUMERICAL EMISSION LIMITATIONS.—

30                (A) IN GENERAL.—The performance standards promulgated  
31                under this section and section 211111 of this title and applicable  
32                to solid waste incineration units shall specify numerical emission  
33                limitations for the following:

34                    (i) particulate matter (total and fine);

35                    (ii) opacity (as appropriate);

36                    (iii) sulfur dioxide;

37                    (iv) hydrogen chloride;

38                    (v) nitrogen oxides;

39                    (vi) carbon monoxide;

40                    (vii) lead;

41                    (viii) cadmium;

1 (ix) mercury; and

2 (x) dioxins and dibenzofurans.

3 (B) SURROGATE SUBSTANCES.—The Administrator may pro-  
4 mulgate numerical emission limitations or provide for the monitor-  
5 ing of postcombustion concentrations of surrogate substances, pa-  
6 rameters, or periods of residence time in excess of stated tempera-  
7 tures with respect to pollutants other than those listed in this  
8 paragraph.

9 (5) REVIEW AND REVISION.—Not later than 5 years after the initial  
10 promulgation of any performance standards and other requirements  
11 under this section and section 211111 of this title applicable to a cat-  
12 egory of units, and at 5 year intervals thereafter, the Administrator  
13 shall review, and in accordance with this section and section 211111  
14 of this title, revise the standards and requirements.

15 (c) EXISTING UNITS.—

16 (1) GUIDELINES.—Performance standards under this section and  
17 section 211111 of this title for units shall include guidelines promul-  
18 gated pursuant to this section and section 211111(d) of this title appli-  
19 cable to existing units. The guidelines shall include, as provided in this  
20 section, each of the elements required by subsections (b) (notwithstand-  
21 ing any restriction in section 211111(d) of this title regarding issuance  
22 of such limitations), (d), (e), (f), and (h)(3).

23 (2) STATE PLANS.—Not later than 1 year after the Administrator  
24 promulgates guidelines for a category of units, a State in which units  
25 in the category are operating shall submit to the Administrator a plan  
26 to implement and enforce the guidelines with respect to that category  
27 of units. The State plan shall be at least as protective as the guidelines  
28 promulgated by the Administrator and shall provide that each unit sub-  
29 ject to the guidelines shall be in compliance with all requirements of  
30 this section not later than 3 years after the State plan is approved by  
31 the Administrator but not later than 5 years after the guidelines are  
32 promulgated. The Administrator shall approve or disapprove any State  
33 plan within 180 days of the submission, and if a plan is disapproved,  
34 the Administrator shall state the reasons for disapproval in writing. A  
35 State may modify and resubmit a plan that has been disapproved by  
36 the Administrator.

37 (3) FEDERAL PLAN.—The Administrator shall develop, implement,  
38 and enforce a plan for existing units within any category located in any  
39 State that has not submitted an approvable plan under this subsection  
40 with respect to units in that category within 2 years after the date on  
41 which the Administrator promulgated the relevant guidelines. The plan

1 shall ensure that each unit subject to the plan is in compliance with  
2 all provisions of the guidelines not later than 5 years after the date  
3 on which the relevant guidelines are promulgated.

4 (d) MONITORING.—

5 (1) IN GENERAL.—The Administrator shall, as part of each perform-  
6 ance standard promulgated pursuant to subsection (b) and section  
7 211111 of this title, promulgate regulations requiring the owner or op-  
8 erator of each solid waste incineration unit—

9 (A) to monitor emissions from the unit at the point at which  
10 the emissions are emitted into the ambient air (or within the  
11 stack, combustion chamber, or pollution control equipment, as ap-  
12 propriate) and at such other points as are necessary to protect  
13 public health and the environment;

14 (B) to monitor such other parameters relating to the operation  
15 of the unit and its pollution control technology as the Adminis-  
16 trator determines are appropriate; and

17 (C) to report the results of the monitoring.

18 (2) CONTENTS.—The regulations shall—

19 (A) contain provisions regarding the frequency of monitoring,  
20 test methods, and procedures validated on solid waste incineration  
21 units, and the form and frequency of reports containing the results  
22 of monitoring;

23 (B) require that any monitoring reports or test results indicat-  
24 ing an exceedance of any standard under this section be reported  
25 separately and in a manner that facilitates review for purposes of  
26 enforcement actions; and

27 (C) require that copies of the results of the monitoring be main-  
28 tained on file at the facility concerned and that copies be made  
29 available for inspection and copying by members of the public dur-  
30 ing business hours.

31 (e) OPERATOR TRAINING.—The Administrator shall develop and promote  
32 a model State program for the training and certification of unit operators  
33 and high-capacity fossil fuel-fired plant operators. The Administrator may  
34 authorize any State to implement a model program for the training of unit  
35 operators and high-capacity fossil fuel-fired plant operators if the State  
36 adopts a program that is at least as effective as the model program devel-  
37 oped by the Administrator. Beginning on the date 36 months after the date  
38 on which performance standards and guidelines are promulgated under sub-  
39 section (b) and section 211111 of this title for any category of units, it shall  
40 be unlawful to operate any unit in the category unless each person with con-  
41 trol over processes affecting emissions from the unit has satisfactorily com-

1 pleted a training program meeting the requirements established by the Ad-  
2 ministrator under this subsection.

3 (f) PERMITS.—

4 (1) IN GENERAL.—Beginning on the later of—

5 (A) the date that is 36 months after the promulgation of a per-  
6 formance standard under subsection (b) and section 211111 of  
7 this title applicable to a category of units; or

8 (B) the effective date of a permit program under subdivision 6  
9 in the State in which the unit is located;

10 each unit in the category shall operate pursuant to a permit issued  
11 under this subsection and subdivision 6.

12 (2) RENEWAL.—A permit required by this subsection may be re-  
13 newed under subdivision 6.

14 (3) DURATION.—Notwithstanding any other provision of this divi-  
15 sion, a permit for a unit combusting municipal waste issued under this  
16 division shall be issued for a period of up to 12 years and shall be re-  
17 viewed every 5 years after date of issuance or reissuance. A permit  
18 shall continue in effect after the date of issuance until the date of ter-  
19 mination, unless the Administrator or State determines that the unit  
20 is not in compliance with all standards and conditions contained in the  
21 permit. Such a determination shall be made at regular intervals of not  
22 more than 5 years during the term of the permit, after public comment  
23 and public hearing.

24 (4) LIMITATION.—No permit for a unit may be issued under this di-  
25 vision by an agency, instrumentality, or person that is also responsible,  
26 in whole or part, for the design and construction or operation of the  
27 unit.

28 (5) COMPLIANCE WITH EMISSION LIMITATIONS OR IMPLEMENTATION  
29 OF OTHER MEASURES.—

30 (A) IN GENERAL.—Notwithstanding any other provision of this  
31 subsection, the Administrator or the State shall require the owner  
32 or operator of any unit to comply with emission limitations or im-  
33 plement any other measures, if the Administrator or the State de-  
34 termines that emissions in the absence of such limitations or  
35 measures may reasonably be anticipated to endanger public health  
36 or the environment.

37 (B) DISCRETIONARY DECISION.—The Administrator's deter-  
38 mination under subparagraph (A) is a discretionary decision.

39 (g) EFFECTIVE DATE AND ENFORCEMENT.—

40 (1) NEW UNITS.—Performance standards and other requirements  
41 promulgated pursuant to this section and section 211111 of this title

1 and applicable to new solid waste incineration units shall be effective  
2 as of the date that is 6 months after the date of promulgation.

3 (2) EXISTING UNITS.—Performance standards and other require-  
4 ments promulgated pursuant to this section and section 211111 of this  
5 title and applicable to existing units shall be effective as expeditiously  
6 as practicable after approval of a State plan under subsection (c)(2)  
7 (or promulgation of a plan by the Administrator under subsection  
8 (c)(3)) but in no event later than 3 years after the State plan is ap-  
9 proved or 5 years after the date on which the standards or require-  
10 ments are promulgated, whichever is earlier.

11 (3) PROHIBITION.—It shall be unlawful for any owner or operator  
12 of any solid waste incineration unit to which a performance standard,  
13 emission limitation, or other requirement promulgated pursuant to this  
14 section and section 211111 of this title applies to operate the unit in  
15 violation of the performance standard, emission limitation, or require-  
16 ment or for any other person to violate an applicable requirement of  
17 this section.

18 (4) COORDINATION WITH OTHER AUTHORITIES.—For purposes of  
19 sections 203102, 203103, 203104, 211111(j), 211113, 211114,  
20 211116, and 211119 of this title and other provisions for the enforce-  
21 ment of this division, each performance standard, emission limitation,  
22 or other requirement established pursuant to this section by the Ad-  
23 ministrator or a State or local government shall be treated in the same  
24 manner as a standard of performance under section 211111 of this  
25 title that is an emission limitation.

26 (h) OTHER AUTHORITY.—

27 (1) STATE AUTHORITY.—Nothing in this section shall preclude or  
28 deny the right of any State or political subdivision thereof to adopt or  
29 enforce any regulation, requirement, limitation, or standard relating to  
30 solid waste incineration units that is more stringent than a regulation,  
31 requirement, limitation, or standard in effect under this section or  
32 under any other provision of this division.

33 (2) OTHER AUTHORITY UNDER THIS DIVISION.—Nothing in this sec-  
34 tion shall diminish the authority of the Administrator or a State to es-  
35 tablish any other requirements applicable to solid waste incineration  
36 units under any other authority of law, including the authority to es-  
37 tablish for any air pollutant a NAAQS, except that no solid waste in-  
38 cineration unit subject to performance standards under this section and  
39 section 211111 of this title shall be subject to standards under section  
40 211112(d) of this title.

41 (3) RESIDUAL RISK.—



1 (A) IN GENERAL.—The Administrator shall promulgate stand-  
2 ards under section 211112(f) of this title for a category of solid  
3 waste incineration units, if promulgation of such standards is re-  
4 quired under section 211112(f) of this title.

5 (B) STANDARDS.—For purposes of subparagraph (A) only—

6 (i) the performance standards under subsection (b) and  
7 section 211111 of this title applicable to a category of units  
8 shall be deemed to be standards under section 211112(d)(2)  
9 of this title; and

10 (ii) the Administrator shall consider and regulate, if re-  
11 quired, the pollutants listed under subsection (b)(4) and no  
12 others.

13 (4) ACID RAIN.—A solid waste incineration unit shall not be a utility  
14 unit as defined in subdivision 5 if more than 80 percent of its annual  
15 average fuel consumption measured on a British thermal unit basis,  
16 during a period or periods to be determined by the Administrator, is  
17 from a fuel (including any waste burned as a fuel) other than a fossil  
18 fuel.

19 (5) REQUIREMENTS OF CHAPTERS 213 AND 215.—No requirement of  
20 an applicable implementation plan under section 213107 or  
21 215102(e)(5) of this title may be used to weaken the standards in ef-  
22 fect under this section.

### 23 **§ 211129. Emission factors**

24 (a) DEFINITION OF EMISSION FACTOR.—In this section, the term “emis-  
25 sion factor” means a method by which to estimate the quantity of emissions  
26 of an air pollutant for purposes of this division.

27 (b) REVIEW AND REVISION OF EMISSION FACTORS.—At least every 3  
28 years, the Administrator shall review and, if necessary, revise, the emission  
29 factors for carbon monoxide, volatile organic compounds, and nitrogen ox-  
30 ides from sources of those air pollutants (including area sources and mobile  
31 sources).

32 (c) ADDITIONAL EMISSION FACTORS.—The Administrator shall establish  
33 emission factors for sources for which no emission factors have previously  
34 been established by the Administrator.

35 (d) EMISSIONS ESTIMATING TECHNIQUES.—The Administrator shall per-  
36 mit any person to demonstrate improved emissions estimating techniques,  
37 and following approval of such techniques, the Administrator shall authorize  
38 the use of the techniques. Any such technique may be approved only after  
39 appropriate public participation.

### 40 **§ 211130. Land use authority**

41 Nothing in this division—

- 1 (1) constitutes an infringement on the authority of counties and cit-  
 2 ies to plan or control land use; or  
 3 (2) provides or transfers authority over land use.

## 4 **Chapter 213—Prevention of Significant** 5 **Deterioration of Air Quality**

### **Subchapter I—General Provisions**

Sec.

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### **Subchapter II—Visibility Protection**

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## 6 **Subchapter I—General Provisions**

### 7 **§ 213101. Purposes**

8 The purposes of this chapter are—

- 9 (1) to protect public health and welfare from any actual or potential  
 10 adverse effect that in the Administrator’s judgment may reasonably be  
 11 anticipated to occur from air pollution or from exposures to pollutants  
 12 in other media, which pollutants originate as emissions to the ambient  
 13 air, notwithstanding attainment and maintenance of all NAAQSEs;  
 14 (2) to preserve, protect, and enhance the air quality in national  
 15 parks, national wilderness areas, national monuments, national sea-  
 16 shores, and other areas of special national or regional natural, rec-  
 17 recreational, scenic, or historic value;  
 18 (3) to ensure that economic growth will occur in a manner consistent  
 19 with the preservation of existing clean air resources;  
 20 (4) to ensure that emissions from any source in any State will not  
 21 interfere with any portion of the applicable implementation plan to pre-  
 22 vent significant deterioration of air quality for any other State; and  
 23 (5) to ensure that any decision to permit increased air pollution in  
 24 any area to which this chapter applies is made only after careful eval-  
 25 uation of all the consequences of such a decision and after adequate  
 26 procedural opportunities for informed public participation in the deci-  
 27 sionmaking process.

### 28 **§ 213102. Definitions**

29 In this chapter:

30 (1) **BASELINE CONCENTRATION.**—

31 (A) **IN GENERAL.**—The term “baseline concentration” means,  
 32 with respect to a pollutant, the ambient concentration levels that

1           exist at the time of the 1st application for a permit in an area  
2           subject to this chapter, based on air quality data available in EPA  
3           or a State air pollution control agency and on such monitoring  
4           data as the permit applicant is required to submit.

5           (B) PROJECTED EMISSIONS TAKEN INTO ACCOUNT.—Ambient  
6           concentration levels described in subparagraph (A) shall take into  
7           account all projected emissions in, or that may affect, the area  
8           from any major emitting facility on which construction commenced  
9           prior to January 6, 1975, but that had not begun operation by  
10          the date of the baseline air quality concentration determination.

11          (C) SULFUR OXIDES; PARTICULATE MATTER.—Emissions of sul-  
12          fur oxides and particulate matter from any major emitting facility  
13          on which construction commences after January 6, 1975, shall not  
14          be included in the baseline and shall be counted against the maxi-  
15          mum allowable increases in pollutant concentrations established  
16          under this chapter.

17          (2) BEST AVAILABLE CONTROL TECHNOLOGY.—The term “best  
18          available control technology” means an emission limitation that—

19                (A) is based on the maximum degree of reduction of each pollut-  
20                ant subject to regulation under this division emitted from or that  
21                results from any major emitting facility, which the permitting au-  
22                thority, on a case-by-case basis, taking into account energy, envi-  
23                ronmental, and economic impacts and other costs, determines is  
24                achievable for the major emitting facility through application of  
25                production processes and available methods, systems, and tech-  
26                niques, including fuel cleaning, clean fuels, or treatment or innova-  
27                tive fuel combustion techniques for control of each such pollutant;

28                (B) does not result in emissions of any pollutants that will ex-  
29                ceed the emissions allowed by any applicable standard established  
30                pursuant to section 211111 or 211112 of this title; and

31                (C) does not allow emissions from any source utilizing clean  
32                fuels, or any other means, to comply with this paragraph to in-  
33                crease above levels that would have been required under section  
34                169(3) of the Clean Air Act (42 U.S.C. 7479(3)) as in effect be-  
35                fore November 15, 1990.

36          (3) COMMENCE.—The term “commence”, as applied to construction  
37          of a major emitting facility, means to—

38                (A) obtain all necessary preconstruction approvals or permits re-  
39                quired by Federal, State, or local air pollution emissions and air  
40                quality laws (including regulations); and

1 (B)(i) begin, or cause to begin, a continuous program of phys-  
2 ical on-site construction of the major emitting facility; or

3 (ii) enter into a binding agreement or contractual obligation,  
4 which cannot be canceled or modified without substantial loss to  
5 the owner or operator, to undertake a program of construction of  
6 the major emitting facility to be completed within a reasonable  
7 time.

8 (4) CONSTRUCTION.—The term “construction”, when used in con-  
9 nection with any source or facility, includes the modification (as de-  
10 fined in section 211111(a) of this title) of the source or facility.

11 (5) MAJOR EMITTING FACILITY.—

12 (A) IN GENERAL.—The term “major emitting facility” means—

13 (i) any of the stationary sources of air pollutants identified  
14 in subparagraph (B) that emit, or have the potential to emit,  
15 100 tons per year or more of any air pollutant from the types  
16 of stationary sources identified in subparagraph (B); and

17 (ii) any other source with the potential to emit 250 tons  
18 per year or more of any air pollutant.

19 (B) IDENTIFIED STATIONARY SOURCES.—The stationary  
20 sources referred to in subparagraph (A)(i) are—

21 (i) fossil fuel-fired steam electric plants of more than  
22 250,000,000 British thermal units per hour heat input;

23 (ii) coal cleaning plants (thermal dryers);

24 (iii) kraft pulp mills;

25 (iv) Portland cement plants;

26 (v) primary zinc smelters;

27 (vi) iron and steel mill plants;

28 (vii) primary aluminum ore reduction plants;

29 (viii) primary copper smelters;

30 (ix) municipal incinerators capable of charging more than  
31 50 tons of refuse per day;

32 (x) hydrofluoric, sulfuric, and nitric acid plants;

33 (xi) petroleum refineries;

34 (xii) lime plants;

35 (xiii) phosphate rock processing plants;

36 (xiv) coke oven batteries;

37 (xv) sulfur recovery plants;

38 (xvi) carbon black plants (furnace process);

39 (xvii) primary lead smelters;

40 (xviii) fuel conversion plants;

41 (xix) sintering plants;

- 1 (xx) secondary metal production facilities;  
2 (xxi) chemical process plants;  
3 (xxii) fossil-fuel boilers of more than 250,000,000 British  
4 thermal units per hour heat input;  
5 (xxiii) petroleum storage and transfer facilities with a ca-  
6 pacity exceeding 300,000 barrels;  
7 (xxiv) taconite ore processing facilities;  
8 (xxv) glass fiber processing plants; and  
9 (xxvi) charcoal production facilities.

10 (C) EXCLUSIONS.—The term “major emitting facility” does not  
11 include a new or modified facility that is a nonprofit health or  
12 education institution that has been exempted by a State.

13 (6) NECESSARY PRECONSTRUCTION APPROVALS OR PERMITS.—The  
14 term “necessary preconstruction approvals or permits” means the per-  
15 mits or approvals required by a permitting authority as a precondition  
16 to undertaking any activity described in paragraph (3)(B).

### 17 **§ 213103. Plan requirements**

18 In accordance with the policy of section 211101(b)(1) of this title, each  
19 applicable implementation plan shall contain emission limitations and such  
20 other measures as may be necessary, as determined under regulations pro-  
21 mulgated under this chapter, to prevent significant deterioration of air qual-  
22 ity in each region (or portion thereof) designated pursuant to section  
23 211107 of this title as attainment or unclassifiable.

### 24 **§ 213104. Initial classifications**

25 (a) AREAS DESIGNATED AS CLASS I.—

26 (1) AREAS THAT MAY NOT BE REDESIGNATED.—All—

- 27 (A) international parks;  
28 (B) national wilderness areas that exceed 5,000 acres;  
29 (C) national memorial parks that exceed 5,000 acres; and  
30 (D) national parks that exceed 6,000 acres;

31 that were in existence on August 7, 1977, shall be class I areas and  
32 may not be redesignated.

33 (2) AREAS THAT MAY BE REDESIGNATED.—All areas that were re-  
34 designating as class I under regulations promulgated before August 7,  
35 1977, shall be class I areas that may be redesignated as provided in  
36 this chapter.

37 (3) BOUNDARY CHANGES.—The extent of the areas designated as  
38 class I under this section shall conform to any changes in the bound-  
39 aries of those areas that occur.

40 (b) AREAS DESIGNATED AS CLASS II.—All areas in a State designated  
41 pursuant to section 211107(d) of this title as attainment or unclassifiable

1 that are not established as class I under subsection (a) shall be class II  
 2 areas unless redesignated under section 213106 of this title.

3 **§ 213105. Increments and ceilings**

4 (a) PARTICULATE MATTER AND SULFUR OXIDE; REQUIREMENT THAT  
 5 MAXIMUM ALLOWABLE INCREASES AND MAXIMUM ALLOWABLE CON-  
 6 CENTRATIONS NOT BE EXCEEDED.—In the case of particulate matter and  
 7 sulfur oxide, an applicable implementation plan shall contain measures en-  
 8 suring that maximum allowable increases over baseline concentrations of,  
 9 and maximum allowable concentrations of, particulate matter and sulfur  
 10 oxide shall not be exceeded. In the case of any maximum allowable increase  
 11 (except an allowable increase specified under section  
 12 213107(d)(2)(C)(iii)(II) of this title) for a pollutant based on concentrations  
 13 permitted under NAAQSEs for any period other than an annual period, reg-  
 14 ulations shall permit such maximum allowable increase to be exceeded dur-  
 15 ing 1 such period per year.

16 (b) MAXIMUM ALLOWABLE INCREASES IN CONCENTRATIONS OVER BASE-  
 17 LINE CONCENTRATIONS.—

18 (1) CLASS I AREAS.—For any class I area, the maximum allowable  
 19 increase in concentrations of particulate matter and sulfur oxide over  
 20 the baseline concentration of those pollutants shall not exceed the fol-  
 21 lowing amounts:

MAXIMUM ALLOWABLE INCREASE

Pollutant	Micrograms per cubic meter
Particulate matter:	
Annual geometric mean .....	5
24-hour maximum .....	10
Sulfur dioxide:	
Annual arithmetic mean .....	2
24-hour maximum .....	5
3-hour maximum .....	25

22 (2) CLASS II AREAS.—For any class II area, the maximum allowable  
 23 increase in concentrations of particulate matter and sulfur oxide over  
 24 the baseline concentration of those pollutants shall not exceed the fol-  
 25 lowing amounts:

MAXIMUM ALLOWABLE INCREASE

Pollutant	Micrograms per cubic meter
Particulate matter:	
Annual geometric mean .....	19
24-hour maximum .....	37
Sulfur dioxide:	
Annual arithmetic mean .....	20
24-hour maximum .....	91
3-hour maximum .....	512

26 (3) CLASS III AREAS.—For any class III area, the maximum allow-  
 27 able increase in concentrations of particulate matter and sulfur oxide  
 28 over the baseline concentration of those pollutants shall not exceed the  
 29 following amounts:

## MAXIMUM ALLOWABLE INCREASE

Pollutant:	Micrograms per cubic meter
Particulate matter:	
Annual geometric mean .....	37
24-hour maximum .....	75
Sulfur dioxide:	
Annual arithmetic mean .....	40
24-hour maximum .....	182
3-hour maximum .....	700

1           (4) ANY AREA TO WHICH THIS CHAPTER APPLIES.—The maximum  
2           allowable concentration of any air pollutant in any area to which this  
3           chapter applies shall not exceed a concentration for that pollutant for  
4           each period of exposure equal to—

5                   (A) the concentration permitted under the secondary NAAQS;

6                   or

7                   (B) the concentration permitted under the primary NAAQS;

8           whichever concentration is lower for the pollutant for that period of ex-  
9           posure.

10          (c) ORDERS OR REGULATIONS FOR DETERMINING COMPLIANCE WITH  
11          MAXIMUM ALLOWABLE INCREASES IN AMBIENT CONCENTRATIONS OF AIR  
12          POLLUTANTS.—

13               (1) CONCENTRATIONS OF CERTAIN POLLUTANTS NOT TAKEN INTO  
14               ACCOUNT.—In the case of any State that has a plan approved by the  
15               Administrator for purposes of carrying out this chapter, the Governor  
16               of the State may, after notice and opportunity for public hearing, issue  
17               orders or promulgate regulations providing that for purposes of deter-  
18               mining compliance with the maximum allowable increases in ambient  
19               concentrations of an air pollutant, the following concentrations of the  
20               pollutant shall not be taken into account:

21                   (A) Concentrations of the pollutant attributable to the increase  
22                   in emissions from stationary sources that have converted from the  
23                   use of petroleum products, or natural gas, or both, by reason of  
24                   an order that is in effect under subsections (a) and (b) of section  
25                   2 of the Energy Supply and Environmental Coordination Act of  
26                   1974 (15 U.S.C. 792) (or any subsequent legislation that super-  
27                   sedeses those subsections) over the emissions from those stationary  
28                   sources before the effective date of the order.

29                   (B) Concentrations of the pollutant attributable to the increase  
30                   in emissions from stationary sources that have converted from  
31                   using natural gas by reason of a natural gas curtailment pursuant  
32                   to a natural gas curtailment plan in effect pursuant to the Federal  
33                   Power Act (16 U.S.C. 791a et seq.) over the emissions from those  
34                   stationary sources before the effective date of the plan.

1 (C) Concentrations of particulate matter attributable to the in-  
2 crease in emissions from construction or other temporary emis-  
3 sion-related activities.

4 (D) The increase in concentrations attributable to new sources  
5 outside the United States over the concentrations attributable to  
6 existing sources that are included in the baseline concentration.

7 (2) TIME PERIOD.—No action taken with respect to a source under  
8 subparagraph (A) or (B) of paragraph (1) shall apply more than 5  
9 years after the effective date of an order described in paragraph (1)(A)  
10 or the plan described to in paragraph (1)(B), whichever is applicable.  
11 If both such an order and such a plan are applicable, no such action  
12 shall apply more than 5 years after the later of the effective dates.

13 (3) SUBMISSION TO THE ADMINISTRATOR.—No action under this  
14 subsection shall take effect unless the Governor submits the order or  
15 regulation providing for an exclusion to the Administrator and the Ad-  
16 ministrator determines that the order or regulation is in compliance  
17 with this subsection.

18 **§ 213106. Area redesignation**

19 (a) AUTHORITY OF STATES TO REDESIGNATE AREAS.—

20 (1) CLASS I.—Except as otherwise provided under subsection (c), a  
21 State may redesignate such areas as the State considers appropriate  
22 as class I areas.

23 (2) CLASS I OR CLASS II.—

24 (A) IN GENERAL.—The following areas may be redesignated  
25 only as class I or class II:

26 (i) An area that exceeds 10,000 acres and is a national  
27 monument, national primitive area, national preserve, na-  
28 tional recreation area, national wild and scenic river, national  
29 wildlife refuge, national lakeshore, or national seashore.

30 (ii) A national park or national wilderness area established  
31 after August 7, 1977, that exceeds 10,000 acres.

32 (B) EXTENT OF AREAS.—The extent of the areas described in  
33 clauses (i) and (ii) of subparagraph (A) shall conform to any  
34 changes in the boundaries of those areas that occur.

35 (3) CLASS III.—

36 (A) IN GENERAL.—Any area (other than an area described in  
37 clause (i) or (ii) of paragraph (2)(A) or an area established as  
38 class I under section 213104(a)(1) of this title) may be redesign-  
39 ated by a State as class III if—

40 (i)(I) the redesignation has been specifically approved by  
41 the Governor of the State, after consultation with the appro-



1           priate committees of the legislature if it is in session or with  
2           the leadership of the legislature if it is not in session (unless  
3           State law provides that such redesignation must be specifi-  
4           cally approved by State legislation); and

5           (II) general purpose units of local government representing  
6           a majority of the residents of the area to be redesignated  
7           enact legislation (including for such units of local government  
8           resolutions where appropriate) concurring in the State's re-  
9           designation;

10          (ii) the redesignation will not cause, or contribute to, con-  
11          centrations of any air pollutant that exceed any maximum al-  
12          lowable increase or maximum allowable concentration per-  
13          mitted under the classification of any other area; and

14          (iii) the redesignation otherwise meets the requirements of  
15          this chapter.

16          (B) INDIAN TRIBES.—Subparagraph (A)(i)(I) does not apply to  
17          area redesignations by an Indian tribe.

18       (b) PROCEDURE.—

19           (1) NOTICE AND HEARING; NOTICE TO FEDERAL LAND MANAGER;  
20           WRITTEN COMMENTS AND RECOMMENDATIONS; REGULATIONS; DIS-  
21           APPROVAL OF REDESIGNATION.—

22           (A) NOTICE OF HEARING.—Prior to redesignation of any area  
23           under this chapter, notice shall be afforded and public hearings  
24           shall be conducted in areas proposed to be redesignated and in  
25           areas that may be affected by the proposed redesignation. Prior  
26           to any such public hearing, a satisfactory description and analysis  
27           of the health, environmental, economic, social, and energy effects  
28           of the proposed redesignation shall be prepared and made avail-  
29           able for public inspection, and prior to any such redesignation, the  
30           description and analysis of those effects shall be reviewed and ex-  
31           amined by the redesignating authorities.

32           (B) FEDERAL LAND MANAGERS.—Prior to the issuance of no-  
33           tice under subparagraph (A) respecting the redesignation of any  
34           area under this subsection, if the area includes any Federal land,  
35           the State shall provide written notice to the appropriate Federal  
36           land manager and afford adequate opportunity (but not in excess  
37           of 60 days) to confer with the State respecting the intended notice  
38           of redesignation and to submit written comments and recom-  
39           mendations with respect to the intended notice of redesignation.  
40           In redesignating any area under this section with respect to which  
41           a Federal land manager has submitted written comments and rec-

1           ommendations, the State shall publish a list of any inconsistency  
2           between the redesignation and the recommendations and an expla-  
3           nation of the inconsistency (including the reasons for making the  
4           redesignation against the recommendation of the Federal land  
5           manager).

6           (C) REGULATIONS.—The Administrator shall promulgate regu-  
7           lations to ensure, insofar as practicable, that prior to any public  
8           hearing on redesignation of any area, there shall be available for  
9           public inspection any specific plans for any new or modified major  
10          emitting facility that may be permitted to be constructed and op-  
11          erated only if the area is designated or redesignated as class III.

12          (2) DISAPPROVAL OF REDESIGNATION.—The Administrator may dis-  
13          approve the redesignation of any area only if the Administrator finds,  
14          after notice and opportunity for public hearing, that the redesignation  
15          does not meet the procedural requirements of this section or is incon-  
16          sistent with the requirements of section 213104(a) of this title or of  
17          subsection (a). If any such disapproval occurs, the classification of the  
18          area shall be that which was in effect prior to the redesignation that  
19          was disapproved.

20          (e) INDIAN RESERVATIONS.—Land within the exterior boundaries of a  
21          reservation of a federally recognized Indian tribe may be redesignated only  
22          by the appropriate Indian governing body.

23          (d) RESOLUTION OF DISPUTES BETWEEN STATES AND INDIAN  
24          TRIBES.—

25                (1) NEGOTIATIONS.—If any State affected by the redesignation of an  
26                area by an Indian tribe or any Indian tribe affected by the redesigna-  
27                tion of an area by a State disagrees with the redesignation of any area,  
28                or if a permit is proposed to be issued for any new major emitting fa-  
29                cility proposed for construction in any State that the Governor of an  
30                affected State or governing body of an affected Indian tribe determines  
31                will cause or contribute to a cumulative change in air quality in excess  
32                of that allowed in this subchapter within the affected State or tribal  
33                reservation, the Governor or Indian governing body may request the  
34                Administrator to enter into negotiations with the parties involved to re-  
35                solve the dispute.

36                (2) RECOMMENDATIONS.—If requested by any State or Indian tribe  
37                involved, the Administrator shall make a recommendation to resolve the  
38                dispute and protect the air quality related values of the land involved.

39                (3) FAILURE TO REACH AGREEMENT.—If the parties involved do not  
40                reach agreement, the Administrator shall resolve the dispute and the  
41                Administrator's determination, or the results of agreements reached

1 through other means, shall become part of the applicable plan and shall  
2 be enforceable as part of the plan. In resolving such disputes relating  
3 to area redesignation, the Administrator shall consider the extent to  
4 which the land involved is of sufficient size to allow effective air quality  
5 management or have air quality-related values of such an area.

6 **§ 213107. Preconstruction requirements**

7 (a) MAJOR EMITTING FACILITIES ON WHICH CONSTRUCTION IS COM-  
8 MENCED.—No major emitting facility may be constructed in any area to  
9 which this chapter applies unless—

10 (1) a permit is issued for the proposed major emitting facility in ac-  
11 cordance with this chapter setting forth emission limitations for the  
12 major emitting facility that conform to the requirements of this chap-  
13 ter;

14 (2)(A) the proposed permit is subjected to a review in accordance  
15 with this section;

16 (B) the required analysis is conducted in accordance with regulations  
17 promulgated by the Administrator; and

18 (C) a public hearing is held with opportunity for interested persons  
19 including representatives of the Administrator to appear and submit  
20 written or oral presentations on—

21 (i) the air quality impact of the source;

22 (ii) alternatives thereto;

23 (iii) control technology requirements; and

24 (iv) other appropriate considerations;

25 (3) the owner or operator of the major emitting facility dem-  
26 onstrates, as required pursuant to section 211110(h) of this title, that  
27 emissions from construction or operation of the major emitting facility  
28 will not cause, or contribute to, air pollution in excess of—

29 (A) any maximum allowable increase or maximum allowable  
30 concentration for any pollutant in any area to which this chapter  
31 applies more than 1 time per year;

32 (B) any NAAQS in any air quality control region; or

33 (C) any other applicable emission standard or standard of per-  
34 formance under this division;

35 (4) the proposed major emitting facility is subject to the best avail-  
36 able control technology for each pollutant subject to regulation under  
37 this division emitted from, or that results from, the major emitting fa-  
38 cility;

39 (5) the provisions of subsection (d) with respect to protection of class  
40 I areas are complied with for the major emitting facility;

1 (6) there is an analysis of any air quality impacts projected for the  
2 area as a result of growth associated with the major emitting facility;

3 (7) the person that owns or operates, or proposes to own or operate,  
4 a major emitting facility for which a permit is required under this  
5 chapter agrees to conduct such monitoring as may be necessary to de-  
6 termine the effect that emissions from any such major emitting facility  
7 may have, or is having, on air quality in any area that may be affected  
8 by emissions from the source; and

9 (8) in the case of a source that proposes to construct in a class III  
10 area, emissions from which would cause or contribute to exceeding the  
11 maximum allowable increments applicable in a class II area and where  
12 no standard under section 211111 of this title has been promulgated  
13 subsequent to August 7, 1977, for that source category, the Adminis-  
14 trator has approved the determination of best available technology as  
15 set forth in the permit.

16 (b) EXCEPTION.—The demonstration pertaining to maximum allowable  
17 increases required under subsection (a)(3) shall not apply to maximum al-  
18 lowable increases for class II areas in the case of an expansion or modifica-  
19 tion of a major emitting facility that was in existence on August 7, 1977,  
20 whose allowable emissions of air pollutants, after compliance with subsection  
21 (a)(4), will be less than 50 tons per year and for which the owner or opera-  
22 tor of the major emitting facility demonstrates that emissions of particulate  
23 matter and sulfur oxides will not cause or contribute to ambient air quality  
24 levels in excess of the secondary NAAQS for particulate matter or sulfur  
25 oxides.

26 (c) PERMIT APPLICATIONS.—Any completed permit application under sec-  
27 tion 211110 of this title for a major emitting facility in any area to which  
28 this chapter applies shall be granted or denied not later than 1 year after  
29 the date of filing of the completed application.

30 (d) ACTION TAKEN ON PERMIT APPLICATIONS; NOTICE; ADVERSE IM-  
31 PACT ON AIR QUALITY RELATED VALUES; VARIANCE; EMISSION LIMITA-  
32 TIONS.—

33 (1) TRANSMITTAL OF COPY OF PERMIT APPLICATION TO ADMINIS-  
34 TRATOR; NOTICE OF ACTION.—Each State shall—

35 (A) transmit to the Administrator a copy of each permit appli-  
36 cation relating to a major emitting facility received by the State;  
37 and

38 (B) provide notice to the Administrator of every action related  
39 to the consideration of the permit.

40 (2) FEDERAL LAND MANAGER; FEDERAL OFFICIAL CHARGED WITH  
41 RESPONSIBILITY.—

1 (A) NOTICE.—The Administrator shall provide notice of the  
2 permit application to the Federal land manager and the Federal  
3 official charged with direct responsibility for management of any  
4 land within a class I area that may be affected by emissions from  
5 the proposed major emitting facility.

6 (B) RESPONSIBILITY.—The Federal land manager and the Fed-  
7 eral official charged with direct responsibility for management of  
8 land within a class I area that may be affected by emissions from  
9 the proposed major emitting facility shall have an affirmative re-  
10 sponsibility to protect the air quality-related values (including visi-  
11 bility) of any such land within a class I area and to consider, in  
12 consultation with the Administrator, whether a proposed major  
13 emitting facility will have an adverse impact on those values.

14 (C) CHANGE IN AIR QUALITY; ADVERSE IMPACT ON AIR QUAL-  
15 ITY-RELATED VALUES; NO ADVERSE IMPACT.—

16 (i) CHANGE IN AIR QUALITY.—In any case where the Fed-  
17 eral official charged with direct responsibility for management  
18 of any land within a class I area or the Federal land manager  
19 of the land, the Administrator, or the Governor of an adja-  
20 cent State containing a class I area files a notice alleging that  
21 emissions from a proposed major emitting facility may cause  
22 or contribute to a change in the air quality in the area and  
23 identifying the potential adverse impact of the change, a per-  
24 mit shall not be issued unless the owner or operator of the  
25 major emitting facility demonstrates that emissions of partic-  
26 ulate matter and sulfur dioxide will not cause or contribute  
27 to concentrations that exceed the maximum allowable in-  
28 creases for a class I area.

29 (ii) ADVERSE IMPACT ON THE AIR QUALITY-RELATED VAL-  
30 UES.—In any case where the Federal land manager dem-  
31 onstrates to the satisfaction of the State that the emissions  
32 from the major emitting facility will have an adverse impact  
33 on the air quality-related values (including visibility) of the  
34 land, notwithstanding the fact that the change in air quality  
35 resulting from emissions from the major emitting facility will  
36 not cause or contribute to concentrations that exceed the  
37 maximum allowable increases for a class I area, a permit  
38 shall not be issued.

39 (iii) NO ADVERSE IMPACT ON AIR QUALITY-RELATED VAL-  
40 UES.—

1 (I) IN GENERAL.—In any case where the owner or op-  
 2 erator of the major emitting facility demonstrates to the  
 3 satisfaction of the Federal land manager, and the Fed-  
 4 eral land manager so certifies, that the emissions from  
 5 the major emitting facility will have no adverse impact  
 6 on the air quality-related values of the land (including  
 7 visibility), notwithstanding the fact that the change in  
 8 air quality resulting from emissions from the major emit-  
 9 ting facility will cause or contribute to concentrations  
 10 that exceed the maximum allowable increases for class I  
 11 areas, the State may issue a permit.

12 (II) COMPLIANCE WITH EMISSION LIMITATIONS.—In  
 13 the case of a permit issued pursuant to subelause (I), the  
 14 major emitting facility shall comply with such emission  
 15 limitations under the permit as may be necessary to en-  
 16 sure that emissions of particulate matter and sulfur ox-  
 17 ides from the major emitting facility will not cause or  
 18 contribute to concentrations of particulate matter or sul-  
 19 fur oxides that exceed the following maximum allowable  
 20 increases over the baseline concentration for particulate  
 21 matter and sulfur oxides:

MAXIMUM ALLOWABLE INCREASE

Pollutant:	Micrograms per cubic meter
Particulate matter:	
Annual geometric mean .....	19
24-hour maximum .....	37
Sulfur dioxide:	
Annual arithmetic mean .....	20
24-hour maximum .....	91
3-hour maximum .....	325

22 (D) VARIANCE.—  
 23 (i) IN GENERAL.—In any case where the owner or operator  
 24 of a proposed major emitting facility that has been denied a  
 25 permit under subparagraph (C)(iii)(I) demonstrates to the  
 26 satisfaction of the Governor, after notice and public hearing,  
 27 and the Governor finds, that the facility cannot be con-  
 28 structed by reason of any maximum allowable increase for  
 29 sulfur dioxide for periods of 24 hours or less applicable to any  
 30 class I area and, in the case of Federal mandatory class I  
 31 areas, that a variance under this clause will not adversely af-  
 32 fect the air quality related values of the area (including visi-  
 33 bility), the Governor, after consideration of the Federal land  
 34 manager’s recommendation (if any) and subject to the con-  
 35 currence of the Federal land manager, may grant a variance  
 36 from the maximum allowable increase. If a variance is grant-

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ed, a permit may be issued to the source pursuant to the requirements of this subparagraph.

(ii) NO CONCURRENCE.—In any case in which a Governor recommends a variance under this subparagraph in which the Federal land manager does not concur, the recommendations of the Governor and the Federal land manager shall be transmitted to the President. The President may approve the Governor’s recommendation if the President finds that the variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor’s recommendations. The President shall approve or disapprove the recommendation within 90 days after receipt by the President of the recommendations of the Governor and the Federal land manager.

(iii) COMPLIANCE WITH EMISSION LIMITATIONS.—

(I) DEFINITIONS.—

(aa) HIGH TERRAIN AREA.—In this clause, the term “high terrain area”, with respect to any major emitting facility, means any area having an elevation of 900 feet or more above the base of the stack of the major emitting facility.

(bb) LOW TERRAIN AREA.—The term “low terrain area” means any area other than a high terrain area.

(II) COMPLIANCE.—In the case of a permit issued pursuant to this subparagraph, the major emitting facility shall comply with such emission limitations under the permit as may be necessary to ensure that emissions of sulfur oxides from the major emitting facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations that exceed the following maximum allowable increases for such areas over the baseline concentration for sulfur oxides and to ensure that the emissions will not cause or contribute to concentrations that exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE

Period of exposure:	Micrograms per cubic meter
Low terrain areas:	
24-hour maximum .....	36
3-hour maximum .....	130

High terrain areas:		
24-hour maximum .....		62
3-hour maximum .....		221

1 (e) ANALYSIS.—

2 (1) IN GENERAL.—The review provided for in subsection (a) shall be  
 3 preceded by an analysis of the ambient air quality at the proposed site  
 4 and in areas that may be affected by emissions from the major emit-  
 5 ting facility for each pollutant subject to regulation under this division  
 6 that will be emitted from the major emitting facility. The review shall  
 7 be conducted in accordance with regulations of the Administrator, pro-  
 8 mulgated under this subsection, and may be conducted by the State,  
 9 any general purpose unit of local government, or the major emitting  
 10 facility applying for a permit.

11 (2) CONTINUOUS AIR QUALITY MONITORING.—The analysis required  
 12 by this subsection shall include continuous air quality monitoring data  
 13 gathered for purposes of determining whether emissions from the major  
 14 emitting facility will exceed the maximum allowable increases or the  
 15 maximum allowable concentration permitted under this chapter. The  
 16 data shall be gathered over a period of 1 calendar year preceding the  
 17 date of application for a permit under this chapter unless the State,  
 18 in accordance with regulations promulgated by the Administrator, de-  
 19 termines that a complete and adequate analysis for such purposes may  
 20 be accomplished in a shorter period. The results of the analysis shall  
 21 be available at the time of the public hearing on the application for the  
 22 permit.

23 (3) REGULATIONS.—

24 (A) IN GENERAL.—The Administrator shall promulgate regula-  
 25 tions respecting the analysis required under this subsection.

26 (B) CONTENTS.—The regulations—

27 (i) shall not require the use of any automatic or uniform  
 28 buffer zone or zones;

29 (ii) shall require an analysis of—

30 (I) the ambient air quality, climate and meteorology,  
 31 terrain, soils and vegetation, and visibility at the site of  
 32 the proposed major emitting facility and in the area po-  
 33 tentially affected by the emissions from the major emit-  
 34 ting facility for each pollutant regulated under this divi-  
 35 sion that will be emitted from, or that results from the  
 36 construction or operation of, the major emitting facility;

37 (II) the size and nature of the proposed major emit-  
 38 ting facility;



1 (III) the degree of continuous emission reduction that  
2 could be achieved by the major emitting facility; and

3 (IV) such other factors as may be relevant in deter-  
4 mining the effect of emissions from a proposed major  
5 emitting facility on any air quality control region;

6 (iii) shall require that the results of the analysis be avail-  
7 able at the time of the public hearing on the application for  
8 the permit; and

9 (iv) shall specify with reasonable particularity each air  
10 quality model to be used under specified sets of conditions for  
11 purposes of this chapter.

12 (4) ADJUSTMENT OF MODELS.—Any model or models designated  
13 under the regulations may be adjusted based on a determination, after  
14 notice and opportunity for public hearing, by the Administrator that  
15 an adjustment is necessary to take into account unique terrain or mete-  
16 orological characteristics of an area potentially affected by emissions  
17 from a source applying for a permit required under this chapter.

18 **§ 213108. Other pollutants**

19 (a) HYDROCARBONS, CARBON MONOXIDE, PETROCHEMICAL OXIDANTS,  
20 AND NITROGEN OXIDES.—In the case of the pollutants hydrocarbons, car-  
21 bon monoxide, photochemical oxidants, and nitrogen oxides, the Adminis-  
22 trator shall conduct a study and promulgate regulations to prevent the sig-  
23 nificant deterioration of air quality that would result from the emissions of  
24 those pollutants. In the case of pollutants for which NAAQses are promul-  
25 gated after August 7, 1977, the Administrator shall promulgate such regu-  
26 lations not more than 2 years after the date of promulgation of the  
27 NAAQses.

28 (b) EFFECTIVE DATE OF REGULATIONS.—Regulations under subsection  
29 (a) shall become effective 1 year after the date of promulgation.

30 (c) STATE IMPLEMENTATION PLAN PROVISIONS.—A State implementa-  
31 tion plan shall contain provisions to conform the regulations under sub-  
32 section (a), which provisions shall be submitted to the Administrator, who  
33 shall approve or disapprove the provisions within 25 months after the date  
34 of promulgation of the regulations in the same manner as is required under  
35 section 211110 of this title.

36 (d) CONTENTS OF REGULATIONS.—The regulations shall—

37 (1) provide—

38 (A) specific numerical measures against which permit applica-  
39 tions may be evaluated;

40 (B) a framework for stimulating improved control technology;  
41 and

1 (C) protection of air quality values; and  
2 (2) fulfill the goals and purposes set forth in sections 211101 and  
3 213101 of this title.

4 (e) SPECIFIC MEASURES TO FULFILL GOALS AND PURPOSES.—The reg-  
5 ulations—

6 (1) shall provide specific measures at least as effective as the incre-  
7 ments established in section 213105 of this title to fulfill the goals and  
8 purposes set forth in sections 211101 and 213101 of this title; and

9 (2) may contain air quality increments, emission density require-  
10 ments, or other measures.

11 (f) AREA CLASSIFICATION PLAN NOT REQUIRED.—

12 (1) IN GENERAL.—With respect to any air pollutant (other than a  
13 sulfur oxide or particulate matter) for which a NAAQS is established,  
14 an area classification plan shall not be required under this section if  
15 the implementation plan adopted by the State and submitted for the  
16 Administrator's approval or promulgated by the Administrator under  
17 section 211110(c) of this title contains other provisions that, when con-  
18 sidered as a whole, the Administrator finds will carry out the purposes  
19 of section 213101 of this title at least as effectively as an area classi-  
20 fication plan for that pollutant.

21 (2) MAXIMUM ALLOWABLE INCREASES.—The other provisions de-  
22 scribed in paragraph (1) need not require the establishment of maxi-  
23 mum allowable increases with respect to a pollutant for any area to  
24 which this section applies.

25 (g) PM-10 INCREMENTS.—

26 (1) IN GENERAL.—The Administrator may substitute, for the maxi-  
27 mum allowable increases in particulate matter specified in sections  
28 213105(b) and 213107(d)(2)(C)(iii)(II) of this title, maximum allow-  
29 able increases in particulate matter with an aerodynamic diameter  
30 smaller than or equal to 10 micrometers.

31 (2) STRINGENCY.—Such substituted maximum allowable increases  
32 shall be of equal stringency in effect as those specified in the provisions  
33 for which they are substituted.

#### 34 **§ 213109. Enforcement**

35 The Administrator shall, and a State may, take such measures, including  
36 issuance of an order or seeking injunctive relief, as are necessary to prevent  
37 the construction or modification of a major emitting facility that—

38 (1) does not conform to the requirements of this chapter; or

39 (2)(A) is proposed to be constructed in any area designated pursuant  
40 to section 211107(d) of this title as attainment or unclassifiable; and

1 (B) is not subject to an implementation plan that meets the require-  
2 ments of this chapter.

## 3 **Subchapter II—Visibility Protection**

### 4 **§ 213201. Visibility protection for mandatory class I Federal** 5 **areas**

6 (a) DEFINITIONS.—In this section:

7 (1) AS EXPEDITIOUSLY AS PRACTICABLE.—The term “as expedi-  
8 tiously as practicable” means as expeditiously as practicable but in no  
9 event later than 5 years after the date of approval of a plan revision  
10 under this section (or the date of promulgation of such a plan revision  
11 in the case of action by the Administrator under section 211110(e) of  
12 this title for purposes of this section).

13 (2) BEST AVAILABLE RETROFIT TECHNOLOGY.—The term “best  
14 available retrofit technology”, with respect to a source, means retrofit  
15 technology that a State (or the Administrator in determining emission  
16 limitations that reflect such technology) determines is the best available  
17 after taking into consideration—

18 (A) the costs of compliance;

19 (B) the energy and non-air-quality environmental impacts of  
20 compliance;

21 (C) any existing pollution control technology in use at the  
22 source;

23 (D) the remaining useful life of the source; and

24 (E) the degree of improvement in visibility that may reasonably  
25 be anticipated to result from the use of the technology.

26 (3) IMPAIRMENT OF VISIBILITY.—The term “impairment of visi-  
27 bility” includes reduction in visual range and atmospheric discoloration.

28 (4) MAJOR STATIONARY SOURCE.—The term “major stationary  
29 source” means the following types of stationary sources with the poten-  
30 tial to emit 250 tons or more of any pollutant:

31 (A) Fossil fuel-fired steam electric plants of more than  
32 250,000,000 British thermal units per hour heat input.

33 (B) Coal cleaning plants (thermal dryers).

34 (C) Kraft pulp mills.

35 (D) Portland cement plants.

36 (E) Primary zinc smelters.

37 (F) Iron and steel mill plants.

38 (G) Primary aluminum ore reduction plants.

39 (H) Primary copper smelters.

40 (I) Municipal incinerators capable of charging more than 250  
41 tons of refuse per day.

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- 1 (J) Hydrofluoric, sulfuric, and nitric acid plants.
- 2 (K) Petroleum refineries.
- 3 (L) Lime plants.
- 4 (M) Phosphate rock processing plants.
- 5 (N) Coke oven batteries.
- 6 (O) Sulfur recovery plants.
- 7 (P) Carbon black plants (furnace process).
- 8 (Q) Primary lead smelters.
- 9 (R) Fuel conversion plants.
- 10 (S) Sintering plants.
- 11 (T) Secondary metal production facilities.
- 12 (U) Chemical process plants.
- 13 (V) Fossil-fuel boilers of more than 250,000,000 British ther-
- 14 mal units per hour heat input.
- 15 (W) Petroleum storage and transfer facilities with a capacity ex-
- 16 ceeding 300,000 barrels.
- 17 (X) Taconite ore processing facilities.
- 18 (Y) Glass fiber processing plants.
- 19 (Z) Charcoal production facilities.

20 (5) MANDATORY CLASS I FEDERAL AREA.—The term “mandatory  
21 class I Federal area” means a Federal area that may not be designated  
22 as other than class I under this chapter.

23 (6) MANMADE AIR POLLUTION.—The term “manmade air pollution”  
24 means air pollution that results directly or indirectly from human activ-  
25 ity.

26 (7) REASONABLE PROGRESS.—The term “reasonable progress”, with  
27 respect to a source, means progress that is determined to be reasonable  
28 after taking into consideration—

- 29 (A) the costs of compliance;
- 30 (B) the time necessary for compliance;
- 31 (C) the energy and non-air-quality environmental impacts of  
32 compliance; and
- 33 (D) the remaining useful life of the source.

34 (b) PREVENTION OF FUTURE AND REMEDYING OF EXISTING IMPAIR-  
35 MENT OF VISIBILITY.—

36 (1) NATIONAL GOAL.—Congress declares as a national goal the pre-  
37 vention of any future impairment of visibility, and the remedying of  
38 any existing impairment of visibility, in mandatory class I Federal  
39 areas that results from manmade air pollution.

40 (2) IDENTIFICATION OF AREAS WHERE VISIBILITY IS AN IMPORTANT  
41 VALUE.—The Secretary of the Interior, in consultation with other Fed-

1 eral land managers, shall review all mandatory class I Federal areas  
2 and identify those where visibility is an important value of the area.  
3 From time to time the Secretary of the Interior may revise the identi-  
4 fications. The Administrator shall, after consultation with the Secretary  
5 of the Interior, promulgate a list of mandatory class I Federal areas  
6 in which the Secretary of the Interior determines that visibility is an  
7 important value.

8 (3) REPORT.—

9 (A) IN GENERAL.—The Administrator shall complete a study  
10 and report to Congress on available methods for implementing the  
11 national goal set forth in paragraph (1).

12 (B) CONTENTS OF REPORT.—The report shall—

13 (i) include recommendations for—

14 (I) methods for identifying, characterizing, determin-  
15 ing, quantifying, and measuring impairment of visibility  
16 in mandatory class I Federal areas;

17 (II) modeling techniques (or other methods) for deter-  
18 mining the extent to which manmade air pollution may  
19 reasonably be anticipated to cause or contribute to im-  
20 pairment of visibility; and

21 (III) methods for preventing and remedying such man-  
22 made air pollution and resulting impairment of visibility;  
23 and

24 (ii) identify the classes or categories of sources and the  
25 types of air pollutants that, alone or in conjunction with other  
26 sources or pollutants, may reasonably be anticipated to cause  
27 or contribute significantly to impairment of visibility.

28 (c) REGULATIONS.—

29 (1) IN GENERAL.—After notice and public hearing, the Adminis-  
30 trator shall promulgate regulations to ensure—

31 (A) reasonable progress toward meeting the national goal speci-  
32 fied in subsection (b)(1); and

33 (B) compliance with the requirements of this section.

34 (2) CONTENTS.—Regulations under paragraph (1) shall—

35 (A) provide guidelines to the States, taking into account the rec-  
36 ommendations under subsection (b)(3) on appropriate techniques  
37 and methods for implementing this section (as provided in sub-  
38 clauses (I) through (III) of subsection (b)(3)(B)(i)); and

39 (B) require each applicable implementation plan for a State in  
40 which any area listed by the Administrator under subsection (b)(2)  
41 is located (or for a State the emissions from which may reasonably

1 be anticipated to cause or contribute to any impairment of visi-  
2 bility in any mandatory class I Federal area) to contain such emis-  
3 sion limitations, schedules of compliance, and other measures as  
4 may be necessary to make reasonable progress toward meeting the  
5 national goal specified in subsection (b)(1), including—

6 (i) except as otherwise provided pursuant to subsection (d),  
7 a requirement that each major stationary source that was in  
8 existence on August 7, 1977, but which had not been in oper-  
9 ation for more than 15 years as of that date, and which, as  
10 determined by the State (or the Administrator in the case of  
11 a plan promulgated under section 211110(c) of this title)  
12 emits any air pollutant that may reasonably be anticipated to  
13 cause or contribute to any impairment of visibility in any  
14 mandatory class I Federal area, shall procure, install, and op-  
15 erate, as expeditiously as practicable (and maintain there-  
16 after) the best available retrofit technology, as determined by  
17 the State (or the Administrator in the case of a plan promul-  
18 gated under section 211110(c) of this title) for controlling  
19 emissions from the source for the purpose of eliminating or  
20 reducing any impairment of visibility; and

21 (ii) a long-term (10- to 15-year) strategy for making rea-  
22 sonable progress toward meeting the national goal specified in  
23 subsection (b)(1).

24 (3) CERTAIN FOSSIL FUEL-FIRED GENERATING POWERPLANTS.—In  
25 the case of a fossil fuel-fired generating powerplant having a total gen-  
26 erating capacity in excess of 750 megawatts, the emission limitations  
27 required under this subsection shall be determined pursuant to guide-  
28 lines promulgated by the Administrator under paragraph (2)(A).

29 (d) EXEMPTIONS.—

30 (1) IN GENERAL.—The Administrator may, by regulation, after no-  
31 tice and opportunity for public hearing, exempt any major stationary  
32 source from the requirement of subsection (c)(2)(B)(i), on a determina-  
33 tion by the Administrator that the source does not or will not, by itself  
34 or in combination with other sources, emit any air pollutant that may  
35 reasonably be anticipated to cause or contribute to a significant impair-  
36 ment of visibility in any mandatory class I Federal area.

37 (2) CERTAIN FOSSIL FUEL-FIRED POWERPLANTS.—Paragraph (1)  
38 does not apply to any fossil fuel-fired powerplant with total design ca-  
39 pacity of 750 megawatts or more unless the owner or operator of the  
40 powerplant demonstrates to the satisfaction of the Administrator that  
41 the powerplant is located at such a distance from all mandatory class

1 I Federal areas listed by the Administrator under subsection (b)(2)  
2 that the powerplant does not or will not, by itself or in combination  
3 with other sources, emit any air pollutant that may reasonably be an-  
4 ticipated to cause or contribute to significant impairment of visibility  
5 in any mandatory class I Federal area.

6 (3) CONCURRENCE.—An exemption under this subsection shall be ef-  
7 fective only on concurrence by the appropriate Federal land manager  
8 or Federal land managers with the Administrator's determination  
9 under this subsection.

10 (e) CONSULTATION WITH APPROPRIATE FEDERAL LAND MANAGERS.—  
11 Before holding a public hearing on the proposed revision of an applicable  
12 implementation plan to meet the requirements of this section, the State (or  
13 the Administrator, in the case of a plan promulgated under section  
14 211110(e) of this title) shall—

15 (1) consult in person with the appropriate Federal land manager or  
16 Federal land managers; and

17 (2) include a summary of the conclusions and recommendations of  
18 the Federal land managers in the notice to the public.

19 (f) BUFFER ZONES.—In promulgating regulations under this section, the  
20 Administrator shall not require the use of any automatic or uniform buffer  
21 zone or zones.

22 (g) NONDISCRETIONARY DUTY.—For purposes of section 203104(b)(2) of  
23 this title, the meeting of the national goal specified in subsection (b)(1) by  
24 any specific date or dates shall not be considered to be a nondiscretionary  
25 duty of the Administrator.

## 26 **§ 213202. Visibility**

27 (a) STUDIES.—

28 (1) RESEARCH.—

29 (A) IN GENERAL.—The Administrator, in conjunction with the  
30 National Park Service and other appropriate Federal agencies,  
31 shall conduct research to identify and evaluate—

32 (i) sources and source regions of visibility impairment in  
33 class I areas; and

34 (ii) regions that provide predominantly clean air in class I  
35 areas.

36 (B) INCLUSIONS.—The research shall include—

37 (i) expansion of current visibility-related monitoring in  
38 class I areas;

39 (ii) assessment of current sources of visibility-impairing  
40 pollution and clean air corridors;

1 (iii) adaptation of regional air quality models for the as-  
2 sessment of visibility; and

3 (iv) studies of atmospheric chemistry and physics of visi-  
4 bility.

5 (2) ASSESSMENT AND EVALUATION.—Based on the findings available  
6 from the research required in paragraph (1), other available scientific  
7 and technical data, studies, and other available information pertaining  
8 to visibility source-receptor relationships, the Administrator shall con-  
9 duct an assessment and evaluation that identifies, to the extent pos-  
10 sible, sources and source regions of visibility impairment including nat-  
11 ural sources and source regions of clear air for class I areas.

12 (b) IMPACTS OF OTHER PROVISIONS.—Every 5 years, the Administrator  
13 shall conduct an assessment of actual progress and improvement in visibility  
14 in class I areas. The Administrator shall prepare a written report on each  
15 assessment and transmit copies of the reports to the appropriate committees  
16 of Congress.

17 (c) VISIBILITY TRANSPORT COMMISSIONS.—

18 (1) VISIBILITY TRANSPORT REGIONS.—

19 (A) ESTABLISHMENT.—When, on the Administrator's motion or  
20 by petition from the Governors of at least 2 affected States, the  
21 Administrator has reason to believe that the current or projected  
22 interstate transport of air pollutants from 1 or more States con-  
23 tributes significantly to visibility impairment in class I areas lo-  
24 cated in the affected States, the Administrator may establish a  
25 visibility transport region for such pollutants that includes those  
26 States.

27 (B) ADDITION AND REMOVAL OF STATES.—The Administrator,  
28 on the Administrator's own motion, on petition from the Governor  
29 of any affected State, or on the recommendations of a visibility  
30 transport commission established under paragraph (2), may—

31 (i) add any State or portion of a State to a visibility trans-  
32 port region when the Administrator determines that the inter-  
33 state transport of air pollutants from that State significantly  
34 contributes to visibility impairment in a class I area located  
35 within the visibility transport region; or

36 (ii) remove any State or portion of a State from a visibility  
37 transport region when the Administrator has reason to believe  
38 that the control of emissions in that State or portion of the  
39 State pursuant to this section will not significantly contribute  
40 to the protection or enhancement of visibility in any class I  
41 area in the visibility transport region.



- 1 (2) VISIBILITY TRANSPORT COMMISSIONS.—
- 2 (A) ESTABLISHMENT.—When the Administrator establishes a
- 3 visibility transport region under paragraph (1), the Administrator
- 4 shall establish a visibility transport commission comprised of (as
- 5 a minimum) each of the following members:
- 6 (i) The Governor of each State in the visibility transport
- 7 region, or the Governor’s designee.
- 8 (ii) The Administrator, or the Administrator’s designee.
- 9 (iii) A representative of each Federal agency charged with
- 10 the direct management of each class I area within the visi-
- 11 bility transport region.
- 12 (B) VOTING.—Decisions of, and recommendations and requests
- 13 to the Administrator, by a visibility transport commission may be
- 14 made only by a majority vote of all members other than the Ad-
- 15 ministrator and the Federal agency representatives (or designees).
- 16 (C) FEDERAL ADVISORY COMMITTEE ACT.—A visibility trans-
- 17 port commission shall not be subject to the Federal Advisory Com-
- 18 mittee Act (5 U.S.C. App.).
- 19 (d) DUTIES.—
- 20 (1) IN GENERAL.—A visibility transport commission—
- 21 (A) shall assess the scientific and technical data, studies, and
- 22 other currently available information, including studies conducted
- 23 pursuant to subsection (a)(1), pertaining to adverse impacts on
- 24 visibility from potential or projected growth in emissions from
- 25 sources located in the visibility transport region; and
- 26 (B) shall, within 4 years after establishment of the visibility
- 27 transport commission, issue a report to the Administrator rec-
- 28 commending what measures, if any, should be taken under this di-
- 29 vision to remedy the adverse impacts.
- 30 (2) MEASURES TO BE ADDRESSED.—A report under paragraph
- 31 (1)(B) shall address at least the following measures:
- 32 (A) The establishment of clean air corridors in which additional
- 33 restrictions on increases in emissions may be appropriate to pro-
- 34 tect visibility in affected class I areas.
- 35 (B) The imposition of the requirements of chapter 215 affecting
- 36 the construction of new major stationary sources or major modi-
- 37 fications to existing sources in such clean air corridors specifically
- 38 including the alternative siting analysis provisions of section
- 39 215103(a)(1)(E) of this title.

1 (C) The promulgation of regulations under section 213201 of  
2 this title to address long range strategies for addressing regional  
3 haze that impairs visibility in affected class I areas.

4 (e) DUTIES OF ADMINISTRATOR.—

5 (1) IN GENERAL.—The Administrator shall, taking into account the  
6 studies pursuant to subsection (a)(1) and the reports pursuant to sub-  
7 section (d) and any other relevant information, within 18 months after  
8 receipt of the report described in subsection (d), carry out the Adminis-  
9 trator's regulatory responsibilities under section 213201 of this title,  
10 including criteria for measuring reasonable progress toward the na-  
11 tional goal.

12 (2) REGULATIONS.—Any regulations promulgated under section  
13 213201 of this title pursuant to this subsection shall require affected  
14 States to revise within 12 months their implementation plans under  
15 section 211110 of this title to contain such emission limitations, sched-  
16 ules of compliance, and other measures as may be necessary to carry  
17 out regulations promulgated pursuant to this subsection.

18 (f) GRAND CANYON VISIBILITY TRANSPORT COMMISSION.—The Adminis-  
19 trator pursuant to subsection (e) shall establish a visibility transport com-  
20 mission for the region affecting visibility in Grand Canyon National Park.

## 21 **Chapter 215—Plan Requirements for** 22 **Nonattainment Areas**

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**Subchapter I—Nonattainment Areas In  
General**

**§ 215101. Definitions**

In this chapter:

(1) LOWEST ACHIEVABLE EMISSION RATE.—

(A) IN GENERAL.—The term “lowest achievable emission rate”, with respect to a source, means the rate of emissions that reflects the more stringent of—

(i) the most stringent emission limitation that is contained in the implementation plan of any State for that class or category of source, unless the owner or operator of the proposed source demonstrates that such an emission limitation is not achievable; or

(ii) the most stringent emission limitation that is achieved in practice by that class or category of source.

(B) EFFECT OF APPLICATION OF TERM.—In no event shall the application of the term “lowest achievable emission rate” permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(2) MODIFY.—

(A) IN GENERAL.—The term “modify”, with respect to a stationary source, means to make or undergo any physical change in, or change in the method of operation of, the stationary source that—

(i) increases the amount of any air pollutant emitted by the stationary source; or

(ii) results in the emission of any air pollutant not previously emitted.

(B) CONVERSION TO COAL.—A conversion to coal by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792(a)) or any enactment that supersedes that Act shall not be considered to be a modification for purposes of subparagraph (A).

(3) NONATTAINMENT AREA.—The term “nonattainment area” means, for any air pollutant, an area that is designated nonattainment

1 with respect to that air pollutant within the meaning of section  
2 211107(d) of this title.

3 (4) REASONABLE FURTHER PROGRESS.—The term “reasonable fur-  
4 ther progress” means such annual incremental reductions in emissions  
5 of an air pollutant as are required by this chapter or may reasonably  
6 be required by the Administrator for the purpose of ensuring attain-  
7 ment of the applicable NAAQS by the applicable date.

8 **§ 215102. Nonattainment plan provisions in general**

9 (a) CLASSIFICATIONS AND ATTAINMENT DATES.—

10 (1) CLASSIFICATIONS.—

11 (A) IN GENERAL.—On or after the date on which the Adminis-  
12 trator promulgates the designation of an area as a nonattainment  
13 area pursuant to section 211107(d) of this title with respect to  
14 any NAAQS (or any revised standard), the Administrator may  
15 classify the area for the purpose of applying an attainment date  
16 pursuant to paragraph (2), and for other purposes. In determining  
17 the appropriate classification, if any, for a nonattainment area, the  
18 Administrator may consider such factors as the severity of non-  
19 attainment in the area and the availability and feasibility of the  
20 pollution control measures that the Administrator believes may be  
21 necessary to provide for attainment of the standard in that area.

22 (B) PROCEDURE.—The Administrator shall publish a notice in  
23 the Federal Register announcing each classification under sub-  
24 paragraph (A), except that the Administrator shall provide an op-  
25 portunity for at least 30 days for written comment. A classifica-  
26 tion shall not be subject to sections 553 to 557 of title 5 and shall  
27 not be subject to judicial review until the Administrator takes final  
28 action under subsection (i) or (j) of section 211110 or section  
29 215111 of this title with respect to any plan submissions required  
30 by virtue of the classification.

31 (C) NONAPPLICABILITY.—This paragraph shall not apply with  
32 respect to nonattainment areas for which classifications are spe-  
33 cifically provided under other provisions of this chapter.

34 (2) ATTAINMENT DATES FOR NONATTAINMENT AREAS.—

35 (A) PRIMARY NAAQSES.—The attainment date for an area des-  
36 signated nonattainment with respect to a primary NAAQS shall be  
37 the date by which attainment can be achieved as expeditiously as  
38 practicable, but not later than 5 years after the date on which the  
39 area was designated nonattainment under section 211107(d) of  
40 this title, except that the Administrator may extend the attain-  
41 ment date to the extent that the Administrator determines to be

1 appropriate, for a period not longer than 10 years after the date  
2 of designation as nonattainment, considering the severity of non-  
3 attainment and the availability and feasibility of pollution control  
4 measures.

5 (B) SECONDARY NAAQSES.—The attainment date for an area  
6 designated nonattainment with respect to a secondary NAAQS  
7 shall be the date by which attainment can be achieved as expedi-  
8 tiously as practicable after the date on which the area was des-  
9 ignated nonattainment under section 211107(d) of this title.

10 (C) EXTENSION.—

11 (i) IN GENERAL.—On application by any State, the Admin-  
12 istrator may extend for 1 additional year (referred to in this  
13 subparagraph as the “extension year”) the attainment date  
14 determined by the Administrator under subparagraph (A) or  
15 (B) if—

16 (I) the State has complied with all requirements and  
17 commitments pertaining to the area in the applicable im-  
18 plementation plan; and

19 (II) in accordance with guidance published by the Ad-  
20 ministrator, not more than a minimal number of  
21 exceedances of the relevant NAAQS has occurred in the  
22 area in the year preceding the extension year.

23 (ii) LIMITATION.—Not more than 2 one-year extensions  
24 may be issued under this subparagraph for a single non-  
25 attainment area.

26 (D) NONAPPLICABILITY.—This paragraph shall not apply with  
27 respect to nonattainment areas for which attainment dates are  
28 specifically provided under other provisions of this chapter.

29 (b) SCHEDULE FOR PLAN SUBMISSIONS.—At the time at which the Ad-  
30 ministrator promulgates the designation of an area as nonattainment with  
31 respect to a NAAQS under section 211107(d) of this title, the Adminis-  
32 trator shall establish a schedule according to which the State containing the  
33 area shall submit a plan or plan provision (including plan items) meeting  
34 the applicable requirements of subsection (c) and section 211110(a)(3) of  
35 this title. The schedule shall, at a minimum, include a date or dates, extend-  
36 ing not later than 3 years after the date of the nonattainment designation,  
37 for the submission of a plan or plan provision (including plan items) meet-  
38 ing the applicable requirements of subsection (c) and section 211110(a)(3)  
39 of this title.

40 (c) NONATTAINMENT PLAN PROVISIONS.—

1 (1) IN GENERAL.—The plan provisions (including plan items) shall  
2 provide for—

3 (A) implementation of all reasonably available control measures  
4 as expeditiously as practicable (including such reductions in emis-  
5 sions from existing sources in the area as may be obtained  
6 through the adoption, at a minimum, of reasonably available con-  
7 trol technology); and

8 (B) attainment of the primary NAAQSeS.

9 (2) REASONABLE FURTHER PROGRESS.—The plan provisions (in-  
10 cluding plan items) shall require reasonable further progress.

11 (3) INVENTORY.—The plan provisions (including plan items) shall  
12 include a comprehensive, accurate, current inventory of actual emis-  
13 sions from all sources of the relevant pollutant or pollutants in the  
14 area, including such periodic revisions as the Administrator may deter-  
15 mine to be necessary to ensure that the requirements of this chapter  
16 are met.

17 (4) IDENTIFICATION AND QUANTIFICATION.—The plan provisions  
18 (including plan items) shall expressly identify and quantify the emis-  
19 sions, if any, of any such pollutant or pollutants that will be allowed,  
20 in accordance with section 215103(a)(1)(A)(ii) of this title, from the  
21 construction and operation of major new or modified stationary sources  
22 in each such area. The plan shall demonstrate to the satisfaction of the  
23 Administrator that the emissions quantified for this purpose will be  
24 consistent with the achievement of reasonable further progress and will  
25 not interfere with attainment of the applicable NAAQS by the applica-  
26 ble attainment date.

27 (5) PERMITS FOR NEW AND MODIFIED MAJOR STATIONARY  
28 SOURCES.—The plan provisions (including plan items) shall require  
29 permits for the construction and operation of new or modified major  
30 stationary sources anywhere in the nonattainment area, in accordance  
31 with section 215103 of this title.

32 (6) OTHER MEASURES.—The plan provisions (including plan items)  
33 shall include enforceable emission limitations and such other control  
34 measures, means, or techniques (including economic incentives such as  
35 fees, marketable permits, and auctions of emission rights) and sched-  
36 ules and timetables for compliance as may be necessary or appropriate  
37 to provide for attainment of the standard in the area by the applicable  
38 attainment date specified in this chapter.

39 (7) COMPLIANCE WITH SECTION 211110(a)(3).—The plan provisions  
40 (including plan items) shall meet the applicable provisions of section  
41 211110(a)(3) of this title.

1 (8) EQUIVALENT TECHNIQUES.—On application by any State, the  
2 Administrator may allow the use of equivalent modeling, emission in-  
3 ventory, and planning procedures, unless the Administrator determines  
4 that the proposed techniques are, in the aggregate, less effective than  
5 the methods specified by the Administrator.

6 (9) CONTINGENCY MEASURES.—The plan (including plan items)  
7 shall provide for the implementation of specific measures to be under-  
8 taken if the area fails to make reasonable further progress or to attain  
9 the primary NAAQS by the attainment date applicable under this  
10 chapter. The measures shall be included in the plan as contingency  
11 measures to take effect in any such case without further action by the  
12 State or the Administrator.

13 (d) PLAN PROVISIONS REQUIRED IN RESPONSE TO FINDING OF PLAN  
14 INADEQUACY.—

15 (1) IN GENERAL.—Any plan provision for a nonattainment area that  
16 is required to be submitted in response to a finding by the Adminis-  
17 trator pursuant to section 211110(i)(5) of this title shall—

18 (A) correct the plan deficiency (or deficiencies) specified by the  
19 Administrator; and

20 (B) meet all other applicable plan requirements of section  
21 211110 of this title and this chapter.

22 (2) ADJUSTMENT OF DATES.—The Administrator may reasonably  
23 adjust the dates otherwise applicable under those requirements to the  
24 provision (except for attainment dates that have not yet elapsed) to the  
25 extent necessary to achieve a consistent application of the require-  
26 ments.

27 (3) GUIDELINES, INTERPRETATIONS, AND INFORMATION.—

28 (A) IN GENERAL.—In order to facilitate submittal by the States  
29 of adequate and approvable plans consistent with the applicable  
30 requirements of this division, the Administrator shall, as appro-  
31 priate and from time to time, issue written guidelines, interpreta-  
32 tions, and information to the States, taking into consideration any  
33 such guidelines, interpretations, or information provided before  
34 November 15, 1990.

35 (B) PUBLIC AVAILABILITY.—Guidelines, interpretations, and in-  
36 formation issued under subparagraph (A) shall be available to the  
37 public.

38 (e) FUTURE MODIFICATION OF STANDARD.—If the Administrator relaxes  
39 a primary NAAQS, the Administrator shall, within 12 months after the re-  
40 laxation, promulgate requirements applicable to all areas that have not at-  
41 tained that standard as of the date of the relaxation. The requirements shall

1 provide for controls that are not less stringent than the controls applicable  
2 to areas designated nonattainment before the relaxation.

3 **§ 215103. Permit requirements**

4 (a) IN GENERAL.—

5 (1) IN GENERAL.—The permit program required by section  
6 215102(e)(5) of this title shall provide that permits to construct and  
7 operate may be issued if—

8 (A) in accordance with regulations issued by the Administrator  
9 for the determination of baseline emissions in a manner consistent  
10 with the assumptions underlying the applicable implementation  
11 plan approved under section 211110 of this title and this chapter,  
12 the permitting agency determines that—

13 (i) by the time the source is to commence operation, suffi-  
14 cient offsetting emissions reductions have been obtained, such  
15 that total allowable emissions from existing sources in the re-  
16 gion, from new or modified sources that are not major emit-  
17 ting facilities and from the proposed source, will be suffi-  
18 ciently less than total emissions from existing sources (as de-  
19 termined in accordance with the regulations under this sub-  
20 paragraph) prior to the application for the permit to con-  
21 struct or modify so as to represent (when considered together  
22 with the plan provisions required under section 215102 of  
23 this title) reasonable further progress; or

24 (ii) in the case of a new or modified major stationary  
25 source that is located in a zone (within the nonattainment  
26 area) identified by the Administrator, in consultation with the  
27 Secretary of Housing and Urban Development, as a zone to  
28 which economic development should be targeted, that emis-  
29 sions of the pollutant resulting from the proposed new or  
30 modified major stationary source will not cause or contribute  
31 to emissions levels that exceed the allowance permitted for the  
32 pollutant for the area from new or modified major stationary  
33 sources under section 215102(e) of this title;

34 (B) the proposed source is required to comply with the lowest  
35 achievable emission rate;

36 (C) the owner or operator of the proposed new or modified  
37 source has demonstrated that all major stationary sources owned  
38 or operated by the owner or operator (or by any entity controlling,  
39 controlled by, or under common control with the owner or opera-  
40 tor) in the State are subject to emission limitations and are in



1 compliance, or on a schedule for compliance, with all applicable  
2 emission limitations and standards under this division;

3 (D) the Administrator has not determined that the applicable  
4 implementation plan is not being adequately implemented for the  
5 nonattainment area in which the proposed source is to be con-  
6 structed or modified in accordance with the requirements of this  
7 chapter; and

8 (E) an analysis of alternative sites, sizes, production processes,  
9 and environmental control techniques for the proposed source  
10 demonstrates that benefits of the proposed source significantly  
11 outweigh the environmental and social costs imposed as a result  
12 of its location, construction, or modification.

13 (2) **FEDERALLY ENFORCEABLE EMISSION REDUCTIONS.**—Any emis-  
14 sion reductions required as a precondition of the issuance of a permit  
15 under paragraph (1)(A) shall be federally enforceable before a permit  
16 may be issued.

17 (b) **PROHIBITION OF USE OF OLD GROWTH ALLOWANCES.**—Any growth  
18 allowance included in an applicable implementation plan to meet the re-  
19 quirements of section 172(b)(5) of the Clean Air Act (42 U.S.C.  
20 7502(b)(5)) (as in effect on November 14, 1990) shall not be valid for use  
21 in any area that received a notice under section 110(a)(2)(H)(ii) of the  
22 Clean Air Act (42 U.S.C. 7410(a)(2)(H)(ii)) (as in effect on November 14,  
23 1990) or under section 211110(i)(1) of this title that its applicable imple-  
24 mentation plan containing the allowance is substantially inadequate.

25 (c) **OFFSETS.**—

26 (1) **IN GENERAL.**—The owner or operator of a new or modified  
27 major stationary source may comply with any offset requirement in ef-  
28 fect under this chapter for increased emissions of any air pollutant only  
29 by obtaining emission reductions of the air pollutant from the same  
30 source or other sources in the same nonattainment area, except that  
31 the State may allow the owner or operator of a source to obtain the  
32 emission reductions in another nonattainment area if—

33 (A) the other area has a nonattainment classification that is  
34 equal to or higher than that of the area in which the source is  
35 located; and

36 (B) emissions from the other area contribute to a violation of  
37 the NAAQS in the nonattainment area in which the source is lo-  
38 cated.

39 (2) **EMISSION REDUCTION REQUIREMENTS.**—Emission reductions re-  
40 quired under paragraph (1)—

1 (A) shall be, by the time a new or modified source commences  
2 operation, in effect and enforceable; and

3 (B) shall ensure that the total tonnage of increased emissions  
4 of the air pollutant from the new or modified source shall be offset  
5 by an equal or greater reduction, as applicable, in the actual emis-  
6 sions of the air pollutant from the same or other sources in the  
7 area.

8 (3) CREDITABILITY.—Emission reductions otherwise required by this  
9 division shall not be creditable as emissions reductions for purposes of  
10 any such offset requirement. Incidental emission reductions that are  
11 not otherwise required by this division shall be creditable as emission  
12 reductions for such purposes if the emission reductions meet the re-  
13 quirements of paragraph (1).

14 (d) CONTROL TECHNOLOGY INFORMATION.—A State shall provide that  
15 control technology information from permits issued under this section will  
16 be promptly submitted to the Administrator for purposes of making such  
17 information available through the RACT/BACT/LAER clearinghouse to  
18 other States and to the general public.

19 (e) ROCKET ENGINES OR MOTORS.—

20 (1) IN GENERAL.—The permitting authority of a State shall allow  
21 a source to offset by alternative or innovative means emission increases  
22 from rocket engine and motor firing, and cleaning related to such fir-  
23 ing, at an existing or modified major source that tests rocket engines  
24 or motors under the following conditions:

25 (A) PURPOSE.—Any modification proposed is solely for the pur-  
26 pose of expanding the testing of rocket engines or motors at an  
27 existing source that was permitted to test such engines on Novem-  
28 ber 15, 1990.

29 (B) OFFSETS.—The source demonstrates to the satisfaction of  
30 the permitting authority of the State that—

31 (i) the source has used all reasonable means to obtain and  
32 utilize offsets, as determined on an annual basis, for the  
33 emissions increases beyond allowable levels;

34 (ii) all available offsets are being used; and

35 (iii) sufficient offsets are not available to the source.

36 (C) NATIONAL SECURITY.—The source has obtained a written  
37 finding from the Department of Defense, Department of Trans-  
38 portation, National Aeronautics and Space Administration, or  
39 other appropriate Federal agency that the testing of rocket motors  
40 or engines at the facility is required for a program essential to na-  
41 tional security.

1 (D) ALTERNATIVE MEASURE.—The source will comply with an  
2 alternative measure, imposed by the permitting authority, designed  
3 to offset any emission increases beyond permitted levels not di-  
4 rectly offset by the source.

5 (2) EMISSION FEE.—In lieu of imposing any alternative offset meas-  
6 ures, the permitting authority may impose an emission fee to be paid  
7 to the permitting authority, which shall be in an amount not greater  
8 than 1.5 times the average cost of stationary source control measures  
9 adopted in that area during the previous 3 years. The permitting au-  
10 thority shall utilize the fees in a manner that maximizes emission re-  
11 ductions in that area.

12 **§ 215104. Planning procedures**

13 (a) IN GENERAL.—

14 (1) UPDATED OR NEW PLANNING PROCEDURES.—For any ozone,  
15 carbon monoxide, or PM-10 nonattainment area, the State containing  
16 the area and elected officials of affected local governments shall, before  
17 the date required for submittal of the inventory described under section  
18 215203(a)(2) or 215303(a)(2) of this title, jointly review and update  
19 as necessary the planning procedures adopted pursuant to section  
20 174(a) of the Clean Air Act (42 U.S.C. 7504(a)) as in effect on No-  
21 vember 14, 1990, or develop new planning procedures pursuant to this  
22 subsection, as appropriate.

23 (2) DETERMINATION.—In preparing the procedures, the State and  
24 local elected officials shall determine which elements of a revised imple-  
25 mentation plan will be developed, adopted, and implemented (through  
26 means including enforcement) by the State and which by local govern-  
27 ments or regional agencies, or any combination of local governments,  
28 regional agencies, or the State.

29 (3) PREPARATION.—The implementation plan required by this chap-  
30 ter shall be prepared by an organization certified by the State, in con-  
31 sultation with elected officials of local governments and in accordance  
32 with the determination under paragraph (2).

33 (4) ORGANIZATION.—The organization shall include—

34 (A) elected officials of local governments in the affected area;  
35 and

36 (B) representatives of—

37 (i) the State air quality planning agency;

38 (ii) the State transportation planning agency;

39 (iii) the metropolitan planning organization designated to  
40 conduct the continuing, cooperative, and comprehensive trans-

1                   portation planning process for the area under section 134 of  
2                   title 23;

3                   (iv) the organization responsible for the air quality mainte-  
4                   nance planning process under regulations implementing this  
5                   division; and

6                   (v) any other organization with responsibilities for develop-  
7                   ing, submitting, or implementing the plan required by this  
8                   chapter.

9                   (5) SAME ORGANIZATION.—The organization may be an organization  
10                  that carried out the functions described in this subsection before No-  
11                  vember 15, 1990.

12                  (b) COORDINATION.—The preparation of implementation plan provisions  
13                  and subsequent plan revisions under the continuing transportation-air qual-  
14                  ity planning process described in section 211108(e) of this title shall be  
15                  coordinated with the continuing, cooperative, and comprehensive transpor-  
16                  tation planning process required under section 134 of title 23, and those  
17                  planning processes shall take into account the requirements of this chapter.

18                  (c) JOINT PLANNING.—In the case of a nonattainment area that is in-  
19                  cluded within more than 1 State, the affected States may jointly, through  
20                  interstate compact or otherwise, undertake and implement all or part of the  
21                  planning procedures described in this section.

## 22                  **§ 215105. EPA grants**

23                  (a) PLAN PROVISION DEVELOPMENT COSTS.—The Administrator shall  
24                  make grants to any organization of local elected officials with transportation  
25                  or air quality maintenance planning responsibilities recognized by a State  
26                  under section 215104(a) of this title for payment of the reasonable costs  
27                  of developing a plan provision under this chapter.

28                  (b) GRANT FUNDS.—The amount granted to any organization under sub-  
29                  section (a) shall be 100 percent of any additional costs of developing a plan  
30                  provision under this chapter for the 1st 2 fiscal years following receipt of  
31                  the grant under this paragraph, and shall supplement any funds available  
32                  under Federal law to the organization for transportation or air quality  
33                  maintenance planning. Grants under this section shall not be used for con-  
34                  struction.

## 35                  **§ 215106. Maintenance plans**

36                  (a) PLAN PROVISION.—A State that submits a request under section  
37                  211107(d) of this title for redesignation of a nonattainment area for any  
38                  air pollutant as an area that has attained the primary NAAQS for that air  
39                  pollutant shall submit an applicable State implementation plan provision  
40                  that—

1 (1) provides for the maintenance of the primary NAAQS for that air  
2 pollutant in the area for at least 10 years after the redesignation; and

3 (2) contains such additional measures, if any, as may be necessary  
4 to ensure such maintenance.

5 (b) SUBSEQUENT PLAN PROVISIONS.—Eight years after redesignation of  
6 any area as an attainment area under section 211107(d) of this title, the  
7 State shall submit to the Administrator an additional applicable State im-  
8 plementation plan provision for maintaining the primary NAAQS for 10  
9 years after the expiration of the 10-year period described in subsection (a).

10 (c) NONATTAINMENT REQUIREMENTS APPLICABLE PENDING PLAN AP-  
11 PROVAL.—Until a plan provision under subsection (b) is approved and an  
12 area is redesignated as attainment for any area designated as a nonattain-  
13 ment area, the requirements of this chapter shall continue in effect with re-  
14 spect to the area.

15 (d) CONTINGENCY PROVISIONS.—A plan provision submitted under this  
16 section shall contain such contingency provisions as the Administrator con-  
17 siders necessary to ensure that the State will promptly correct any violation  
18 of the standard that occurs after the redesignation of the area as an attain-  
19 ment area. The contingency provisions shall include a requirement that the  
20 State will implement all measures with respect to the control of the air pol-  
21 lutant concerned that were contained in the State implementation plan for  
22 the area before redesignation of the area as an attainment area. The failure  
23 of any area redesignated as an attainment area to maintain the NAAQS  
24 concerned shall not result in a requirement that the State revise its State  
25 implementation plan unless the Administrator, in the Administrator's discre-  
26 tion, requires the State to submit a revised State implementation plan.

27 **§ 215107. Limitations on certain Federal assistance**

28 (a) ACTIVITIES NOT CONFORMING TO APPROVED OR PROMULGATED  
29 PLANS.—

30 (1) LIMITATION.—

31 (A) IN GENERAL.—No department, agency, or instrumentality  
32 of the Federal Government shall engage in, support in any way  
33 or provide financial assistance for, license or permit, or approve  
34 any activity that does not conform to an implementation plan after  
35 the implementation plan has been approved or promulgated under  
36 section 211110 of this title. No metropolitan planning organiza-  
37 tion designated under section 134 of title 23, shall give its ap-  
38 proval to any project, program, or plan that does not conform to  
39 an implementation plan approved or promulgated under section  
40 211110 of this title. The assurance of conformity to such an im-

1            plementation plan shall be an affirmative responsibility of the head  
2            of a department, agency, or instrumentality.

3            (B) CONFORMITY.—An activity shall be considered to conform  
4            to an implementation plan if the activity—

5                    (i) conforms to an implementation plan's purpose of elimi-  
6                    nating or reducing the severity and number of violations of  
7                    the NAAQSeS and achieving expeditious attainment of the  
8                    NAAQSeS; and

9                    (ii) will not—

10                            (I) cause or contribute to any new violation of any  
11                            NAAQS in any area;

12                            (II) increase the frequency or severity of any existing  
13                            violation of any NAAQS in any area; or

14                            (III) delay timely attainment of any NAAQS or any  
15                            required interim emission reductions or other milestones  
16                            in any area.

17            (C) BASIS OF DETERMINATION.—The determination of conform-  
18            ity shall be based on the most recent estimates of emissions, and  
19            those estimates shall be determined from the most recent popu-  
20            lation, employment, travel, and congestion estimates as determined  
21            by the metropolitan planning organization or other agency author-  
22            ized to make such estimates.

23            (2) TRANSPORTATION PLANS AND PROGRAMS.—

24                    (A) IN GENERAL.—Any transportation plan or program devel-  
25                    oped pursuant to title 23 or chapter 53 of title 49 shall implement  
26                    the transportation provisions of any applicable implementation  
27                    plan approved under this division applicable to all or part of the  
28                    area covered by the transportation plan or program. No Federal  
29                    agency may approve, accept, or fund any transportation plan, pro-  
30                    gram, or project unless the plan, program, or project has been  
31                    found to conform to any applicable implementation plan in effect  
32                    under this division.

33                    (B) PARTICULAR CASES.—In particular—

34                            (i) no transportation plan or transportation improvement  
35                            program may be adopted by a metropolitan planning organi-  
36                            zation designated under title 23 or chapter 53 of title 49, or  
37                            be found to be in conformity by a metropolitan planning orga-  
38                            nization, until a final determination has been made that—

39                                    (I) emissions expected from implementation of the  
40                                    plans and programs are consistent with estimates of  
41                                    emissions from motor vehicles and necessary emissions

1 reductions contained in the applicable implementation  
2 plan; and

3 (II) the plan or program will conform to the require-  
4 ments of paragraph (1)(B)(ii);

5 (ii) no metropolitan planning organization or other recipi-  
6 ent of funds under title 23 or chapter 53 of title 49 shall  
7 adopt or approve a transportation improvement program of  
8 projects until the recipient of funds determines that the pro-  
9 gram provides for timely implementation of transportation  
10 control measures consistent with schedules included in the ap-  
11 plicable implementation plan; and

12 (iii) a transportation project may be adopted or approved  
13 by a metropolitan planning organization or any recipient of  
14 funds designated under title 23 or chapter 53 of title 49, or  
15 found in conformity by a metropolitan planning organization  
16 or approved, accepted, or funded by the Department of  
17 Transportation only if—

18 (I) the transportation project meets the requirements  
19 of subparagraph (C); or

20 (II)(aa) the transportation project comes from a con-  
21 forming plan and program;

22 (bb) the design concept and scope of the transpor-  
23 tation project have not changed significantly since the  
24 conformity finding regarding the plan and program from  
25 which the project derived; and

26 (cc) the design concept and scope of the transportation  
27 project at the time of the conformity determination for  
28 the program was adequate to determine emissions.

29 (C) TREATMENT OF CERTAIN PROJECTS AS CONFORMING.—Any  
30 project not described in subparagraph (B)(iii) shall be treated as  
31 conforming to the applicable implementation plan only if it is dem-  
32 onstrated that the projected emissions from the project, when con-  
33 sidered together with emissions projected for the conforming  
34 transportation plans and programs within the nonattainment area,  
35 do not cause those plans and programs to exceed the emission re-  
36 duction projections and schedules assigned to the plans and pro-  
37 grams in the applicable implementation plan.

38 (D) REDETERMINATION OF CONFORMITY.—The appropriate  
39 metropolitan planning organization shall redetermine conformity of  
40 existing transportation plans and programs not later than 2 years  
41 after the date on which the Administrator—

1 (i) finds a motor vehicle emissions budget to be adequate  
2 in accordance with section 93.118(e)(4) of title 40, Code of  
3 Federal Regulations (as in effect on October 1, 2004);

4 (ii) approves an implementation plan that establishes a  
5 motor vehicle emissions budget if that budget has not yet  
6 been determined to be adequate in accordance with clause (i);  
7 or

8 (iii) promulgates an implementation plan that establishes  
9 or revises a motor vehicle emissions budget.

10 (3) DEMONSTRATION OF CONFORMITY.—

11 (A) IN GENERAL.—Until such time as the implementation plan  
12 provision described in paragraph (4)(E) is approved, conformity of  
13 plans, programs, and projects described in this paragraph will be  
14 demonstrated if—

15 (i) the transportation plans and programs—

16 (I) are consistent with the most recent estimates of  
17 mobile source emissions;

18 (II) provide for the expeditious implementation of  
19 transportation control measures in the applicable imple-  
20 mentation plan; and

21 (III) with respect to ozone and carbon monoxide non-  
22 attainment areas, contribute to annual emissions reduc-  
23 tions consistent with sections 215203(b)(2) and  
24 215303(a)(8) of this title; and

25 (ii) the transportation projects—

26 (I) come from a conforming transportation plan and  
27 program as defined in clause (i); and

28 (II) in carbon monoxide nonattainment areas, elimi-  
29 nate or reduce the severity and number of violations of  
30 the carbon monoxide standards in the area substantially  
31 affected by the project.

32 (B) DETERMINATION FOR TRANSPORTATION PROGRAM OR INDI-  
33 VIDUAL PROJECT.—With regard to subparagraph (A)(ii)(II), the  
34 determination may be made as part of the conformity determina-  
35 tion for the transportation program or for the individual project  
36 taken as a whole during the environmental review phase of project  
37 development.

38 (4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

39 (A) IN GENERAL.—The Administrator shall promulgate, and pe-  
40 riodically update, criteria and procedures for determining conform-  
41 ity (except in the case of transportation plans, programs, and



1 projects) of, and for keeping the Administrator informed about,  
2 the activities described in paragraph (1).

3 (B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The  
4 Administrator, with the concurrence of the Secretary of Transpor-  
5 tation, shall promulgate, and periodically update, criteria and pro-  
6 cedures for demonstrating and ensuring conformity in the case of  
7 transportation plans, programs, and projects.

8 (C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action  
9 may be brought against the Administrator and the Secretary of  
10 Transportation under section 203104 of this title to compel pro-  
11 mulgation of criteria and procedures under subparagraphs (A) and  
12 (B), and a United States district court shall have jurisdiction to  
13 order such promulgation.

14 (D) REQUIREMENTS.—The procedures and criteria shall, at a  
15 minimum—

16 (i) address the consultation procedures to be undertaken by  
17 metropolitan planning organizations and the Secretary of  
18 Transportation with State and local air quality agencies and  
19 State departments of transportation before the organizations  
20 and the Secretary make conformity determinations;

21 (ii) address the appropriate frequency for making conform-  
22 ity determinations, but the frequency for making conformity  
23 determinations on updated transportation plans and pro-  
24 grams shall be every 4 years, except in a case in which—

25 (I) the metropolitan planning organization elects to  
26 update a transportation plan or program more fre-  
27 quently; or

28 (II) the metropolitan planning organization is required  
29 to determine conformity in accordance with paragraph  
30 (2)(D); and

31 (iii) address how conformity determinations will be made  
32 with respect to maintenance plans.

33 (E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—The  
34 procedures under subparagraph (A) shall include a requirement  
35 that each State include in the State implementation plan criteria  
36 and procedures for consultation required by subparagraph (D)(i),  
37 and enforcement and enforceability (pursuant to sections  
38 93.125(e) and 93.122(a)(4)(ii) of title 40, Code of Federal Regu-  
39 lations) in accordance with the Administrator's criteria and proce-  
40 dures for consultation, enforcement, and enforceability.

1 (F) TRAFFIC SIGNAL SYNCHRONIZATION PROJECTS.—Compli-  
2 ance with the regulations of the Administrator for determining the  
3 conformity of transportation plans, programs, and projects funded  
4 or approved under title 23 or chapter 53 of title 49 to State or  
5 Federal implementation plans shall not be required for traffic sig-  
6 nal synchronization projects prior to the funding, approval or im-  
7 plementation of such projects. The supporting regional emissions  
8 analysis for any conformity determination made with respect to a  
9 transportation plan, program, or project shall consider the effect  
10 on emissions of any such project funded, approved, or imple-  
11 mented prior to the conformity determination.

12 (5) APPLICABILITY.—This subsection shall apply only with respect  
13 to—

14 (A) a nonattainment area and each pollutant for which the area  
15 is designated as a nonattainment area; and

16 (B) an area that was designated as a nonattainment area but  
17 that was later redesignated by the Administrator as an attainment  
18 area and that is required to develop a maintenance plan under sec-  
19 tion 215106 of this title with respect to the specific pollutant for  
20 which the area was designated nonattainment.

21 (6) NONAPPLICABILITY.—Notwithstanding paragraph (5), this sub-  
22 section shall not apply with respect to an area designated nonattain-  
23 ment under section 211107(d)(1) of this title until 1 year after the  
24 area is first designated nonattainment for a specific NAAQS. This  
25 paragraph applies only with respect to the NAAQS for which an area  
26 is newly designated nonattainment and does not affect the area's re-  
27 quirements with respect to all other NAAQSeS for which the area is  
28 designated nonattainment or has been redesignated from nonattain-  
29 ment to attainment with a maintenance plan pursuant to section  
30 215106 of this title (including any pre-existing NAAQS for a pollutant  
31 for which a new or revised standard has been issued).

32 (7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

33 (A) DEFINITION OF AIR POLLUTION CONTROL AGENCY.—In this  
34 paragraph, the term “air pollution control agency” means an air  
35 pollution control agency (as defined in section 201101 of this title)  
36 that is responsible for developing plans or controlling air pollution  
37 within the area covered by a transportation plan.

38 (B) IN GENERAL.—Each conformity determination required  
39 under this section for a transportation plan under section 134(i)  
40 of title 23 or section 5303(i) of title 49 shall require a demonstra-  
41 tion of conformity for—

1 (i) the period ending on the final year of the transportation  
2 plan; or

3 (ii) at the election of the metropolitan planning organiza-  
4 tion, after consultation with the air pollution control agency  
5 and solicitation of public comments and consideration of the  
6 comments, the longest of the following periods:

7 (I) The 1st 10-year period of the transportation plan.

8 (II) The period ending on the latest year in the imple-  
9 mentation plan applicable to the area that contains a  
10 motor vehicle emission budget.

11 (III) The period ending on the year after the comple-  
12 tion date of a regionally significant project if the project  
13 is included in the transportation improvement program  
14 or the project requires approval before the subsequent  
15 conformity determination.

16 (C) REGIONAL EMISSIONS ANALYSIS.—The conformity deter-  
17 mination shall be accompanied by a regional emissions analysis for  
18 the last year of the transportation plan and for any year shown  
19 to exceed emission budgets by a prior analysis, if that year extends  
20 beyond the applicable period as determined under subparagraph  
21 (B).

22 (D) EXCEPTION.—In any case in which an area has an imple-  
23 mentation plan provision under section 215106(b) of this title and  
24 the Administrator finds the motor vehicles emissions budgets from  
25 that revision to be adequate in accordance with section  
26 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect  
27 on October 1, 2004), or approves the provision, the demonstration  
28 of conformity, at the election of the metropolitan planning organi-  
29 zation, after consultation with the air pollution control agency and  
30 solicitation of public comments and consideration of such com-  
31 ments, shall be required to extend only through the last year of  
32 the implementation plan required under section 215106(b) of this  
33 title.

34 (E) EFFECT OF ELECTION.—Any election by a metropolitan  
35 planning organization under this paragraph shall continue in ef-  
36 fect until the metropolitan planning organization elects otherwise.

37 (8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

38 (A) IN GENERAL.—Transportation control measures that are  
39 specified in an implementation plan may be replaced or added to  
40 the implementation plan with alternate or additional transpor-  
41 tation control measures if—

1 (i) the substitute measures achieve equivalent or greater  
2 emissions reductions than the control measure to be replaced,  
3 as demonstrated with an emissions impact analysis that is  
4 consistent with the current methodology used for evaluating  
5 the replaced control measure in the implementation plan;

6 (ii) the substitute control measures are implemented—

7 (I) in accordance with a schedule that is consistent  
8 with the schedule provided for control measures in the  
9 implementation plan; or

10 (II) if the implementation plan date for implementa-  
11 tion of the control measure to be replaced has passed, as  
12 soon as practicable after the implementation plan date  
13 but not later than the date on which emission reductions  
14 are necessary to achieve the purpose of the implementa-  
15 tion plan;

16 (iii) the substitute and additional control measures are ac-  
17 companied by evidence of adequate personnel and funding  
18 and authority under State or local law to implement, monitor,  
19 and enforce the control measures;

20 (iv) the substitute and additional control measures are de-  
21 veloped through a collaborative process that includes—

22 (I) participation by representatives of all affected ju-  
23 risdictions (including local air pollution control agencies,  
24 the State air pollution control agency, and State and  
25 local transportation agencies);

26 (II) consultation with the Administrator; and

27 (III) reasonable public notice and opportunity for com-  
28 ment; and

29 (v) the metropolitan planning organization, the State air  
30 pollution control agency, and the Administrator concur with  
31 the equivalency of the substitute or additional control meas-  
32 ures.

33 (B) ADOPTION.—

34 (i) EFFECT OF CONCURRENCE.—Concurrence by the met-  
35 ropolitan planning organization, the State air pollution con-  
36 trol agency, and the Administrator as required by subpara-  
37 graph (A)(v) shall constitute adoption of the substitute or ad-  
38 ditional control measures so long as the requirements of  
39 clauses (i), (ii), (iii) and (iv) of subparagraph (A) are met.

40 (ii) STATE IMPLEMENTATION PLAN; FEDERAL ENFORCE-  
41 ABILITY.—Once adopted, the substitute or additional control

1 measures become, by operation of law, part of the State im-  
2 plementation plan and become federally enforceable.

3 (iii) SUBMITTAL.—Within 90 days of its concurrence under  
4 subparagraph (A)(v), the State air pollution control agency  
5 shall submit the substitute or additional control measure to  
6 the Administrator for incorporation in the codification of the  
7 applicable implementation plan.

8 (iv) NO ADDITIONAL PROCESS.—Notwithstanding any other  
9 provision of this division, no additional State process shall be  
10 necessary to support such an applicable plan provision.

11 (C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substi-  
12 tution or addition of a transportation control measure in accord-  
13 ance with this paragraph and the funding or approval of such a  
14 control measure shall not be contingent on the existence of any  
15 provision in the applicable implementation plan that expressly per-  
16 mits such a substitution or addition.

17 (D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINA-  
18 TION.—The substitution or addition of a transportation control  
19 measure in accordance with this paragraph shall not require—

20 (i) a new conformity determination for the transportation  
21 plan; or

22 (ii) a revision of the implementation plan.

23 (E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—  
24 A control measure that is being replaced by a substitute control  
25 measure under this paragraph shall remain in effect until the sub-  
26 stitute control measure is adopted by the State pursuant to sub-  
27 paragraph (B).

28 (F) EFFECT OF ADOPTION.—Adoption of a substitute control  
29 measure shall constitute rescission of the previously applicable  
30 control measure.

31 (9) LAPSE OF CONFORMITY.—

32 (A) IN GENERAL.—A transportation plan shall lapse if—

33 (i) a conformity determination required under this sub-  
34 section for a transportation plan under section 134(i) of title  
35 23 or section 5303(i) of title 49, or a transportation improve-  
36 ment program under section 134(j) of title 23 or under sec-  
37 tion 5303(j) of title 49 is not made by the applicable dead-  
38 line; and

39 (ii) the failure to make a conformity determination is not  
40 corrected by—

1 (I) additional measures to reduce motor vehicle emis-  
2 sions sufficient to demonstrate compliance with the re-  
3 quirements of this subsection within 12 months after the  
4 deadline; or

5 (II) other measures sufficient to correct the failures.

6 (B) EFFECT OF LAPSE.—If a transportation plan lapses under  
7 subparagraph (A)—

8 (i) the conformity determination for the transportation plan  
9 or transportation improvement program expires; and

10 (ii) there is no currently conforming transportation plan or  
11 transportation improvement program.

12 (b) PRIORITY OF ACHIEVING AND MAINTAINING PRIMARY NAAQSES.—

13 Each department, agency, or instrumentality of the Federal Government  
14 having authority to conduct or support any program with air quality-related  
15 transportation consequences shall give priority in the exercise of that au-  
16 thority, consistent with statutory requirements for allocation among States  
17 or other jurisdictions, to the implementation of the portions of plans pre-  
18 pared under this section to achieve and maintain the primary NAAQS. The  
19 authority to which this subsection extends includes authority exercised  
20 under chapter 53 of title 49, title 23, the Housing and Urban Development  
21 Act of 1965 (79 Stat. 451), the Housing and Urban Development Act of  
22 1968 (82 Stat. 476), the Housing and Urban Development Act of 1969 (83  
23 Stat. 379), and the Housing and Urban Development Act of 1970 (84 Stat.  
24 1770).

25 **§ 215108. Interstate transport commissions**

26 (a) INTERSTATE TRANSPORT REGIONS.—

27 (1) ESTABLISHMENT.—When, on the Administrator’s own motion or  
28 by petition from the Governor of any State, the Administrator has rea-  
29 son to believe that the interstate transport of air pollutants from 1 or  
30 more States contributes significantly to a violation of a NAAQS in 1  
31 or more other States, the Administrator may establish, by regulation,  
32 an interstate transport region for the pollutant that includes those  
33 States.

34 (2) ADDITION AND REMOVAL OF STATES.—The Administrator, on  
35 the Administrator’s own motion, on petition from the Governor of any  
36 State, or on the recommendation of an interstate transport commission  
37 established under subsection (b), may—

38 (A) add any State or portion of a State to an interstate trans-  
39 port region established under this subsection when the Adminis-  
40 trator has reason to believe that the interstate transport of air pol-

1           lutants from that State significantly contributes to a violation of  
2           the NAAQS in the interstate transport region; or

3           (B) remove any State or portion of a State from an interstate  
4           transport region when the Administrator has reason to believe that  
5           the control of emissions in that State or portion of the State pur-  
6           suant to this section will not significantly contribute to the attain-  
7           ment of the NAAQS in any area in the interstate transport region.

8           (3) PROCEDURE.—

9           (A) APPROVAL OR DISAPPROVAL.—The Administrator shall ap-  
10          prove or disapprove a petition or recommendation under subpara-  
11          graph (A) or (B) of paragraph (2) within 18 months after its re-  
12          ceipt.

13          (B) PUBLIC PARTICIPATION.—The Administrator shall establish  
14          appropriate proceedings for public participation regarding motions,  
15          petitions, and recommendations under subparagraphs (A) and (B)  
16          of paragraph (2), including notice and comment.

17          (b) INTERSTATE TRANSPORT COMMISSIONS.—

18          (1) ESTABLISHMENT.—When the Administrator establishes an inter-  
19          state transport region under subsection (a), the Administrator shall es-  
20          tablish a transport commission comprised of (at a minimum) each of  
21          the following members:

22                  (A) The Governor of each State in the interstate transport re-  
23                  gion or the Governor's designee.

24                  (B) The Administrator, or the Administrator's designee.

25                  (C) The Regional Administrator (or the Administrator's des-  
26                  ignee) for each Regional Office for each EPA region affected by  
27                  the interstate transport region.

28                  (D) An air pollution control official representing each State in  
29                  the interstate transport region, appointed by the Governor.

30          (2) VOTING.—Decisions of, and recommendations and requests to  
31          the Administrator, by an interstate transport commission may be made  
32          only by a majority vote of all members other than the Administrator  
33          and the Regional Administrators (or designees).

34          (3) RECOMMENDATIONS.—An interstate transport commission  
35          shall—

36                  (A) assess the degree of interstate transport of the pollutant or  
37                  precursors to the pollutant throughout the interstate transport re-  
38                  gion;

39                  (B) assess strategies for mitigating the interstate pollution; and

40                  (C) recommend to the Administrator such measures as the  
41                  interstate transport commission determines to be necessary to en-

1           sure that the implementation plans for the States in the interstate  
2           transport region meet the requirements of section  
3           211110(a)(3)(D) of this title.

4           (4) FEDERAL ADVISORY COMMITTEE ACT.—An interstate transport  
5           commission shall not be subject to the Federal Advisory Committee Act  
6           (5 U.S.C. App.).

7           (e) COMMISSION REQUESTS.—

8           (1) REQUEST.—An interstate transport commission may request the  
9           Administrator to issue a finding under section 211110(i)(5) of this title  
10          that the implementation plan for 1 or more of the States in the inter-  
11          state transport region is substantially inadequate to meet the require-  
12          ments of section 211110(a)(3)(D) of this title.

13          (2) PUBLIC PARTICIPATION; SPECIFIC RECOMMENDATIONS.—In act-  
14          ing on a request under paragraph (1), the Administrator shall provide  
15          an opportunity for public participation and shall address each specific  
16          recommendation made by the commission.

17          (3) APPROVAL OR DISAPPROVAL.—The Administrator shall approve,  
18          disapprove, or partially approve and partially disapprove a request  
19          under paragraph (1) within 18 months after its receipt and, to the ex-  
20          tent that the Administrator approves the request, issue the finding  
21          under section 211110(i)(5) of this title at the time of approval. Ap-  
22          proval or disapproval of a request shall constitute final agency action  
23          within the meaning of section 203102(b) of this title.

24          **§215109. New motor vehicle emission standards in non-**  
25          **attainment areas**

26          (a) IN GENERAL.—Notwithstanding section 221109(a) of this title, any  
27          State that has implementation plan provisions approved under this chapter  
28          may adopt and enforce for any model year standards relating to control of  
29          emissions from new motor vehicles or new motor vehicle engines and take  
30          such other actions as are described in section 221109(a) of this title re-  
31          specting such vehicles if—

32                  (1) the standards are identical to the California standards for which  
33                  a waiver has been granted for that model year; and

34                  (2) California and that State adopt the standards at least 2 years  
35                  before commencement of the model year (as determined by regulations  
36                  of the Administrator).

37          (b) EFFECT OF SECTION.—Nothing in this section or in subdivision 3  
38          shall be construed as authorizing any State described in subsection (a) to—

39                  (1) prohibit or limit, directly or indirectly, the manufacture or sale  
40                  of a new motor vehicle or motor vehicle engine that is certified in Cali-  
41                  fornia as meeting California standards; or



1           (2) take any action to create, or have the effect of creating, a motor  
2           vehicle or motor vehicle engine different from a motor vehicle or engine  
3           certified in California under California standards (referred to in this  
4           section as a “3d vehicle”) or otherwise create a 3d vehicle.

5           **§ 215110. Guidance documents respecting the lowest achiev-**  
6           **able emission rate**

7           (a) IN GENERAL.—The Administrator shall issue guidance documents  
8           under section 211108 of this title for purposes of assisting States in imple-  
9           menting requirements of this chapter respecting the lowest achievable emis-  
10          sion rate.

11          (b) REVISION.—The guidance documents shall be revised at least every  
12          2 years.

13          **§ 215111. Sanctions and consequences of failure to attain**

14          (a) STATE FAILURE.—

15               (1) IN GENERAL.—Except as provided in paragraph (2), for any im-  
16               plementation plan or plan revision required under this chapter (or re-  
17               quired in response to a finding of substantial inadequacy as described  
18               in section 211110(i)(5) of this title), if the Administrator—

19                       (A) finds that a State has failed, for an area designated non-  
20                       attainment under section 211107(d) of this title, to submit a plan,  
21                       or to submit 1 or more of the elements (as determined by the Ad-  
22                       ministrator) required by the provisions of this division applicable  
23                       to such an area, or has failed to make a submission for such an  
24                       area that satisfies the minimum criteria established in relation to  
25                       any such element under section 211110(i) of this title;

26                       (B) disapproves a submission under section 211110(i) of this  
27                       title for an area designated nonattainment under section 211107  
28                       of this title, based on the submission’s failure to meet 1 or more  
29                       of the elements required by the provisions of this division applica-  
30                       ble to such an area;

31                       (C)(i) determines that a State has failed to make any submis-  
32                       sion as required under this division (other than a submission de-  
33                       scribed under subparagraph (A) or (B)), including an adequate  
34                       maintenance plan that satisfies the minimum criteria established  
35                       in relation to the submission under section 211110(i)(1)(A) of this  
36                       title; or

37                       (ii) disapproves in whole or in part a submission under section  
38                       211110(i)(1)(A) of this title; or

39                       (D) finds that any requirement of an approved plan (or ap-  
40                       proved part of a plan) is not being implemented;

1 unless the deficiency is corrected within 18 months after the finding,  
2 disapproval, or determination under subparagraph (A), (B), (C), or  
3 (D), 1 of the sanctions described in subsection (b) shall apply, as se-  
4 lected by the Administrator, until the Administrator determines that  
5 the State has come into compliance.

6 (2) LACK OF GOOD FAITH.—If the Administrator finds a lack of  
7 good faith, sanctions under both paragraphs (2) and (3) of subsection  
8 (b) shall apply until the Administrator determines that the State has  
9 come into compliance.

10 (3) DEFICIENCY NOT CORRECTED WITHIN 6 MONTHS.—If the Ad-  
11 ministrator has selected 1 of the sanctions under subsection (b) and  
12 the deficiency is not corrected within 6 months thereafter, sanctions  
13 under both paragraphs (2) and (3) of subsection (b) shall apply until  
14 the Administrator determines that the State has come into compliance.

15 (4) WITHHOLDING OF GRANT.—In addition to any other sanction ap-  
16 plicable as provided in this section, the Administrator may withhold all  
17 or part of a grant for support of air pollution planning and control pro-  
18 grams that the Administrator may award under section 211105 of this  
19 title.

20 (b) SANCTIONS.—

21 (1) IN GENERAL.—The sanctions available to the Administrator  
22 under subsection (a) are as provided in this subsection.

23 (2) HIGHWAY SANCTIONS.—

24 (A) IN GENERAL.—The Administrator may impose a prohibi-  
25 tion, applicable to a nonattainment area, on the approval by the  
26 Secretary of Transportation of any projects or the awarding by the  
27 Secretary of any grants under title 23, other than a project or  
28 grant for—

29 (i) safety, if the Secretary determines, based on accident or  
30 other appropriate data submitted by the State, that the prin-  
31 cipal purpose of the project is an improvement in safety to  
32 resolve a demonstrated safety problem and likely will result  
33 in a significant reduction in, or avoidance of, accidents;

34 (ii) capital programs for public transit;

35 (iii) construction or restriction of certain roads or lanes  
36 solely for the use of passenger buses or high occupancy vehi-  
37 cles;

38 (iv) planning for requirements for employers to reduce em-  
39 ployee work-trip-related vehicle emissions;

1 (v) highway ramp metering, traffic signalization, and relat-  
2 ed programs that improve traffic flow and achieve a net emis-  
3 sion reduction;

4 (vi) fringe and transportation corridor parking facilities  
5 serving multiple occupancy vehicle programs or transit oper-  
6 ations;

7 (vii) programs to limit or restrict vehicle use in downtown  
8 areas or other areas of emission concentration particularly  
9 during periods of peak use, through road use charges, tolls,  
10 parking surcharges, or other pricing mechanisms, vehicle re-  
11 stricted zones or periods, or vehicle registration programs;

12 (viii) programs for breakdown and accident scene manage-  
13 ment, nonrecurring congestion, and vehicle information sys-  
14 tems, to reduce congestion and emissions; and

15 (ix) such other transportation-related programs as the Ad-  
16 ministrator, in consultation with the Secretary of Transpor-  
17 tation, finds would improve air quality and would not encour-  
18 age single occupancy vehicle capacity.

19 (B) CONSIDERATIONS.—In considering measures described in  
20 clauses (ii) through (ix) of subparagraph (A), a State should seek  
21 to ensure adequate access to downtown, other commercial, and  
22 residential areas and avoid increasing or relocating emissions and  
23 congestion.

24 (C) EFFECTIVE DATE.—A prohibition under subparagraph (A)  
25 shall become effective on the selection by the Administrator of the  
26 sanction.

27 (3) OFFSETS.—In applying the emissions offset requirements of sec-  
28 tion 215103 of this title to new or modified sources or emissions units  
29 for which a permit is required under this chapter, the ratio of emission  
30 reductions to increased emissions shall be at least 2 to 1.

31 (e) NOTICE OF FAILURE TO ATTAIN.—

32 (1) DETERMINATION.—As expeditiously as practicable after the ap-  
33 plicable attainment date for any nonattainment area, but not later than  
34 6 months after that date, the Administrator shall determine, based on  
35 the area's air quality as of the attainment date, whether the area at-  
36 tained the standard by that date.

37 (2) NOTICE.—On making a determination under paragraph (1), the  
38 Administrator shall publish a notice in the Federal Register containing  
39 the determination and identifying each area that the Administrator de-  
40 termined to have failed to attain.

1           (3) REVISION OR SUPPLEMENTATION.—The Administrator may re-  
2        vise or supplement a determination under paragraph (1) at any time  
3        based on more complete information or analysis concerning the area’s  
4        air quality as of the attainment date.

5        (d) CONSEQUENCES FOR FAILURE TO ATTAIN.—

6           (1) REVISION OF IMPLEMENTATION PLAN.—Within 1 year after the  
7        Administrator publishes a notice under subsection (c)(2), each State  
8        containing a nonattainment area shall submit a revision to the applica-  
9        ble implementation plan meeting the requirements of paragraph (2).

10          (2) REQUIREMENTS.—A revision required under paragraph (1)  
11        shall—

12           (A) meet the requirements of sections 211110 and 215102 of  
13        this title; and

14           (B) include such additional measures as the Administrator may  
15        reasonably prescribe, including all measures that can be feasibly  
16        implemented in the area in light of technological achievability,  
17        costs, and other air quality-related and non-air-quality-related  
18        health and environmental impacts.

19          (3) ATTAINMENT DATE.—The attainment date applicable to a revi-  
20        sion required under paragraph (1) shall be the same as provided in  
21        paragraph (2) of section 215102(a) of this title, except that in applying  
22        subparagraph (A) of that paragraph the phrase “after the date of the  
23        notice under section 215111(c)(2) of this title” shall be substituted for  
24        the phrase “after the date on which the area was designated nonattain-  
25        ment under section 211107(d) of this title” and for the phrase “after  
26        the date of designation as nonattainment”.

27        **§ 215112. International border areas**

28          (a) IMPLEMENTATION PLANS AND REVISIONS.—Notwithstanding any  
29        other provision of law, an implementation plan or plan revision required  
30        under this division shall be approved by the Administrator if—

31           (1) the implementation plan or revision meets all the requirements  
32        applicable to it under this division other than a requirement that the  
33        implementation plan or revision demonstrate attainment and mainte-  
34        nance of the relevant NAAQSeS by the attainment date specified under  
35        the applicable provision of this division (including a regulation promul-  
36        gated under that provision); and

37           (2) the submitting State establishes to the satisfaction of the Admin-  
38        istrator that the implementation plan would be adequate to attain and  
39        maintain the relevant NAAQSeS by the attainment date specified under  
40        the applicable provision of this division (including a regulation promul-

1 gated under that provision) but for emissions emanating from outside  
2 the United States.

3 (b) ATTAINMENT OF OZONE LEVELS.—Notwithstanding any other provi-  
4 sion of law, a State that establishes to the satisfaction of the Administrator  
5 that, with respect to an ozone nonattainment area in the State, the State  
6 would have attained the NAAQS for ozone by the applicable attainment  
7 date but for emissions emanating from outside the United States, shall not  
8 be subject to paragraph (2) or (5) of section 215202(a) or section 215206  
9 of this title.

10 (c) ATTAINMENT OF CARBON MONOXIDE LEVELS.—Notwithstanding any  
11 other provision of law, a State that establishes to the satisfaction of the Ad-  
12 ministrator that, with respect to a carbon monoxide nonattainment area in  
13 the State, the State has attained the NAAQS for carbon monoxide by the  
14 applicable attainment date but for emissions emanating from outside the  
15 United States, shall not be subject to section 215302(b)(2) of this title.

16 (d) ATTAINMENT OF PM-10 LEVELS.—Notwithstanding any other provi-  
17 sion of law, a State that establishes to the satisfaction of the Administrator  
18 that, with respect to a PM-10 nonattainment area in the State, the State  
19 would have attained the NAAQS for carbon monoxide by the applicable at-  
20 tainment date but for emissions emanating from outside the United States,  
21 shall not be subject to section 215402(b)(2) of this title.

## 22 **Subchapter II—Additional Provisions for** 23 **Ozone Nonattainment Areas**

### 24 **§ 215201. Definitions**

25 In this subchapter:

26 (1) APPLICABLE MILESTONE.—The term “applicable milestone”  
27 means a reduction in omissions described in section 215203(g)(1) of  
28 this title.

29 (2) EXTREME AREA.—The term “extreme area” means an area that  
30 is classified as an extreme area under section 215202 of this title.

31 (3) MARGINAL AREA.—The term “marginal area” means an area  
32 that is classified as a marginal area under section 215202 of this title.

33 (4) MODERATE AREA.—The term “moderate area” means an area  
34 that is classified as a moderate area under section 215202 of this title.

35 (5) NEXT HIGHER CLASSIFICATION.—The term “next higher classi-  
36 fication”, with respect to a classification related to any set of design  
37 values in table 1, means the classification that is related to the next  
38 higher set of design values in table 1.

39 (6) SERIOUS AREA.—The term “serious area” means an area that  
40 is classified as a serious area under section 215202 of this title.

1 (7) SEVERE AREA.—The term “severe area” means an area that is  
2 classified as a severe area under section 215202 of this title.

3 (8) TABLE 1.—The term “table 1” means table 1 in section  
4 215202(a)(1) of this title.

5 **§ 215202. Classifications and attainment dates**

6 (a) CLASSIFICATION AND ATTAINMENT DATES FOR 1989 NONATTAIN-  
7 MENT AREAS.—

8 (1) IN GENERAL.—Each area designated nonattainment for ozone  
9 pursuant to section 211107(d) of this title shall be classified at the  
10 time of designation, under table 1, by operation of law, as a marginal  
11 area, moderate area, serious area, severe area, or extreme area based  
12 on the design value for the area. The design value shall be calculated  
13 according to the interpretation methodology issued by the Adminis-  
14 trator most recently before November 15, 1990. For each area classi-  
15 fied under this subsection, the primary standard attainment date for  
16 ozone shall be achieved as expeditiously as practicable but not later  
17 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.

18 (2) CERTAIN SEVERE AREAS.—Notwithstanding table 1, in the case  
19 of a severe area with a 1988 ozone design value between 0.190 and  
20 0.280 part per million, the attainment date shall be 17 years (in lieu  
21 of 15 years) after November 15, 1990.

22 (3) NOTICE.—At the time of publication of the notice under section  
23 211107(d)(4) of this title for each ozone nonattainment area, the Ad-  
24 ministrator shall publish a notice announcing the classification of the  
25 ozone nonattainment area. Section 215102(a)(1)(B) of this title shall  
26 apply to such a classification.

27 (4) ADJUSTMENT.—

28 (A) IN GENERAL.—If an area classified under paragraph (1)  
29 would have been classified in another category if the design value  
30 in the area were 5 percent greater or 5 percent less than the level  
31 on which the classification was based, the Administrator may,  
32 within 90 days after the initial classification, by the procedure re-

1           quired under paragraph (3), adjust the classification to place the  
2           area in the other category.

3           (B) CONSIDERATIONS.—In making an adjustment under sub-  
4           paragraph (A), the Administrator may consider—

5                 (i) the number of exceedances of the primary NAAQS for  
6                 ozone in the area;

7                 (ii) the level of pollution transport between the area and  
8                 other affected areas, including both intrastate and interstate  
9                 transport; and

10                (iii) the mix of sources and air pollutants in the area.

11           (5) EXTENSION.—

12                 (A) IN GENERAL.—On application by any State, the Adminis-  
13                 trator may extend for 1 additional year (referred to in this para-  
14                 graph as an “extension year”) the date specified in table 1 if—

15                         (i) the State has complied with all requirements and com-  
16                         mitments pertaining to the area in the applicable implementa-  
17                         tion plan; and

18                         (ii) not more than 1 exceedance of the NAAQS level for  
19                         ozone has occurred in the area in the year preceding the ex-  
20                         tension year.

21                 (B) LIMITATION.—Not more than 2 one-year extensions may be  
22                 issued under this paragraph for a single nonattainment area.

23           (b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

24                 (1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is  
25                 designated attainment or unclassifiable for ozone under section  
26                 211107(d)(4) of this title and is subsequently redesignated to non-  
27                 attainment for ozone under section 211107(d)(3) of this title shall, at  
28                 the time of redesignation, be classified by operation of law in accord-  
29                 ance with table 1. Upon its classification, the area shall be subject to  
30                 the same requirements under section 211110 of this title, subchapter  
31                 I, and this subchapter that would have applied had the area been so  
32                 classified at the time of the notice under subsection (a)(3), except that  
33                 any absolute, fixed date applicable in connection with any such require-  
34                 ment is extended by operation of law by a period equal to the length  
35                 of time between November 15, 1990, and the date on which the area  
36                 is classified under this paragraph.

37                 (2) RECLASSIFICATION ON FAILURE TO ATTAIN.—

38                         (A) DETERMINATION.—Within 6 months following the applica-  
39                         ble attainment date (including any extension) for an ozone non-  
40                         attainment area, the Administrator shall determine, based on the

1 area's design value (as of the attainment date), whether the area  
2 attained the NAAQS by that date.

3 (B) RECLASSIFICATION.—Except for any severe area or extreme  
4 area, any area that the Administrator finds has not attained the  
5 NAAQS by that date shall be reclassified by operation of law in  
6 accordance with table 1 to the higher of—

7 (i) the next higher classification for the area; or  
8 (ii) the classification applicable to the area's design value  
9 as determined at the time of the notice required under sub-  
10 paragraph (D).

11 (C) NO RECLASSIFICATION AS EXTREME AREA.—No area shall  
12 be reclassified as an extreme area under subparagraph (B)(ii).

13 (D) NOTICE.—The Administrator shall publish a notice in the  
14 Federal Register, not later than 6 months following the attain-  
15 ment date, identifying each area that the Administrator has deter-  
16 mined under subparagraph (A) as having failed to attain and iden-  
17 tifying the reclassification, if any, described under subparagraph  
18 (B).

19 (3) VOLUNTARY RECLASSIFICATION.—The Administrator shall grant  
20 the request of any State to reclassify a nonattainment area in that  
21 State in accordance with table 1 to a higher classification. The Admin-  
22 istrator shall publish a notice in the Federal Register of any such re-  
23 quest and of action by the Administrator granting the request.

24 (4) FAILURE OF SEVERE AREA TO ATTAIN STANDARD.—

25 (A) IN GENERAL.—

26 (i) SANCTIONS.—If any severe area fails to achieve the pri-  
27 mary NAAQS for ozone by the applicable attainment date  
28 (including any extension)—

29 (I) the fee provisions under section 215206 of this  
30 title shall apply within the severe area; and

31 (II)(aa) the percent reduction requirements of section  
32 215203(c)(4)(C) of this title shall continue to apply to  
33 the severe area; and

34 (bb) the State shall demonstrate that the required per-  
35 cent reduction has been achieved in each 3-year interval  
36 after such failure until the standard is attained.

37 (ii) FAILURE TO MAKE DEMONSTRATION.—Any failure to  
38 make a demonstration under clause (i)(II)(bb) shall be sub-  
39 ject to the sanctions provided under this chapter.

40 (B) DESIGN VALUE ABOVE 0.140 PART PER MILLION OR FAIL-  
41 URE TO ACHIEVE MILESTONE.—In addition to the requirements of



1           subparagraph (A), if the ozone design value for a severe area de-  
2           scribed in subparagraph (A) is above 0.140 part per million for  
3           the year of the applicable attainment date, or if the severe area  
4           has failed to achieve its most recent milestone under section  
5           215203(g) of this title, the new source review requirements appli-  
6           cable under this subchapter in extreme areas shall apply in the se-  
7           vere area, for which purpose the terms “major source” and “major  
8           stationary source” as applied to the severe area shall have the  
9           same meaning as when applied to extreme areas.

10           (C) ADDITIONAL REQUIREMENTS.—In addition to the require-  
11           ments of subparagraph (A), in the case of an area described in  
12           subparagraph (A) and not described in subparagraph (B), the pro-  
13           visions described in subparagraph (B) shall apply beginning 3  
14           years after the applicable attainment date unless the area has at-  
15           tained the standard by the end of that 3-year period.

16           (D) MODIFICATION OF METHOD OF DETERMINING COMPLI-  
17           ANCE.—If the Administrator modifies the method of determining  
18           compliance with the primary NAAQS, a design value or other indi-  
19           cator comparable to 0.140 part per million in terms of its relation-  
20           ship to the standard shall be used in lieu of 0.140 part per million  
21           for purposes of applying subparagraphs (B) and (C).

## 22   **§ 215203. Plan provisions**

23           (a) MARGINAL AREAS.—

24           (1) IN GENERAL.—Each State in which all or part of a marginal  
25           area is located shall, with respect to the marginal area (or portion  
26           thereof, to the extent specified in this subsection), include in its appli-  
27           cable implementation plan the provisions (including the plan items) de-  
28           scribed under this subsection.

29           (2) INVENTORY.—A State shall submit a comprehensive, accurate,  
30           current inventory of actual emissions from all sources, as described in  
31           section 215102(c)(3) of this title, in accordance with guidance provided  
32           by the Administrator.

33           (3) CORRECTIONS TO STATE IMPLEMENTATION PLAN.—

34           (A) IN GENERAL.—Within the periods prescribed in this para-  
35           graph, a State shall meet the requirements stated in subpara-  
36           graphs (B) and (C).

37           (B) REASONABLY AVAILABLE CONTROL TECHNOLOGY CORREC-  
38           TIONS.—For any marginal area (or, in the Administrator’s discre-  
39           tion, any portion of a marginal area), a State applicable implemen-  
40           tation plan shall include, within 6 months after the date of classi-  
41           fication under section 215202(a) of this title, such requirements

1 concerning reasonably available control technology as were re-  
2 quired under section 172(b) of the Clean Air Act (42 U.S.C.  
3 7502(b)) as in effect on November 14, 1990, as interpreted in  
4 guidance issued by the Administrator under section 108 of the  
5 Clean Air Act (42 U.S.C. 7408) before November 15, 1990.

6 (C) VEHICLE INSPECTION AND MAINTENANCE.—

7 (i) STRINGENCY.—For any marginal area (or, in the Ad-  
8 ministrator's discretion, any portion of a marginal area), the  
9 plan for which includes, or was required by section  
10 172(b)(11)(B) of the Clean Air Act (42 U.S.C.  
11 7502(b)(11)(B)) (as in effect before November 15, 1990) to  
12 include, a specific schedule for implementation of a vehicle  
13 emission control inspection and maintenance program, a  
14 State applicable implementation plan shall include any provi-  
15 sions necessary to provide for a vehicle inspection and mainte-  
16 nance program of no less stringency than that of the more  
17 stringent of—

18 (I) the program defined in House Report No. 95-294,  
19 95th Congress, 1st Session, 281-291 (1977), as inter-  
20 preted in guidance of the Administrator issued pursuant  
21 to section 172(b)(11)(B) of the Clean Air Act (42 U.S.C.  
22 7502(b)(11)(B)) (as in effect before November 15,  
23 1990); or

24 (II) the program previously included in the plan.

25 (ii) GUIDANCE.—

26 (I) IN GENERAL.—The Administrator shall review, re-  
27 vise, update, and republish in the Federal Register the  
28 guidance for the States for motor vehicle inspection and  
29 maintenance programs required by this division, taking  
30 into consideration the Administrator's investigations and  
31 audits of the program.

32 (II) COVERAGE.—The guidance shall, at a minimum,  
33 cover—

34 (aa) the frequency of inspections;

35 (bb) the types of vehicles to be inspected (which  
36 shall include leased vehicles that are registered in  
37 the nonattainment area);

38 (cc) vehicle maintenance by owners and operators;

39 (dd) audits by the State;

40 (ee) the test method and measures, including  
41 whether centralized or decentralized;

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- 1 (ff) inspection methods and procedures;  
2 (gg) quality of inspection;  
3 (hh) components covered;  
4 (ii) assurance that a vehicle subject to a recall no-  
5 tice from a manufacturer has complied with that no-  
6 tice; and  
7 (jj) effective implementation and enforcement, in-  
8 cluding ensuring that any retesting of a vehicle  
9 after a failure shall include proof of corrective ac-  
10 tion and providing for denial of vehicle registration  
11 in the case of tampering or misfueling.

12 (III) FLEXIBILITY.—The guidance, which shall be in-  
13 corporated in the applicable State implementation plans  
14 by the States, shall provide a State with continued rea-  
15 sonable flexibility to fashion effective, reasonable, and  
16 fair programs for the affected consumer.

17 (IV) SUBMISSION OF REVISION.—Not later than 2  
18 years after the Administrator promulgates regulations  
19 under section 221102(l)(3) of this title, a State shall  
20 submit a revision to the program to meet any require-  
21 ments that the Administrator may prescribe under that  
22 section.

23 (D) PERMIT PROGRAMS.—A State applicable implementation  
24 plan shall include each of the following:

25 (i) Provisions to require permits, in accordance with sec-  
26 tions 215102(c)(5) and 215103 of this title, for the construc-  
27 tion and operation of each new or modified major stationary  
28 source (with respect to ozone) to be located in the marginal  
29 area.

30 (ii) Provisions to correct requirements in (or add require-  
31 ments to) the plan concerning permit programs as were re-  
32 quired under section 172(b)(6) of the Clean Air Act (42  
33 U.S.C. 7502(b)(6)) (as in effect before November 15, 1990),  
34 as interpreted in regulations of the Administrator promul-  
35 gated as of November 15, 1990.

36 (4) PERIODIC INVENTORY.—

37 (A) GENERAL REQUIREMENT.—Not later than the end of each  
38 3-year period after submission of the inventory under paragraph  
39 (2) until the marginal area is redesignated to attainment, the  
40 State shall submit a revised inventory meeting the requirements  
41 of paragraph (2).

1 (B) EMISSIONS STATEMENTS.—

2 (i) IN GENERAL.—At least annually, a State shall submit  
3 a revision to the State implementation plan to require that  
4 the owner or operator of each stationary source of nitrogen  
5 oxides or volatile organic compounds provide the State with  
6 a statement, in such form as the Administrator may prescribe  
7 (or accept an equivalent alternative developed by the State),  
8 for classes or categories of sources, showing the actual emis-  
9 sions of nitrogen oxides and volatile organic compounds from  
10 that source. The statement shall contain a certification that  
11 the information contained in the statement is accurate to the  
12 best knowledge of the individual certifying the statement.

13 (ii) WAIVER.—A State may waive the application of clause  
14 (i) to any class or category of stationary sources that emit  
15 less than 25 tons per year of volatile organic compounds or  
16 nitrogen oxides if the State, in its submissions under para-  
17 graph (2) or subparagraph (A), provides an inventory of  
18 emissions from the class or category of sources based on the  
19 use of the emission factors established by the Administrator  
20 or other methods acceptable to the Administrator.

21 (5) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying  
22 the emission offset requirements of this chapter, the ratio of total emis-  
23 sion reductions of volatile organic compounds to total increased emis-  
24 sions of volatile organic compounds shall be at least 1.1 to 1.

25 (6) SCHEDULE.—The Administrator may require States to submit a  
26 schedule for submitting any of the revisions or other items required  
27 under this subsection.

28 (7) APPLICABILITY OF SUBSECTION IN LIEU OF OTHER REQUIRE-  
29 MENTS.—The requirements of this subsection shall apply in lieu of any  
30 requirement that the State submit a demonstration that the applicable  
31 implementation plan provides for attainment of the ozone standard by  
32 the applicable attainment date in any marginal area.

33 (8) CONTINGENCY MEASURES.—Section 215102(c)(9) of this title  
34 shall not apply to a marginal area.

35 (b) MODERATE AREAS.—

36 (1) IN GENERAL.—Each State in which all or part of a moderate  
37 area is located shall include in its applicable implementation plan the  
38 provisions described under this subsection and subsection (a).

39 (2) PLAN PROVISIONS FOR REASONABLE FURTHER PROGRESS.—

40 (A) DEFINITION OF BASELINE EMISSIONS.—In this paragraph,  
41 the term “baseline emissions” means the total amount of actual

1 volatile organic compound or nitrogen oxide emissions from all an-  
2 thropogenic sources in a moderate area during calendar year  
3 1990, excluding emissions that would be eliminated under the reg-  
4 ulations described in clauses (i) and (ii) of subparagraph (D).

5 (B) GENERAL RULE.—

6 (i) PLAN PROVISION.—A State applicable implementation  
7 plan shall provide for volatile organic compound emission re-  
8 ductions of at least 15 percent from baseline emissions, ac-  
9 counting for any growth in emissions after 1990. The plan  
10 shall provide for such specific annual reductions in emissions  
11 of volatile organic compounds and nitrogen oxides as are nec-  
12 essary to attain the primary NAAQS for ozone by the attain-  
13 ment date applicable under this division.

14 (ii) PERCENTAGE.—

15 (I) IN GENERAL.—A percentage of less than 15 per-  
16 cent may be used for purposes of clause (i) in the case  
17 of a State that demonstrates to the satisfaction of the  
18 Administrator that—

19 (aa) new source review provisions are applicable  
20 in the nonattainment areas in the same manner and  
21 to the same extent as are required under subsection  
22 (e) in the case of extreme areas (with the exception  
23 that, in applying those provisions, the terms “major  
24 source” and “major stationary source” shall include  
25 (in addition to the sources described in section  
26 201101 of this title) any stationary source or group  
27 of sources located within a contiguous area and  
28 under common control that emits, or has the poten-  
29 tial to emit, at least 5 tons per year of volatile or-  
30 ganic compounds);

31 (bb) reasonably available control technology is re-  
32 quired for all existing major sources (as defined in  
33 item (aa)); and

34 (cc) the plan reflecting a lesser percentage than  
35 15 percent includes all measures that can feasibly  
36 be implemented in an area, in light of technological  
37 achievability.

38 (II) MEASURES ACHIEVED IN PRACTICE.—To qualify  
39 for a lesser percentage under this clause, a State shall  
40 demonstrate to the satisfaction of the Administrator that  
41 the plan for the area includes the measures that are

1                   achieved in practice by sources in the same source cat-  
2                   egory in nonattainment areas of the next higher classi-  
3                   fication.

4                   (iii) APPLICABILITY OF SUBPARAGRAPH.—This subpara-  
5                   graph shall not apply in the case of nitrogen oxides for areas  
6                   for which the Administrator determines (when the Adminis-  
7                   trator approves a plan or plan revision) that additional reduc-  
8                   tions of nitrogen oxides would not contribute to attainment.

9                   (C) GENERAL RULE FOR CREDITABILITY OF REDUCTIONS.—Ex-  
10                  cept as provided under subparagraph (D), emission reductions are  
11                  creditable toward the 15 percent required under subparagraph (B)  
12                  to the extent that the emission reductions have actually occurred,  
13                  as of 6 years after November 15, 1990, as a result of the imple-  
14                  mentation of measures required under the applicable implementa-  
15                  tion plan, regulations promulgated by the Administrator, or a per-  
16                  mit under subdivision 6.

17                  (D) LIMITS ON CREDITABILITY OF REDUCTIONS.—Emission re-  
18                  ductions from the following measures are not creditable toward the  
19                  15 percent reductions required under subparagraph (B):

20                  (i) Any measure relating to motor vehicle exhaust or evapo-  
21                  rative emissions promulgated by the Administrator by Janu-  
22                  ary 1, 1990.

23                  (ii) Regulations concerning Reid vapor pressure promul-  
24                  gated by the Administrator by November 15, 1990, or re-  
25                  quired to be promulgated under section 221111(h) of this  
26                  title.

27                  (iii) Measures required under subsection (a)(3)(B) concern-  
28                  ing corrections to implementation plans prescribed under  
29                  guidance by the Administrator.

30                  (iv) Measures required under subsection (a)(3)(C) concern-  
31                  ing corrections to motor vehicle inspection and maintenance  
32                  programs.

33                  (3) REASONABLY AVAILABLE CONTROL TECHNOLOGY.—

34                  (A) IN GENERAL.—A State applicable implementation plan shall  
35                  include provisions to require the implementation of reasonably  
36                  available control technology under section 215102(e)(1) of this  
37                  title with respect to each of the following:

38                  (i) Each category of volatile organic compound sources in  
39                  the area covered by a control technique guidelines document  
40                  issued by the Administrator between November 15, 1990, and  
41                  the date of attainment.

1 (ii) All volatile organic compound sources in the area cov-  
2 ered by any control technique guideline issued before Novem-  
3 ber 15, 1990.

4 (iii) All other major stationary sources of volatile organic  
5 compounds that are located in the area.

6 (B) TIME FOR SUBMISSION.—Each provision described in sub-  
7 paragraph (A)(i) shall be submitted within the period set forth by  
8 the Administrator in issuing the relevant control technique guide-  
9 lines document. The provisions with respect to sources described  
10 in clauses (ii) and (iii) of subparagraph (A) shall provide for the  
11 implementation of the required measures as expeditiously as prac-  
12 ticable.

13 (4) GASOLINE VAPOR RECOVERY.—

14 (A) DEFINITION OF ADOPTION DATE.—In this paragraph, the  
15 term “adoption date” means the date of adoption by a State of  
16 requirements for the installation and operation of a system for  
17 gasoline vapor recovery of emissions from the fueling of motor ve-  
18 hicles.

19 (B) GENERAL RULE.—

20 (i) REQUIREMENT.—A State applicable implementation  
21 plan shall require all owners or operators of gasoline dispens-  
22 ing systems to install and operate, by the date prescribed  
23 under subparagraph (C), a system for gasoline vapor recovery  
24 of emissions from the fueling of motor vehicles.

25 (ii) GUIDANCE.—The Administrator shall issue guidance as  
26 appropriate as to the effectiveness of the system.

27 (iii) APPLICABILITY.—This subparagraph shall apply only  
28 to facilities that sell more than—

29 (I) 10,000 gallons of gasoline per month; or

30 (II) in the case of an independent small business mar-  
31 keter of gasoline (as defined in section 209114 of this  
32 title), 50,000 gallons per month.

33 (C) EFFECTIVE DATE.—The date required under subparagraph  
34 (B) shall be—

35 (i) 6 months after the adoption date, in the case of a gaso-  
36 line dispensing facility for which construction commences  
37 after November 15, 1990;

38 (ii) 1 year after the adoption date, in the case of a gasoline  
39 dispensing facility that dispenses at least 100,000 gallons of  
40 gasoline per month, based on average monthly sales for the

1                   2-year period before the adoption date, and is not a facility  
2                   described in clause (i); or

3                   (iii) 2 years after the adoption date, in the case of all other  
4                   gasoline dispensing facilities.

5                   (5) MOTOR VEHICLE INSPECTION AND MAINTENANCE.—For all mod-  
6                   erate areas, a State applicable implementation plan shall include provi-  
7                   sions necessary to provide for a vehicle inspection and maintenance  
8                   program as described in subsection (a)(3)(C) (without regard to wheth-  
9                   er the area was required by section 172(b)(11)(B) of the Clean Air Act  
10                  (42 U.S.C. 7502(b)(11)(B)) (as in effect before November 15, 1990)  
11                  to have included a specific schedule for implementation of such a pro-  
12                  gram).

13                  (6) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying  
14                  the emission offset requirements of this chapter, the ratio of total emis-  
15                  sion reductions of volatile organic compounds to total increased emis-  
16                  sions of volatile organic compounds shall be at least 1.15 to 1.

17                  (e) SERIOUS AREAS.—

18                  (1) IN GENERAL.—Except as otherwise specified in paragraph (6),  
19                  each State in which all or part of a serious area is located shall, with  
20                  respect to the serious area (or portion thereof, to the extent specified  
21                  in this subsection), include in its applicable implementation plan (in-  
22                  cluding the plan items) the provisions described under this subsection  
23                  and subsection (b) (except that any reference to an attainment date in  
24                  subsection (b), incorporated by reference in this subsection, shall refer  
25                  to the attainment date for serious areas).

26                  (2) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any serious  
27                  area, the terms “major source” and “major stationary source” include  
28                  (in addition to the sources described in section 201101 of this title)  
29                  any stationary source or group of sources located within a contiguous  
30                  area and under common control that emits, or has the potential to  
31                  emit, at least 50 tons per year of volatile organic compounds.

32                  (3) ENHANCED MONITORING.—

33                  (A) REGULATIONS.—To obtain more comprehensive and rep-  
34                  resentative data on ozone air pollution, the Administrator shall  
35                  promulgate regulations, after notice and public comment, for en-  
36                  hanced monitoring of ozone, nitrogen oxides, and volatile organic  
37                  compounds. The regulations shall cover the location and mainte-  
38                  nance of monitors.

39                  (B) STATE ACTION.—Immediately following the promulgation of  
40                  regulations by the Administrator relating to enhanced monitoring,  
41                  a State shall commence such actions as may be necessary to adopt



1 and implement a program based on the regulations to improve  
2 monitoring for ambient concentrations of ozone, nitrogen oxides,  
3 and volatile organic compounds and to improve monitoring of  
4 emissions of nitrogen oxides and volatile organic compounds. Each  
5 State implementation plan for the area shall contain measures to  
6 improve the ambient monitoring of those air pollutants.

7 (4) ATTAINMENT DEMONSTRATIONS; REASONABLE FURTHER  
8 PROGRESS DEMONSTRATIONS.—

9 (A) IN GENERAL.—A State applicable implementation plan shall  
10 include an attainment demonstration described in subparagraph  
11 (B) and a reasonable further progress demonstration described in  
12 subparagraph (C).

13 (B) ATTAINMENT DEMONSTRATION.—A State applicable imple-  
14 mentation plan shall include a demonstration that the plan will  
15 provide for attainment of the ozone NAAQS by the applicable at-  
16 tainment date. The attainment demonstration shall be based on  
17 photochemical grid modeling or any other analytical method deter-  
18 mined by the Administrator, in the Administrator's discretion, to  
19 be at least as effective.

20 (C) REASONABLE FURTHER PROGRESS DEMONSTRATION.—

21 (i) VOLATILE ORGANIC COMPOUND CONTROL.—

22 (I) IN GENERAL.—A State applicable implementation  
23 plan shall include a demonstration that the plan will re-  
24 sult in volatile organic compound emission reductions  
25 from the baseline emissions (as defined in subsection  
26 (b)(2)(A)) equal to 1 of the following amounts averaged  
27 over each consecutive 3-year period beginning 6 years  
28 after November 15, 1990, until the attainment date:

29 (aa) At least 3 percent of baseline emissions each  
30 year.

31 (bb) An amount less than 3 percent of baseline  
32 emissions each year, if the State demonstrates to  
33 the satisfaction of the Administrator that the plan  
34 reflecting such a lesser amount includes all meas-  
35 ures that can feasibly be implemented in the area,  
36 in light of technological achievability.

37 (II) LESS THAN 3 PERCENT REDUCTION.—To lessen  
38 the 3 percent requirement under subclause (I)(bb), a  
39 State shall demonstrate to the satisfaction of the Admin-  
40 istrator that the plan for the area includes the measures  
41 that are achieved in practice by sources in the same

1 source category in nonattainment areas of the next high-  
2 er classification. Any determination to lessen the 3 per-  
3 cent requirement shall be reviewed at each applicable  
4 milestone under subsection (g) and revised to reflect  
5 such new measures (if any) achieved in practice by  
6 sources in the same category in any State, allowing a  
7 reasonable amount of time to implement the measures.

8 (III) CALCULATION OF EMISSION REDUCTIONS.—The  
9 emission reductions described in this clause shall be cal-  
10 culated in accordance with subparagraphs (C) and (D)  
11 of subsection (b)(2). The reductions creditable for the  
12 period beginning 6 years after November 15, 1990, shall  
13 include reductions that occurred before that period, cal-  
14 culated in accordance with subsection (b)(2), that exceed  
15 the 15-percent amount of reductions required under sub-  
16 section (b)(2)(B).

17 (ii) NITROGEN OXIDE CONTROL.—A provision under this  
18 subparagraph may contain, in lieu of the volatile organic com-  
19 pound control demonstration described in clause (i), a dem-  
20 onstration to the satisfaction of the Administrator that the  
21 applicable implementation plan provides for reductions of  
22 emissions of volatile organic compounds and nitrogen oxides  
23 (calculated according to the creditability provisions of sub-  
24 paragraphs (C) and (D) of subsection (b)(2)), that would re-  
25 sult in a reduction in ozone concentrations at least equivalent  
26 to that which would result from the amount of emission re-  
27 ductions required under clause (i). The Administrator shall  
28 issue guidance concerning the conditions under which nitro-  
29 gen oxide control may be substituted for volatile organic com-  
30 pound control or may be combined with volatile organic com-  
31 pound control to maximize the reduction in ozone air pollu-  
32 tion. In accord with such guidance, a lesser percentage of  
33 volatile organic compounds may be accepted as an adequate  
34 demonstration for purposes of this subsection.

35 (5) ENHANCED VEHICLE INSPECTION AND MAINTENANCE PRO-  
36 GRAM.—

37 (A) REQUIREMENT FOR SUBMISSION.—A State shall include in  
38 its applicable implementation plan a provision for an enhanced  
39 program to reduce hydrocarbon emissions and nitrogen oxide emis-  
40 sions from in-use motor vehicles registered in each urbanized area

1 (in the nonattainment area), as defined by the Bureau of the Cen-  
2 sus, with a 1980 population of 200,000 or more.

3 (B) EFFECTIVE DATE OF STATE PROGRAMS; GUIDANCE.—

4 (i) IN GENERAL.—The State program required under sub-  
5 paragraph (A) shall comply in all respects with guidance pub-  
6 lished in the Federal Register (and from time to time revised)  
7 by the Administrator for enhanced vehicle inspection and  
8 maintenance programs.

9 (ii) CONTENTS.—The guidance shall include—

10 (I) a performance standard achievable by a program  
11 combining emission testing, including on-road emission  
12 testing, with inspection to detect tampering with emis-  
13 sion control devices and misfueling for all light-duty ve-  
14 hicles and all light-duty trucks subject to standards  
15 under section 221102 of this title; and

16 (II) program administration features necessary to rea-  
17 sonably ensure that adequate management resources,  
18 tools, and practices are in place to attain and maintain  
19 the performance standard.

20 (iii) COMPLIANCE.—Compliance with the performance  
21 standard under clause (ii)(I) shall be determined using a  
22 method established by the Administrator.

23 (C) STATE PROGRAM.—

24 (i) IN GENERAL.—A State program under subparagraph  
25 (A) shall include, at a minimum, each of the following ele-  
26 ments:

27 (I) Computerized emission analyzers, including on-  
28 road testing devices.

29 (II) No waivers for vehicles and parts covered by the  
30 emission control performance warranty as provided for in  
31 section 221107(c) of this title unless a warranty remedy  
32 has been denied in writing, or for tampering-related re-  
33 pairs.

34 (III) In view of the air quality purpose of the pro-  
35 gram, if, for any vehicle, waivers are permitted for emis-  
36 sions-related repairs not covered by warranty, an expend-  
37 iture to qualify for the waiver of an amount of \$450 or  
38 more for such repairs (adjusted annually as determined  
39 by the Administrator on the basis of the Consumer Price  
40 Index in the same manner as provided in subdivision 6).

1 (IV) Enforcement through denial of vehicle registra-  
2 tion (except for any program in operation before Novem-  
3 ber 15, 1990, whose enforcement mechanism is dem-  
4 onstrated to the Administrator to be more effective than  
5 the applicable vehicle registration program in ensuring  
6 that noncomplying vehicles are not operated on public  
7 roads).

8 (V) Annual emission testing and necessary adjust-  
9 ment, repair, and maintenance, unless the State dem-  
10 onstrates to the satisfaction of the Administrator that a  
11 biennial inspection, in combination with other features of  
12 the program that exceed the requirements of this divi-  
13 sion, will result in emission reductions that equal or ex-  
14 ceed the reductions that can be obtained through annual  
15 inspections.

16 (VI) Operation of the program on a centralized basis,  
17 unless the State demonstrates to the satisfaction of the  
18 Administrator that a decentralized program will be  
19 equally effective. An electronically connected testing sys-  
20 tem, a licensing system, or other measures (or any com-  
21 bination thereof) may be considered, in accordance with  
22 criteria established by the Administrator, as equally ef-  
23 fective for such purposes.

24 (VII) Inspection of emission control diagnostic systems  
25 and the maintenance or repair of malfunctions or system  
26 deterioration identified by or affecting such diagnostics  
27 systems.

28 (ii) BIENNIAL REPORTS.—Each State shall biennially sub-  
29 mit to the Administrator a report that assesses the emission  
30 reductions achieved by the program required under this para-  
31 graph based on data collected during inspection and repair of  
32 vehicles. The methods used to assess the emission reductions  
33 shall be those established by the Administrator.

34 (6) CLEAN-FUEL VEHICLE PROGRAMS.—

35 (A) IN GENERAL.—Except to the extent that substitute provi-  
36 sions are approved by the Administrator under subparagraph (B),  
37 a State applicable implementation plan shall include, for each area  
38 described under chapter 225 and for each area that opts into the  
39 clean fuel-vehicle program as provided in chapter 225, such meas-  
40 ures as may be necessary to ensure the effectiveness of the appli-  
41 cable provisions of the clean-fuel vehicle program prescribed under

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1 chapter 225, including all measures necessary to make the use of  
2 clean alternative fuels in clean-fuel vehicles (as defined in chapter  
3 225) economic from the standpoint of vehicle owners.

4 (B) SUBSTITUTE PROVISIONS.—

5 (i) IN GENERAL.—The Administrator shall approve, as a  
6 substitute for all or a portion of the clean-fuel vehicle pro-  
7 gram prescribed under chapter 225, any provision of a rel-  
8 evant applicable implementation plan that in the Administra-  
9 tor's judgment will achieve long-term reductions in ozone-pro-  
10 ducing and toxic air emissions equal to those achieved under  
11 chapter 225, or the percentage thereof attributable to the  
12 portion of the clean-fuel vehicle program for which the provi-  
13 sion is to substitute.

14 (ii) REQUIREMENT FOR APPROVAL.—The Administrator  
15 may approve such a provision only if it consists exclusively of  
16 provisions other than those required under this division for  
17 the area.

18 (iii) DEADLINE.—Any State seeking approval of such a  
19 provision must have submitted the revision to the Adminis-  
20 trator within 24 months of November 15, 1990.

21 (iv) RULEMAKING.—The Administrator shall publish the  
22 provision submitted by a State in the Federal Register on re-  
23 ceipt. The notice shall constitute a notice of proposed rule-  
24 making on whether to approve the provision and shall be  
25 deemed to comply with the requirements concerning notices of  
26 proposed rulemaking contained in sections 553 to 557 of title  
27 5.

28 (v) NO PROVISION UNDER SUBPARAGRAPH (A).—Where the  
29 Administrator approves such a provision for any area, the  
30 State need not submit the provision required by subparagraph  
31 (A) for the area with respect to the portions of the Federal  
32 clean-fuel vehicle program for which the Administrator has  
33 approved the provision as a substitute.

34 (C) FAILURE TO SUBMIT PROGRAM.—If the Administrator de-  
35 termines under section 215111 of this title that a State has failed  
36 to submit any portion of the program required under subpara-  
37 graph (A), in addition to any sanctions available under section  
38 215111 of this title, the State may not receive credit, in any dem-  
39 onstration of attainment or reasonable further progress for the  
40 area, for any emission reductions from implementation of the cor-

1           responding aspects of the Federal clean-fuel vehicle requirements  
2           established in chapter 225.

3       (7) TRANSPORTATION CONTROL.—

4           (A) IN GENERAL.—Every 3 years, a State shall submit a dem-  
5           onstration whether current aggregate vehicle mileage, aggregate  
6           vehicle emissions, congestion levels, and other relevant parameters  
7           are consistent with those used for the area's demonstration of at-  
8           tainment.

9           (B) EXCEEDANCE.—Where such parameters and emissions lev-  
10          els exceed the levels projected for purposes of the area's attain-  
11          ment demonstration, the State shall within 18 months develop and  
12          submit a revision of the applicable implementation plan that in-  
13          cludes a transportation control measures program that includes  
14          measures described in section 211108(f) of this title that will re-  
15          duce emissions to levels that are consistent with emission levels  
16          projected in the demonstration. In considering such measures, the  
17          State should ensure adequate access to downtown, other commer-  
18          cial, and residential areas and should avoid measures that increase  
19          or relocate emissions and congestion rather than reduce them.

20          (C) DEVELOPMENT; SCHEDULES.—A revision under subpara-  
21          graph (B)—

22               (i) shall be developed in accordance with guidance issued  
23               by the Administrator pursuant to section 211108(e) of this  
24               title and with the requirements of section 215104(b) of this  
25               title; and

26               (ii) shall include implementation and funding schedules  
27               that achieve expeditious emissions reductions in accordance  
28               with implementation plan projections.

29       (8) DE MINIMIS RULE.—The new source review provisions under this  
30       chapter shall ensure that increased emissions of volatile organic com-  
31       pounds resulting from any physical change in, or change in the method  
32       of operation of, a stationary source located in the serious area shall not  
33       be considered de minimis for purposes of determining the applicability  
34       of the permit requirements established by this division unless the in-  
35       crease in net emissions of volatile organic compounds from the station-  
36       ary source does not exceed 25 tons when aggregated with all other net  
37       increases in emissions from the source over any period of 5 consecutive  
38       calendar years that includes the calendar year in which the increase oc-  
39       curred.

40       (9) SPECIAL RULE FOR MODIFICATION OF SOURCES EMITTING LESS  
41       THAN 100 TONS.—

1 (A) IN GENERAL.—Except as provided in subparagraph (B), in  
2 the case of any major stationary source of volatile organic com-  
3 pounds located in the serious area (other than a source that emits  
4 or has the potential to emit 100 tons or more of volatile organic  
5 compounds per year), whenever any change (as described in sec-  
6 tion 211111(a)(2) of this title) at that source results in any in-  
7 crease (other than a de minimis increase) in emissions of volatile  
8 organic compounds from any discrete operation, unit, or other pol-  
9 lutant emitting activity at the source, the change shall be consid-  
10 ered to be a modification for purposes of sections 215102(c)(5)  
11 and 215103(a) of this title, but in applying section  
12 215103(a)(1)(B) of this title in the case of any such modification,  
13 the best available control technology (as defined in section 213102  
14 of this title) shall be substituted for the lowest achievable emission  
15 rate.

16 (B) ELECTION TO OFFSET.—A change described in subpara-  
17 graph (A) shall not be considered to be a modification for the pur-  
18 poses described in subparagraph (A) if the owner or operator of  
19 the source elects to offset the increase by a greater reduction in  
20 emissions of volatile organic compounds concerned from other op-  
21 erations, units, or activities within the source at an internal offset  
22 ratio of at least 1.3 to 1.

23 (C) ELECTION NOT MADE.—If the owner or operator does not  
24 make the election described in subparagraph (B), the change shall  
25 be considered a modification for the purposes described in sub-  
26 paragraph (A), but in applying section 215103(a)(1)(B) of this  
27 title in the case of any such modification, the best available control  
28 technology, as defined in section 213102 of this title, shall be sub-  
29 stituted for the lowest achievable emission rate.

30 (D) POLICIES AND PROCEDURES.—The Administrator shall es-  
31 tablish and publish policies and procedures for implementing this  
32 paragraph.

33 (10) SPECIAL RULE FOR MODIFICATIONS OF SOURCES EMITTING 100  
34 TONS OR MORE.—

35 (A) IN GENERAL.—Except as provided in subparagraph (B), in  
36 the case of any major stationary source of volatile organic com-  
37 pounds located in the serious area that emits or has the potential  
38 to emit 100 tons or more of volatile organic compounds per year,  
39 whenever any change (as described in section 211111(a)(2) of this  
40 title) at that source results in any increase (other than a de mini-  
41 mis increase) in emissions of volatile organic compounds from any

1 discrete operation, unit, or other pollutant emitting activity at the  
2 source, the change shall be considered a modification for purposes  
3 of sections 215102(c)(5) and 215103(a) of this title.

4 (B) ELECTION TO OFFSET.—If the owner or operator of the  
5 source elects to offset the increase by a greater reduction in emis-  
6 sions of volatile organic compounds from other operations, units,  
7 or activities within the source at an internal offset ratio of at least  
8 1.3 to 1, the requirements of section 215103(a)(1)(B) of this title  
9 shall not apply.

10 (11) CONTINGENCY PROVISIONS.—In addition to the contingency  
11 provisions required under section 215102(c)(9) of this title, the plan  
12 revision shall provide for the implementation of specific measures to be  
13 undertaken if the serious area fails to meet any applicable milestone.  
14 The measures shall be included in the plan provision as contingency  
15 measures to take effect without further action by the State or the Ad-  
16 ministrator on a failure by the State to meet the applicable milestone.

17 (12) GENERAL OFFSET REQUIREMENT.—For purposes of satisfying  
18 the emission offset requirements of this chapter, the ratio of total emis-  
19 sion reductions of volatile organic compounds to total increase emis-  
20 sions of an air pollutant shall be at least 1.2 to 1.

21 (d) SEVERE AREAS.—

22 (1) IN GENERAL.—Each State in which all or part of a severe area  
23 is located shall, with respect to the severe area, include in its applicable  
24 implementation plan the provisions (including plan items) described  
25 under this subsection and subsection (c) (except that any reference to  
26 an attainment date in subsection (b) or (c), incorporated by reference  
27 in this subsection, shall refer to the attainment date for severe areas).

28 (2) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any severe  
29 area, the terms “major source” and “major stationary source” include  
30 (in addition to the sources described in section 201101 of this title)  
31 any stationary source or group of sources located within a contiguous  
32 area and under common control that emits, or has the potential to  
33 emit, at least 25 tons per year of volatile organic compounds.

34 (3) VEHICLE MILES TRAVELED.—

35 (A) TRANSPORTATION CONTROL STRATEGIES AND TRANSPOR-  
36 TATION CONTROL MEASURES.—

37 (i) IN GENERAL.—A State applicable implementation plan  
38 shall include a provision that identifies and adopts specific en-  
39 forceable transportation control strategies and transportation  
40 control measures to offset any growth in emissions from  
41 growth in vehicle miles traveled or numbers of vehicle trips



1 in the severe area and to attain reduction in motor vehicle  
2 emissions as necessary, in combination with other emission  
3 reduction requirements of this subchapter, to comply with  
4 subsections (b)(2) and (c)(4)(C)(i).

5 (ii) CONSIDERATIONS.—The State shall consider measures  
6 specified in section 211108(f) of this title and choose from  
7 among and implement those measures as necessary to dem-  
8 onstrate attainment with the NAAQSeS. In considering such  
9 measures, the State should ensure adequate access to down-  
10 town, other commercial, and residential areas and should  
11 avoid measures that increase or relocate emissions and con-  
12 gestion rather than reduce them.

13 (B) PROGRAMS TO REDUCE WORK-RELATED VEHICLE TRIPS  
14 AND MILES TRAVELED BY EMPLOYEES.—

15 (i) IN GENERAL.—The State may include in its applicable  
16 implementation plan a provision requiring employers in the  
17 severe area to implement programs to reduce work-related ve-  
18 hicle trips and miles traveled by employees.

19 (ii) GUIDANCE; OCCUPANCY PER VEHICLE.—A provision de-  
20 scribed in clause (i) shall be developed in accordance with  
21 guidance issued by the Administrator pursuant to section  
22 211108(f) of this title and may require that employers in the  
23 severe area increase average passenger occupancy per vehicle  
24 in commuting trips between home and the workplace during  
25 peak travel periods. The guidance of the Administrator may  
26 specify average vehicle occupancy rates that vary for locations  
27 within a nonattainment area (suburban, center city, business  
28 district) or among nonattainment areas reflecting existing oc-  
29 cupancy rates and the availability of high occupancy modes.

30 (iii) ALTERNATIVE METHODS.—Any State required to sub-  
31 mit a revision under section 182(d)(1)(B) of the Clean Air  
32 Act (42 U.S.C. 7511a(d)(1)(B)) (as in effect before Decem-  
33 ber 23, 1995) containing provisions requiring employers to re-  
34 duce work-related vehicle trips and miles traveled by employ-  
35 ees may, in accordance with State law, remove those provi-  
36 sions from the implementation plan, or withdraw its submis-  
37 sion, if the State notifies the Administrator, in writing, that  
38 the State has undertaken, or will undertake, 1 or more alter-  
39 native methods that will achieve emission reductions equiva-  
40 lent to those to be achieved by the removed or withdrawn pro-  
41 visions.

1           (4) OFFSET REQUIREMENT.—For purposes of satisfying the offset  
2 requirements pursuant to this chapter, the ratio of total emission re-  
3 ductions of volatile organic compounds to total increased emissions of  
4 volatile organic compounds shall be at least 1.3 to 1, except that if the  
5 State applicable implementation plan requires all existing major sources  
6 in the nonattainment area to use best available control technology (as  
7 defined in section 213102 of this title) for the control of volatile or-  
8 ganic compounds, the ratio shall be at least 1.2 to 1.

9           (5) ENFORCEMENT UNDER SECTION 215206.—The State shall submit  
10 a plan revision that includes the provisions required under section  
11 215206 of this title.

12 (e) EXTREME AREAS.—

13           (1) IN GENERAL.—Each State in which all or part of an extreme  
14 area is located shall, with respect to the extreme area, include in its  
15 applicable implementation plan the provisions (including plan items)  
16 described under this subsection and subsection (d) (except that any ref-  
17 erence to an attainment date in subsection (b), (c), or (d), incorporated  
18 by reference in this subsection, shall refer to the attainment date for  
19 extreme areas).

20           (2) INAPPLICABILITY OF CERTAIN PROVISIONS.—Subsection  
21 (b)(2)(B)(ii) and paragraphs (4)(C)(i)(I)(bb), (8), (9), and (10) of sub-  
22 section (c) shall not apply in the case of an extreme area.

23           (3) MAJOR SOURCE; MAJOR STATIONARY SOURCE.—For any extreme  
24 area, the terms “major source” and “major stationary source” include  
25 (in addition to the sources described in section 201101 of this title)  
26 any stationary source or group of sources located within a contiguous  
27 area and under common control that emits, or has the potential to  
28 emit, at least 10 tons per year of volatile organic compounds.

29           (4) OFFSET REQUIREMENT.—For purposes of satisfying the offset  
30 requirements pursuant to this chapter, the ratio of total emission re-  
31 ductions of volatile organic compounds to total increased emissions of  
32 volatile organic compounds shall be at least 1.5 to 1, except that if the  
33 State plan requires all existing major sources in the nonattainment  
34 area to use best available control technology (as defined in section  
35 213102 of this title) for the control of volatile organic compounds, the  
36 ratio shall be at least 1.2 to 1.

37           (5) MODIFICATIONS.—

38           (A) IN GENERAL.—Except as provided in subparagraph (B),  
39 any change (as described in section 211111(a)(2) of this title) at  
40 a major stationary source that results in any increase in emissions  
41 from any discrete operation, unit, or other pollutant-emitting ac-

1           tivity at the source shall be considered a modification for purposes  
2           of sections 215102(e)(5) and 215103(a) of this title.

3           (B) ELECTION TO OFFSET.—For purposes of complying with  
4           the offset requirement pursuant to section 215103(a)(1)(A) of this  
5           title, any change described in subparagraph (A) shall not be con-  
6           sidered to be a modification if the owner or operator of the source  
7           elects to offset the increase by a greater reduction in emissions of  
8           the air pollutant concerned from other discrete operations, units,  
9           or activities within the source at an internal offset ratio of at least  
10          1.3 to 1.

11          (C) NONAPPLICABILITY OF OFFSET PROVISIONS.—The offset re-  
12          quirements of this chapter shall not be applicable in extreme areas  
13          to a modification of an existing source if the modification consists  
14          of installation of equipment required to comply with the applicable  
15          implementation plan, a permit, or this division.

16          (6) USE OF CLEAN FUELS OR ADVANCED CONTROL TECHNOLOGY.—

17           (A) DEFINITION OF PRIMARY FUEL.—In this paragraph, the  
18           term “primary fuel” means the fuel that is used by an electric  
19           utility or industrial or commercial boiler 90 percent or more of the  
20           operating time.

21           (B) CERTAIN ELECTRIC UTILITIES AND INDUSTRIAL AND COM-  
22           MERCIAL BOILERS.—For extreme areas, a State applicable imple-  
23           mentation plan shall include a provision requiring that each new,  
24           modified, and existing electric utility and industrial and commer-  
25           cial boiler that emits more than 25 tons per year of nitrogen ox-  
26           ides—

27           (i) burn as its primary fuel natural gas, methanol, or etha-  
28           nol (or a comparably low-polluting fuel); or

29           (ii) use advanced control technology (such as catalytic con-  
30           trol technology or other comparably effective control methods)  
31           for reduction of emissions of nitrogen oxides.

32           (C) APPLICABILITY.—This paragraph shall not apply during  
33           any natural gas supply emergency (as defined in title III of the  
34           Natural Gas Policy Act of 1978 (15 U.S.C. 3361 et seq.)).

35          (7) TRAFFIC CONTROL MEASURES DURING HEAVY TRAFFIC  
36          HOURS.—For extreme areas, a State applicable implementation plan  
37          may contain provisions establishing traffic control measures applicable  
38          during heavy traffic hours to reduce the use of high-polluting vehicles  
39          or heavy-duty vehicles, notwithstanding any other provision of law.

40          (8) NEW TECHNOLOGIES.—

1 (A) IN GENERAL.—The Administrator may, in accordance with  
2 section 211110 of this title, approve provisions of an implementa-  
3 tion plan for an extreme area that anticipate development of new  
4 control techniques or improvement of existing control technologies,  
5 and an attainment demonstration based on such provisions, if the  
6 State demonstrates to the satisfaction of the Administrator that—

7 (i) such provisions are not necessary to achieve the incre-  
8 mental emission reductions required during the 1st 10 years  
9 after November 15, 1990; and

10 (ii) the State has submitted enforceable commitments to  
11 develop and adopt contingency measures to be implemented  
12 as set forth in subparagraph (B) if the anticipated tech-  
13 nologies do not achieve planned reductions.

14 (B) SUBMISSION AND APPROVAL OR DISAPPROVAL OF CONTIN-  
15 GENCY MEASURES.—Contingency measures described in subpara-  
16 graph (A) shall be submitted to the Administrator not later than  
17 3 years before proposed implementation of the plan provisions and  
18 approved or disapproved by the Administrator in accordance with  
19 section 211110 of this title.

20 (C) ADEQUACY.—The contingency measures shall be adequate  
21 to produce emission reductions sufficient, in conjunction with  
22 other approved plan provisions, to achieve the periodic emission re-  
23 ductions required by subsection (b)(2) or (c)(4) and attainment by  
24 the applicable dates.

25 (D) FAILURE TO ACHIEVE EMISSION REDUCTION.—If the Ad-  
26 ministrator determines that an extreme area has failed to achieve  
27 an emission reduction requirement set forth in subsection (b)(2)  
28 or (c)(4), and that the failure is due in whole or part to an inabil-  
29 ity to fully implement provisions approved pursuant to this sub-  
30 section, the Administrator shall require the State to implement the  
31 contingency measures to the extent necessary to ensure compliance  
32 with subsections (b)(2) and (c)(4).

33 (f) NITROGEN OXIDE REQUIREMENTS.—

34 (1) IN GENERAL.—

35 (A) APPLICABILITY OF PROVISIONS RELATING TO VOLATILE OR-  
36 GANIC COMPOUNDS.—The plan provisions required under this sub-  
37 chapter for major stationary sources of volatile organic compounds  
38 shall apply to major stationary sources (as defined in section  
39 201101 of this title and subsections (c), (d), and (e)) of nitrogen  
40 oxides.

1 (B) NONAPPLICABILITY OF SUBSECTION.—This subsection shall  
2 not apply in the case of nitrogen oxides for—

3 (i) sources for which the Administrator determines (when  
4 the Administrator approves a plan or plan revision) that net  
5 air quality benefits are greater in the absence of reductions  
6 of nitrogen oxides from the sources concerned; or

7 (ii)(I) nonattainment areas not within an ozone transport  
8 region under section 215205 of this title, if the Administrator  
9 determines (when the Administrator approves a plan or plan  
10 revision) that additional reductions of nitrogen oxides would  
11 not contribute to attainment of the NAAQS for ozone in the  
12 area; or

13 (II) nonattainment areas within an ozone transport region  
14 under section 215205 of this title, if the Administrator deter-  
15 mines (when the Administrator approves a plan or plan revi-  
16 sion) that additional reductions of nitrogen oxides would not  
17 produce net ozone air quality benefits in the ozone transport  
18 region.

19 (C) CONSIDERATIONS.—The Administrator shall, in the Admin-  
20 istrator's determinations under subparagraph (B), consider the  
21 study required under section 215207 of this title.

22 (2) LIMITATION ON APPLICABILITY.—

23 (A) IN GENERAL.—If the Administrator determines that excess  
24 reductions in emissions of nitrogen oxides would be achieved under  
25 paragraph (1), the Administrator may limit the application of  
26 paragraph (1) to the extent necessary to avoid achieving the excess  
27 reductions.

28 (B) EXCESS EMISSION REDUCTIONS.—For purposes of this  
29 paragraph, excess reductions in emissions of nitrogen oxides are—

30 (i) emission reductions for which the Administrator deter-  
31 mines that net air quality benefits are greater in the absence  
32 of such emission reductions; or

33 (ii)(I) for nonattainment areas not within an ozone trans-  
34 port region under section 215205 of this title, emission reduc-  
35 tions that the Administrator determines would not contribute  
36 to attainment of the NAAQS for ozone in the area; or

37 (II) for nonattainment areas within an ozone transport re-  
38 gion under section 215205 of this title, emission reductions  
39 that the Administrator determines would not produce net  
40 ozone air quality benefits in the ozone transport region.

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1 (3) PETITION FOR DETERMINATION.—A person may petition the Ad-  
2 ministrator for a determination under paragraph (1) or (2) with re-  
3 spect to any nonattainment area or any ozone transport region under  
4 section 215205 of this title. The Administrator shall grant or deny  
5 such a petition within 6 months after its filing with the Administrator.

6 (g) APPLICABLE MILESTONES.—

7 (1) REDUCTIONS IN EMISSIONS.—At intervals of 3 years, a State  
8 shall determine whether each nonattainment area (other than a mar-  
9 ginal area or moderate area) has achieved a reduction in emissions dur-  
10 ing the preceding intervals equivalent to the total emission reductions  
11 required to be achieved by the end of that interval pursuant to sub-  
12 section (b)(2) and the corresponding requirements of subsections  
13 (e)(4)(C), (d), and (e).

14 (2) COMPLIANCE DEMONSTRATION.—For each nonattainment area  
15 described in paragraph (1), not later than 90 days after the date on  
16 which an applicable milestone occurs (not including an attainment date  
17 on which an applicable milestone occurs in a case in which the standard  
18 has been attained), each State in which all or part of the area is lo-  
19 cated shall submit to the Administrator a demonstration that the appli-  
20 cable milestone has been met. A demonstration under this paragraph  
21 shall be submitted in such form and manner, and shall contain such  
22 information and analysis, as the Administrator shall require, by regula-  
23 tion. The Administrator shall determine whether or not a State's dem-  
24 onstration is adequate within 90 days after the Administrator's receipt  
25 of a demonstration that contains the information and analysis required  
26 by the Administrator.

27 (3) SERIOUS AREAS AND SEVERE AREAS.—

28 (A) STATE ELECTION.—If a State fails to submit a demonstra-  
29 tion under paragraph (2) for any serious area or severe area with-  
30 in the required period or if the Administrator determines that the  
31 serious area or severe area has not met any applicable milestone,  
32 the State shall elect, within 90 days after the failure or determina-  
33 tion—

34 (i) to have the area reclassified to the next higher classi-  
35 fication;

36 (ii) to implement specific additional measures that are ade-  
37 quate, as determined by the Administrator, to meet the next  
38 applicable milestone as provided in the applicable contingency  
39 plan; or

40 (iii) to adopt an economic incentive program as described  
41 in paragraph (4).

1 (B) ADDITIONAL MEASURES.—If the State makes an election  
2 under subparagraph (A)(ii), the Administrator shall—

3 (i) within 90 days after the election, review the applicable  
4 contingency plan; and

5 (ii) if the Administrator finds the contingency plan inad-  
6 equate, require further measures necessary to meet the appli-  
7 cable milestone.

8 (C) ACCEPTANCE OF ELECTION.—If the State makes an elec-  
9 tion, the election shall be deemed accepted by the Administrator  
10 as meeting the election requirement.

11 (D) FAILURE TO MAKE ELECTION.—If the State fails to make  
12 an election required under this paragraph within the required 90-  
13 day period or within 6 months thereafter, the serious area or se-  
14 vere area shall be reclassified to the next higher classification by  
15 operation of law at the expiration of the 6-month period.

16 (E) PLAN REVISION.—Within 12 months after the date required  
17 for the State to make an election, the State shall submit a revision  
18 of the applicable implementation plan for the serious area or se-  
19 vere area that meets the requirements of this paragraph. The Ad-  
20 ministrator shall review the plan revision and approve or dis-  
21 approve the revision within 9 months after the date of its submis-  
22 sion.

23 (4) ECONOMIC INCENTIVE PROGRAM.—

24 (A) IN GENERAL.—

25 (i) CONSISTENCY WITH REGULATIONS; SUFFICIENCY.—An  
26 economic incentive program under this paragraph shall be  
27 consistent with regulations published by the Administrator  
28 and sufficient, in combination with other elements of the  
29 State plan, to achieve the next applicable milestone.

30 (ii) ELEMENTS.—The State program may include—

31 (I) a nondiscriminatory system, consistent with appli-  
32 cable law regarding interstate commerce, of State-estab-  
33 lished emission fees;

34 (II) a system of marketable permits;

35 (III) a system of State fees on sale or manufacture of  
36 products the use of which contributes to ozone forma-  
37 tion;

38 (IV) incentives and requirements to reduce vehicle  
39 emissions and vehicle miles traveled in the serious area  
40 or severe area, including any of the transportation con-

1 trol measures identified in section 211108(f) of this title;  
2 or

3 (V) any combination of the foregoing or other similar  
4 measures.

5 (B) REGULATIONS.—The Administrator shall publish regula-  
6 tions for the programs to be adopted pursuant to subparagraph  
7 (A). The regulations shall include model plan provisions that may  
8 be adopted for reducing emissions from permitted stationary  
9 sources, area sources, and mobile sources.

10 (C) GUIDELINES.—The guidelines shall require that any reve-  
11 nues generated by the plan provisions adopted pursuant to sub-  
12 paragraph (A) shall be used by the State for any of the following:

13 (i) Providing incentives for achieving emission reductions.

14 (ii) Providing assistance for the development of innovative  
15 technologies for the control of ozone air pollution and for the  
16 development of lower-polluting solvents and surface coatings.  
17 Such assistance shall not provide for the payment of more  
18 than 75 percent of the costs of any project to develop such  
19 a technology or the costs of development of a lower-polluting  
20 solvent or surface coating.

21 (iii) Funding the administrative costs of State programs  
22 under this division. Not more than 50 percent of such reve-  
23 nues may be used for purposes of this clause.

24 (5) EXTREME AREAS.—If a State fails to submit a demonstration  
25 under paragraph (2) for any extreme area within the required period,  
26 or if the Administrator determines that the area has not met any appli-  
27 cable milestone, the State shall, within 9 months after the failure or  
28 determination, submit a plan revision to implement an economic incen-  
29 tive program that meets the requirements of paragraph (4). The Ad-  
30 ministrator shall review the plan revision and approve or disapprove the  
31 revision within 9 months after the date of its submission.

32 (h) RURAL TRANSPORT AREAS.—

33 (1) TREATMENT BY OPERATION OF LAW.—Notwithstanding any  
34 other provision of this section or section 215202 of this title, a State  
35 containing an ozone nonattainment area that does not include, and is  
36 not adjacent to, any part of a Metropolitan Statistical Area or, where  
37 one exists, a Consolidated Metropolitan Statistical Area (as defined by  
38 the Bureau of the Census), which area is treated by the Administrator,  
39 in the Administrator's discretion, as a rural transport area within the  
40 meaning of paragraph (2), shall be treated by operation of law as satis-



1           fying the requirements of this section if the State applicable implemen-  
2           tation plan includes the provisions required under subsection (a).

3           (2) TREATMENT BY THE ADMINISTRATOR.—The Administrator may  
4           treat an ozone nonattainment area as a rural transport area if the Ad-  
5           ministrator finds that sources of volatile organic compounds emissions  
6           (and, where the Administrator determines it to be relevant, nitrogen  
7           oxide emissions) within the area do not make a significant contribution  
8           to the ozone concentrations measured in the ozone nonattainment area  
9           or in other areas.

10          (i) RECLASSIFIED AREAS.—Each State containing an ozone nonattain-  
11          ment area reclassified under section 215202(b)(2) of this title shall meet  
12          such requirements of subsections (b) through (d) as may be applicable to  
13          the area as reclassified, according to the schedules prescribed in connection  
14          with those requirements, except that the Administrator may adjust any ap-  
15          plicable deadlines (other than attainment dates) to the extent that an ad-  
16          justment is necessary or appropriate to ensure consistency among the re-  
17          quired provisions.

18          (j) MULTI-STATE OZONE NONATTAINMENT AREAS.—

19           (1) DEFINITION OF MULTI-STATE OZONE NONATTAINMENT AREA.—

20           In this subsection, the term “multi-State ozone nonattainment area”  
21           means a single ozone nonattainment area that is located in more than  
22           1 State.

23           (2) COORDINATION AMONG STATES.—

24           (A) IN GENERAL.—Each State in which there is located a por-  
25           tion of a single ozone nonattainment area shall—

26           (i) take all reasonable steps to coordinate, substantively  
27           and procedurally, the provisions and implementation of State  
28           implementation plans applicable to the nonattainment area  
29           concerned; and

30           (ii) use photochemical grid modeling or any other analytical  
31           method determined by the Administrator, in the Administra-  
32           tor’s discretion, to be at least as effective.

33           (B) NO PLAN PROVISION APPROVAL ABSENT COMPLIANCE.—

34           The Administrator may not approve any provision of a State im-  
35           plementation plan submitted under this subchapter for a State in  
36           which part of a multi-State ozone nonattainment area is located  
37           if the plan revision fails to comply with this paragraph.

38           (3) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in  
39           which there is located a portion of a multi-State ozone nonattainment  
40           area fails to provide a demonstration of attainment of the NAAQS for  
41           ozone in that portion within the required period, the State may petition

1 the Administrator to make a finding that the State would have been  
2 able to make such a demonstration but for the failure of 1 or more  
3 other States in which other portions of the multi-State ozone non-  
4 attainment area are located to commit to the implementation of all  
5 measures required under this section. If the Administrator makes such  
6 a finding, section 215111 of this title shall not apply, by reason of the  
7 failure to make such a demonstration, in the portion of the multi-State  
8 ozone nonattainment area within the State submitting the petition.

9 **§ 215204. Federal ozone measures**

10 (a) CONTROL TECHNIQUE GUIDELINES FOR VOLATILE ORGANIC COM-  
11 POUND SOURCES.—The Administrator shall issue control technique guide-  
12 lines, in accordance with section 211108 of this title, for 11 categories of  
13 stationary sources of volatile organic compound emissions for which control  
14 technique guidelines had not been issued as of November 15, 1990, not in-  
15 cluding the categories described in paragraphs (3) and (4) of subsection (b).  
16 The Administrator may issue such additional control technique guidelines as  
17 the Administrator considers necessary.

18 (b) EXISTING AND NEW CONTROL TECHNIQUE GUIDELINES.—

19 (1) REVIEW AND UPDATING.—The Administrator shall periodically  
20 review and, if necessary, update control technique guidelines issued  
21 under section 108 of the Clean Air Act (42 U.S.C. 7408) before No-  
22 vember 15, 1990.

23 (2) PRIORITY.—In issuing the control technique guidelines the Ad-  
24 ministrator shall give priority to categories that the Administrator con-  
25 siders to make the most significant contribution to the formation of  
26 ozone air pollution in ozone nonattainment areas, including hazardous  
27 waste treatment, storage, and disposal facilities that are permitted  
28 under subtitle C of the Solid Waste Disposal Act (42 U.S.C. 6921 et  
29 seq.). The Administrator shall periodically review and, if necessary, re-  
30 vise the control technique guidelines.

31 (3) AEROSPACE COATINGS AND SOLVENTS.—

32 (A) IN GENERAL.—The Administrator shall issue control tech-  
33 nique guidelines in accordance with section 211108 of this title to  
34 reduce the aggregate emissions of volatile organic compounds into  
35 the ambient air from aerospace coatings and solvents. The control  
36 technique guidelines shall, at a minimum, be adequate to reduce  
37 aggregate emissions of volatile organic compounds into the ambi-  
38 ent air from the application of aerospace coatings and solvents to  
39 such level as the Administrator determines may be achieved  
40 through the adoption of best available control measures. The con-  
41 trol technique guidelines shall provide for such reductions in such

1 increments and on such schedules as the Administrator determines  
2 to be reasonable, but in no event later than 10 years after the  
3 final issuance of the control technique guidelines.

4 (B) CONSULTATION.—In developing control technique guidelines  
5 under this paragraph, the Administrator shall consult with the  
6 Secretary of Defense, the Secretary of Transportation, and the  
7 Administrator of the National Aeronautics and Space Administra-  
8 tion with regard to the establishment of specifications for aero-  
9 space coatings.

10 (C) CONSIDERATIONS.—In evaluating volatile organic compound  
11 reduction strategies, the guidance shall take into account—

12 (i) the applicable requirements of section 211112 of this  
13 title; and

14 (ii) the need to protect stratospheric ozone.

15 (4) SHIPBUILDING AND SHIP REPAIR PAINTS, COATINGS, AND SOL-  
16 VENTS.—

17 (A) IN GENERAL.—The Administrator shall issue control tech-  
18 nique guidelines in accordance with section 211108 of this title to  
19 reduce the aggregate emissions of volatile organic compounds and  
20 PM-10 into the ambient air from paints, coatings, and solvents  
21 used in shipbuilding operations and ship repair. The control tech-  
22 nique guidelines shall, at a minimum, be adequate to reduce ag-  
23 gregate emissions of volatile organic compounds and PM-10 into  
24 the ambient air from the removal or application of such paints,  
25 coatings, and solvents to such level as the Administrator deter-  
26 mines may be achieved through the adoption of the best available  
27 control measures. The control technique guidelines shall provide  
28 for such reductions in such increments and on such schedules as  
29 the Administrator determines to be reasonable, but in no event  
30 later than 10 years after the final issuance of the control tech-  
31 nique guidelines.

32 (B) CONSULTATION.—In developing control technique guidelines  
33 under this paragraph, the Administrator shall consult with the ap-  
34 propriate Federal agencies.

35 (e) ALTERNATIVE CONTROL TECHNIQUES.—The Administrator shall  
36 issue technical documents that identify alternative controls for all categories  
37 of stationary sources of volatile organic compounds and nitrogen oxides that  
38 emit, or have the potential to emit, 25 or more tons per year of volatile or-  
39 ganic compounds and nitrogen oxides. The Administrator shall revise and  
40 update the documents as the Administrator determines to be necessary.

1 (d) GUIDANCE FOR EVALUATING COST-EFFECTIVENESS.—The Adminis-  
2 trator shall provide guidance to the States to be used in evaluating the rel-  
3 ative cost-effectiveness of various options for the control of emissions from  
4 existing stationary sources of air pollutants that contribute to nonattain-  
5 ment of the NAAQSeS for ozone.

6 (e) CONTROL OF EMISSIONS FROM CERTAIN SOURCES.—

7 (1) DEFINITIONS.—In this subsection:

8 (A) BEST AVAILABLE CONTROLS.—The term “best available  
9 controls” means the degree of emission reduction that the Admin-  
10 istrator determines, on the basis of technological and economic  
11 feasibility, health, environmental, and energy impacts, is achiev-  
12 able through the application of the most effective equipment,  
13 measures, processes, methods, systems, or techniques, including  
14 chemical reformulation, product or feedstock substitution, repack-  
15 aging, and directions for use, consumption, storage, or disposal.

16 (B) CONSUMER OR COMMERCIAL PRODUCT.—

17 (i) IN GENERAL.—The term “consumer or commercial  
18 product” means any substance, product (including paints,  
19 coatings, and solvents), or article (including any container or  
20 packaging) held by any person, the use, consumption, storage,  
21 disposal, destruction, or decomposition of which may result in  
22 the release of volatile organic compounds.

23 (ii) EXCLUSIONS.—The term “consumer or commercial  
24 product” does not include—

25 (I) a fuel or fuel additive regulated under section  
26 221111 of this title; or

27 (II) a motor vehicle, nonroad vehicle, or nonroad en-  
28 gine (as defined under section 221101 of this title).

29 (C) REGULATED ENTITY.—The term “regulated entity”  
30 means—

31 (i) a manufacturer, processor, wholesale distributor, or im-  
32 porter of consumer or commercial products for sale or dis-  
33 tribution in interstate commerce; or

34 (ii) a manufacturer, processor, wholesale distributor, or im-  
35 porter that supplies entities described in clause (i) with con-  
36 sumer or commercial products for sale or distribution in  
37 interstate commerce.

38 (2) STUDY AND REPORT.—

39 (A) STUDY.—The Administrator shall conduct a study of and  
40 submit to Congress a report on the emissions of volatile organic

1 compounds into the ambient air from consumer and commercial  
2 products (or any combination thereof) to—

3 (i) determine their potential to contribute to ozone levels  
4 that violate the NAAQS for ozone; and

5 (ii) establish criteria for regulating consumer and commer-  
6 cial products or classes or categories thereof that shall be  
7 subject to control under this subsection.

8 (B) CONSIDERATION OF CERTAIN FACTORS.—In establishing  
9 the criteria under subparagraph (A)(ii), the Administrator shall  
10 take into consideration each of the following:

11 (i) The uses, benefits, and commercial demand of consumer  
12 and commercial products.

13 (ii) The health or safety functions (if any) served by con-  
14 sumer and commercial products.

15 (iii) Consumer and commercial products that emit highly  
16 reactive volatile organic compounds into the ambient air.

17 (iv) Consumer and commercial products that are subject to  
18 the most cost-effective controls.

19 (v) The availability of alternatives (if any) to consumer and  
20 commercial products that are of comparable costs, considering  
21 health, safety, and environmental impacts.

22 (3) REGULATIONS TO REQUIRE EMISSION REDUCTIONS.—

23 (A) IN GENERAL.—On submission of the report under para-  
24 graph (2), the Administrator shall list the categories of consumer  
25 or commercial products that the Administrator determines, based  
26 on the study, account for at least 80 percent of the volatile organic  
27 compound emissions, on a reactivity-adjusted basis, from consumer  
28 or commercial products in areas that violate the NAAQSeS for  
29 ozone. Credit toward the 80 percent emissions calculation shall be  
30 given for emission reductions from consumer or commercial prod-  
31 ucts made after November 15, 1990. The Administrator shall di-  
32 vide the list into 4 groups and promulgate regulations for all 4  
33 groups.

34 (B) BEST AVAILABLE CONTROLS.—The regulations shall require  
35 best available controls.

36 (C) HEALTH USE PRODUCTS.—The regulations may exempt  
37 health use products for which the Administrator determines there  
38 is no suitable substitute.

39 (D) CONTROL OR PROHIBITION OF ACTIVITY.—To carry out this  
40 section, the Administrator may, by regulation, control or prohibit  
41 any activity (including the manufacture or introduction into com-

1 merce, offering for sale, or sale of any consumer or commercial  
2 product) that results in emission of volatile organic compounds  
3 into the ambient air.

4 (E) REGULATED ENTITIES.—Regulations under this subsection  
5 may be imposed only with respect to regulated entities.

6 (F) USE OF CONTROL TECHNIQUE GUIDELINES.—For any con-  
7 sumer or commercial product, the Administrator may issue control  
8 technique guidelines under this division in lieu of regulations re-  
9 quired under subparagraph (A) if the Administrator determines  
10 that control technique guidelines will be substantially as effective  
11 as regulations in reducing emissions of volatile organic compounds  
12 that contribute to ozone levels in areas that violate the NAAQS  
13 for ozone.

14 (4) SYSTEMS OF REGULATION.—The regulations under this sub-  
15 section may include any system or systems of regulation as the Admin-  
16 istrator considers appropriate, including requirements for registration  
17 and labeling, self-monitoring and reporting, prohibitions, limitations, or  
18 economic incentives (including marketable permits and auctions of  
19 emissions rights) concerning the manufacture, processing, distribution,  
20 use, consumption, or disposal of a consumer or commercial product.

21 (5) SPECIAL FUND.—Any amounts collected by the Administrator  
22 under the regulations shall be deposited in the Treasury in a special  
23 fund for licensing and other services, which thereafter shall be available  
24 until expended, subject to annual appropriation Acts, solely to carry  
25 out the activities of the Administrator for which such fees, charges, or  
26 collections are established or made.

27 (6) ENFORCEMENT.—Any regulation established under this sub-  
28 section shall be treated, for purposes of enforcement of this division,  
29 as a standard under section 211111 of this title, and any violation of  
30 such a regulation shall be treated as a violation of a requirement of  
31 section 211111(j) of this title.

32 (7) STATE ADMINISTRATION.—Each State may develop and submit  
33 to the Administrator a procedure under State law for implementing  
34 and enforcing regulations promulgated under this subsection. If the  
35 Administrator finds that the State procedure is adequate, the Adminis-  
36 trator shall approve the procedure. Nothing in this paragraph shall  
37 prohibit the Administrator from enforcing any applicable regulation  
38 under this subsection.

39 (8) SIZE, SHAPE, AND LABELING.—No regulation regarding the size,  
40 shape, or labeling of a consumer or commercial may be promulgated,

1           unless the Administrator determines such a regulation to be useful in  
2           meeting any NAAQS.

3           (9) STATE CONSULTATION.—Any State that proposes regulations  
4           other than those adopted under this subsection shall consult with the  
5           Administrator regarding whether any other State or local subdivision  
6           has promulgated or is promulgating regulations on any products cov-  
7           ered under this chapter. The Administrator shall establish a clearing-  
8           house of information, studies, and regulations proposed and promul-  
9           gated regarding consumer or commercial products and disseminate the  
10          information collected as requested by State or local subdivisions.

11       (f) TANK VESSEL STANDARDS.—

12           (1) IN GENERAL.—

13           (A) STANDARDS.—The Administrator, in consultation with the  
14           Secretary of the department in which the Coast Guard is operat-  
15           ing, shall promulgate standards applicable to the emission of vola-  
16           tile organic compounds and any other air pollutant from loading  
17           and unloading of tank vessels (as defined in section 2101 of title  
18           46) that the Administrator finds causes, or contributes to, air pol-  
19           lution that may be reasonably anticipated to endanger public  
20           health or welfare. The standards shall require the application of  
21           reasonably available control technology, considering costs, any  
22           non-air-quality benefits, environmental impacts, energy require-  
23           ments, and safety factors associated with alternative control tech-  
24           niques. To the extent practicable, the standards shall apply to  
25           loading and unloading facilities and not to tank vessels.

26           (B) EFFECTIVE DATE.—Any regulation promulgated under this  
27           subsection (and any revision thereof) shall take effect after such  
28           period as the Administrator finds (after consultation with the Sec-  
29           retary of the department in which the Coast Guard is operating)  
30           necessary to permit the development and application of the req-  
31           uisite technology, giving appropriate consideration to the cost of  
32           compliance within that period, except that the effective date shall  
33           be not more than 2 years after promulgation of the regulations.

34           (2) REGULATIONS ON EQUIPMENT SAFETY.—The Secretary of the  
35           department in which the Coast Guard is operating shall issue regula-  
36           tions to ensure the safety of the equipment and operations that are to  
37           control emissions from the loading and unloading of tank vessels under  
38           section 3703 of title 46 and section 6 of the Ports and Waterways  
39           Safety Act (33 U.S.C. 1225). The standards promulgated by the Ad-  
40           ministrator under paragraph (1) and the regulations issued by a State  
41           or political subdivision regarding emissions from the loading and un-

1 loading of tank vessels shall be consistent with the regulations regard-  
2 ing safety of the department in which the Coast Guard is operating.

3 (3) AGENCY AUTHORITY.—

4 (A) EMISSION STANDARDS.—The Administrator shall ensure  
5 compliance with the tank vessel emission standards promulgated  
6 under paragraph (1)(A). The Secretary of the department in  
7 which the Coast Guard is operating shall ensure compliance with  
8 the tank vessel standards promulgated under paragraph (1)(A).

9 (B) SAFETY REGULATIONS.—The Secretary of the department  
10 in which the Coast Guard is operating shall ensure compliance  
11 with the regulations issued under paragraph (2).

12 (4) STATE OR LOCAL STANDARDS.—After the Administrator promul-  
13 gates standards under this section, no State or political subdivision  
14 thereof may adopt or attempt to enforce any standard respecting emis-  
15 sions from tank vessels subject to regulation under paragraph (1) un-  
16 less the State or local standard is no less stringent than the standards  
17 promulgated under paragraph (1).

18 (5) ENFORCEMENT.—Any standard established under paragraph  
19 (1)(A) shall be treated, for purposes of enforcement of this division, as  
20 a standard under section 211111 of this title, and any violation of such  
21 a standard shall be treated as a violation of a requirement of section  
22 211111(j) of this title.

23 (g) VEHICLES ENTERING OZONE NONATTAINMENT AREAS.—

24 (1) DEFINITION OF COVERED OZONE NONATTAINMENT AREA.—In  
25 this subsection, the term “covered ozone nonattainment area” means  
26 a serious area, as classified under section 181 of the Clean Air Act (42  
27 U.S.C. 7511) as of October 27, 1998.

28 (2) AUTHORITY REGARDING OZONE INSPECTION AND MAINTENANCE  
29 TESTING.—

30 (A) IN GENERAL.—No noncommercial motor vehicle registered  
31 in a foreign country and operated by a United States citizen or  
32 by an alien who is a permanent resident of the United States, or  
33 who holds a visa for the purposes of employment or educational  
34 study in the United States, may enter a covered ozone nonattain-  
35 ment area from a foreign country bordering the United States and  
36 contiguous to the nonattainment area more than twice in a single  
37 calendar-month period, if State law has requirements for the in-  
38 spection and maintenance of noncommercial motor vehicles under  
39 the applicable implementation plan in the nonattainment area.

40 (B) APPLICABILITY.—Subparagraph (A) shall not apply if the  
41 operator presents documentation at the United States border entry



1 point establishing that the vehicle has complied with such inspec-  
2 tion and maintenance requirements as are in effect and are appli-  
3 cable to motor vehicles of the same type and model year.

4 (3) SANCTIONS FOR VIOLATIONS.—The President may impose and  
5 collect from the operator of any motor vehicle who violates, or attempts  
6 to violate, paragraph (1) a civil penalty of not more than \$200 for the  
7 2d violation or attempted violation and \$400 for the 3d and each sub-  
8 sequent violation or attempted violation.

9 (4) STATE ELECTION.—The prohibition set forth in paragraph (1)  
10 shall not apply in any State that elects to be exempt from the prohibi-  
11 tion. Such an election shall take effect on the President's receipt of  
12 written notice from the Governor of the State notifying the President  
13 of the election.

14 (5) ALTERNATIVE APPROACH.—The prohibition set forth in para-  
15 graph (1) shall not apply in a State, and the President may implement  
16 an alternative approach, if—

17 (A) the Governor of the State submits to the President a writ-  
18 ten description of an alternative approach to facilitate the compli-  
19 ance, by some or all foreign-registered motor vehicles, with the  
20 motor vehicle inspection and maintenance requirements that are—

- 21 (i) related to emissions of air pollutants;
- 22 (ii) in effect under the applicable implementation plan in  
23 the covered ozone nonattainment area; and
- 24 (iii) applicable to motor vehicles of the same types and  
25 model years as the foreign-registered motor vehicles; and

26 (B) the President approves the alternative approach as facilitat-  
27 ing compliance with the motor vehicle inspection and maintenance  
28 requirements described in subparagraph (A).

29 **§ 215205. Control of interstate ozone air pollution**

30 (a) OZONE TRANSPORT REGIONS.—

31 (1) IN GENERAL.—There is established a single interstate transport  
32 region for ozone (within the meaning of section 215108(a) of this title),  
33 comprised of the States of Connecticut, Delaware, Maine, Maryland,  
34 Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania,  
35 Rhode Island, Vermont, and the Consolidated Metropolitan Statistical  
36 Area that includes the District of Columbia.

37 (2) ADDITION AND REMOVAL OF STATES.—The Administrator, on  
38 the Administrator's own motion, on petition from the Governor of any  
39 State, or on the recommendation of the interstate transport commission  
40 established by paragraph (1) or the interstate transport commission es-  
41 tablished for any other interstate transport region for ozone, may—

1 (A) add any State or portion of a State to an interstate trans-  
2 port region established under paragraph (1) or other interstate  
3 transport region for ozone when the Administrator has reason to  
4 believe that the interstate transport of air pollutants from that  
5 State significantly contributes to a violation of the NAAQS for  
6 ozone in the interstate transport region; or

7 (B) remove any State or portion of a State from an interstate  
8 transport region when the Administrator has reason to believe that  
9 the control of emissions in that State or portion of the State pur-  
10 suant to this section will not significantly contribute to the attain-  
11 ment of the NAAQS for ozone in any area in the interstate trans-  
12 port region.

13 (3) PROCEDURE.—

14 (A) APPROVAL OR DISAPPROVAL.—The Administrator shall ap-  
15 prove or disapprove a petition or recommendation under subpara-  
16 graph (A) or (B) of paragraph (2) within 18 months after its re-  
17 ceipt.

18 (B) PUBLIC PARTICIPATION.—The Administrator shall establish  
19 appropriate proceedings for public participation regarding motions,  
20 petitions, and recommendations under subparagraphs (A) and (B)  
21 of paragraph (2), including notice and comment.

22 (4) CONVENING OF COMMISSION.—The Administrator shall convene  
23 the commission required under section 215108(b) of this title as a re-  
24 sult of the establishment of the interstate transport region.

25 (b) PLAN PROVISIONS FOR STATES IN INTERSTATE TRANSPORT REGIONS  
26 FOR OZONE.—

27 (1) IN GENERAL.—In accordance with section 211110 of this title,  
28 not later than 9 months after the inclusion of a State in an interstate  
29 transport region for ozone, each State included in the interstate trans-  
30 port region shall submit to the Administrator a State implementation  
31 plan provision that—

32 (A) requires that each area in the State that is a metropolitan  
33 statistical area or is part of a metropolitan statistical area with  
34 a population of 100,000 or more comply with section  
35 215203(c)(4)(B) of this title; and

36 (B) requires implementation of reasonably available control  
37 technology with respect to all sources of volatile organic com-  
38 pounds in the State covered by a control technique guideline.

39 (2) CONTROL MEASURES.—The Administrator shall complete a study  
40 identifying control measures capable of achieving emission reductions  
41 comparable to those achievable through vehicle refueling controls con-

1           tained in section 215203(b)(4) of this title, and those measures or vehi-  
2           cle refueling controls shall be implemented in accordance with this sec-  
3           tion. Notwithstanding other deadlines in this section, the applicable im-  
4           plementation plan shall be revised to reflect those measures within 1  
5           year of completion of the study. For purposes of this section, any sta-  
6           tionary source that emits or has the potential to emit at least 50 tons  
7           per year of volatile organic compounds shall be considered a major sta-  
8           tionary source and subject to the requirements that would be applicable  
9           to major stationary sources if the area were classified as a moderate  
10          area.

11       (c) **ADDITIONAL CONTROL MEASURES.**—

12           (1) **DEFINITION OF RECEIPT DATE.**—In this subsection, the term  
13           “receipt date” means the date on which the Administrator receives rec-  
14           ommendations prepared by a commission pursuant to paragraph (2).

15           (2) **RECOMMENDATIONS.**—On petition of any State within a trans-  
16           port region established for ozone, and based on a majority vote of the  
17           Governors on the commission (or their designees), the commission may,  
18           after notice and opportunity for public comment, develop recommenda-  
19           tions for additional control measures to be applied within all or a part  
20           of the ozone transport region if the commission determines that such  
21           measures are necessary to bring any area in the ozone transport region  
22           into attainment by the dates provided by this subchapter. The commis-  
23           sion shall transmit the recommendations to the Administrator.

24           (3) **NOTICE AND REVIEW.**—When the Administrator receives recom-  
25           mendations prepared by a commission pursuant to paragraph (2), the  
26           Administrator shall—

27                (A) immediately publish in the Federal Register a notice stating  
28                that the recommendations are available and provide an oppor-  
29                tunity for public hearing within 90 days beginning on the receipt  
30                date; and

31                (B) commence a review of the recommendations to determine  
32                whether the control measures in the recommendations are nec-  
33                essary to bring any area in the ozone transport region into attain-  
34                ment by the dates provided by this subchapter and are otherwise  
35                consistent with this division.

36           (4) **CONSULTATION; CONSIDERATIONS.**—In undertaking the review  
37           required under paragraph (3)(B), the Administrator shall—

38                (A) consult with members of the commission of the affected  
39                States; and

40                (B) take into account the data, views, and comments received  
41                pursuant to paragraph (3)(A).

1 (5) APPROVAL AND DISAPPROVAL.—

2 (A) IN GENERAL.—Within 9 months after the receipt date, the  
3 Administrator shall—

4 (i) determine whether to approve, disapprove, or partially  
5 disapprove and partially approve the recommendations;

6 (ii) notify the commission in writing of the approval, dis-  
7 approval, or partial disapproval; and

8 (iii) publish the determination in the Federal Register.

9 (B) DISAPPROVAL OR PARTIAL DISAPPROVAL.—If the Adminis-  
10 trator disapproves or partially disapproves the recommendations,  
11 the Administrator shall specify—

12 (i) why any disapproved additional control measures are  
13 not necessary to bring any area in the ozone transport region  
14 into attainment by the dates provided by this or are otherwise  
15 not consistent with this division; and

16 (ii) recommendations concerning equal or more effective ac-  
17 tions that could be taken by the commission to conform the  
18 disapproved portion of the recommendations to the require-  
19 ments of this section.

20 (6) FINDING.—On approval or partial approval of recommendations  
21 submitted by a commission, the Administrator shall issue to each State  
22 that is included in the ozone transport region and to which a require-  
23 ment of the approved plan applies a finding under section 211110(i)(5)  
24 of this title that the implementation plan for that State is inadequate  
25 to meet the requirements of section 211110(a)(3)(D) of this title. The  
26 finding shall require each such State to revise its implementation plan  
27 to include the approved additional control measures within 1 year after  
28 the finding is issued.

29 (d) BEST AVAILABLE AIR QUALITY MONITORING AND MODELING.—For  
30 purposes of this section, the Administrator shall promulgate criteria for pur-  
31 poses of determining the contribution of sources in 1 area to concentrations  
32 of ozone in another area that is a nonattainment area for ozone. The cri-  
33 teria shall require that the best available air quality monitoring and model-  
34 ing techniques be used for purposes of making such determinations.

35 **§ 215206. Enforcement for severe areas and extreme areas**  
36 **for failure to attain**

37 (a) GENERAL RULE.—Each implementation plan provision required  
38 under subsections (d) and (e) of section 215203 of this title shall provide  
39 that, if the severe area or extreme area to which the plan provision applies  
40 has failed to attain the primary NAAQS for ozone by the applicable attain-  
41 ment date, each major stationary source of volatile organic compounds lo-

1 cated in the severe area or extreme area shall, except as otherwise provided  
2 under subsection (c), pay a fee to the State as a penalty for the failure,  
3 computed in accordance with subsection (b), for each calendar year begin-  
4 ning after the attainment date, until the severe area or extreme area is re-  
5 designated as an attainment area for ozone. Each such plan provision  
6 should include procedures for assessment and collection of such fees.

7 (b) COMPUTATION OF FEE.—

8 (1) FEE AMOUNT.—The fee shall equal \$5,000, adjusted in accord-  
9 ance with paragraph (3), per ton of volatile organic compound emitted  
10 by the source during the calendar year in excess of 80 percent of the  
11 baseline amount, computed under paragraph (2).

12 (2) BASELINE AMOUNT.—

13 (A) IN GENERAL.—For purposes of this section, the baseline  
14 amount shall be computed, in accordance with such guidance as  
15 the Administrator may provide, as the lower, during the attain-  
16 ment year, of—

17 (i) the amount of actual volatile organic compound emis-  
18 sions (referred to in this paragraph as “actuals”); or

19 (ii) the amount of volatile organic compound emissions al-  
20 lowed under the permit applicable to the source (or, if no  
21 such permit has been issued for the attainment year, the  
22 amount of volatile organic compound emissions allowed under  
23 the applicable implementation plan) (referred to in this para-  
24 graph as “allowables”).

25 (B) PERIOD OF DETERMINATION.—Notwithstanding subpara-  
26 graph (A), the Administrator may issue guidance authorizing the  
27 baseline amount to be determined in accordance with the lower of  
28 average actuals or average allowables, determined over a period of  
29 more than 1 calendar year. The guidance may provide that such  
30 an average calculation for a specific source may be used if that  
31 source’s emissions are irregular, cyclical, or otherwise vary signifi-  
32 cantly from year to year.

33 (3) ANNUAL ADJUSTMENT.—The fee amount under paragraph (1)  
34 shall be adjusted annually, beginning as of 1991, in accordance with  
35 section 235102(b)(3)(B)(iv) of this title.

36 (c) EXCEPTION.—Notwithstanding any provision of this section, no  
37 source shall be required to pay any fee under subsection (a) with respect  
38 to emissions during any year that is treated as an extension year under sec-  
39 tion 215202(a)(5) of this title.

40 (d) FEE COLLECTION BY ADMINISTRATOR.—If the Administrator has  
41 found that the fee provisions of the implementation plan do not meet the

1 requirements of this section, or if the Administrator makes a finding that  
2 the State is not administering and enforcing the fee required under this sec-  
3 tion, the Administrator shall, in addition to any other action authorized  
4 under this subdivision, collect, in accordance with procedures promulgated  
5 by the Administrator, the unpaid fees required under subsection (a). If the  
6 Administrator makes such a finding under section 215111(a)(1)(D) of this  
7 title, the Administrator may collect fees for periods before the determina-  
8 tion, plus interest computed in accordance with section 6621(a)(2) of the  
9 Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)), to the extent that  
10 the Administrator finds that such fees have not been paid to the State.  
11 Clauses (ii) through (iii) of section 235102(b)(3)(C) of this title shall apply  
12 with respect to fees collected under this subsection.

13 (e) EXEMPTIONS FOR CERTAIN SMALL AREAS.—For a severe area or ex-  
14 treme area with a total population under 200,000 that fails to attain the  
15 standard by the applicable attainment date, no sanction under this section  
16 or under any other provision of this division shall apply if the severe area  
17 or extreme area can demonstrate, consistent with guidance issued by the  
18 Administrator, that attainment in the severe area or extreme area is pre-  
19 vented because of ozone or ozone precursors transported from another area.  
20 The prohibition applies only in a case in which the severe area or extreme  
21 area has met all requirements and implemented all measures applicable to  
22 the severe area or extreme area under this division.

23 **§ 215207. Nitrogen oxide and volatile organic compound**  
24 **study**

25 (a) IN GENERAL.—The Administrator, in conjunction with the National  
26 Academy of Sciences, shall conduct a study on the role of ozone precursors  
27 in tropospheric ozone formation and control.

28 (b) MATTERS TO BE EXAMINED.—The study shall examine—

- 29 (1) the roles of nitrogen oxide and volatile organic compound emis-  
30 sion reductions;
- 31 (2) the extent to which nitrogen oxide reductions may contribute (or  
32 be counterproductive) to achievement of attainment in different non-  
33 attainment areas;
- 34 (3) the sensitivity of ozone to the control of nitrogen oxides;
- 35 (4) the availability and extent of controls for nitrogen oxides;
- 36 (5) the role of biogenic volatile organic compound emissions; and
- 37 (6) the basic information required for air quality models.

38 (c) INFORMATION AND STUDIES; ADDITIONAL INFORMATION.—The Ad-  
39 ministrator shall utilize all available information and studies and develop ad-  
40 ditional information in conducting the study required by this section.

1 (d) REPORT.—The Administrator shall submit to Congress a report on  
2 the study.

3 **Subchapter III—Additional Provisions for**  
4 **Carbon Monoxide Nonattainment Areas**

5 **§ 215301. Definitions**

6 In this subchapter:

7 (1) MODERATE AREA.—The term “moderate area” means an area  
8 that is classified as a moderate area under section 215302 of this title.

9 (2) SERIOUS AREA.—The term “serious area” means an area that  
10 is classified as a serious area under section 215302 of this title.

11 (3) TABLE 1.—The term “table 1” means table 1 in section  
12 215302(a)(1) of this title.

13 **§ 215302. Classification and attainment dates**

14 (a) CLASSIFICATION BY OPERATION OF LAW AND ATTAINMENT DATES  
15 FOR NONATTAINMENT AREAS.—

16 (1) IN GENERAL.—Each area designated nonattainment for carbon  
17 monoxide pursuant to section 211107(d) of this title shall be classified  
18 at the time of designation under table 1, by operation of law, as a mod-  
19 erate area or serious area based on the design value for the area. The  
20 design value shall be calculated according to the interpretation meth-  
21 odology issued by the Administrator most recently before November 15,  
22 1990. For each area classified under this subsection, the primary  
23 NAAQS attainment date for carbon monoxide shall be as expeditiously  
24 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

25 (2) NOTICE.—At the time of publication of the notice required under  
26 section 211107 of this title, the Administrator shall publish a notice  
27 announcing the classification of each such carbon monoxide nonattain-  
28 ment area. Section 215102(a)(1)(B) of this title shall apply with re-  
29 spect to such a classification.

30 (3) ADJUSTMENT.—

31 (A) IN GENERAL.—If an area classified under paragraph (1)  
32 would have been classified in another category if the design value  
33 in the area were 5 percent greater or 5 percent less than the level  
34 on which the classification was based, the Administrator may,  
35 within 90 days after November 15, 1990, by the procedure re-  
36 quired under paragraph (2), adjust the classification of the area.

1 (B) CONSIDERATIONS.—In making such an adjustment, the Ad-  
2 ministrator may consider—

3 (i) the number of exceedances of the primary NAAQS for  
4 carbon monoxide in the area;

5 (ii) the level of pollution transport between the area and  
6 other affected areas; and

7 (iii) the mix of sources and air pollutants in the area.

8 (4) EXTENSION.—

9 (A) IN GENERAL.—On application by any State, the Adminis-  
10 trator may extend for 1 additional year (referred to in this para-  
11 graph as an “extension year”) the date specified in table 1 of sub-  
12 section (a) if—

13 (i) the State has complied with all requirements and com-  
14 mitments pertaining to the area in the applicable implementa-  
15 tion plan; and

16 (ii) not more than 1 exceedance of the NAAQS level for  
17 carbon monoxide has occurred in the area in the year preced-  
18 ing the extension year.

19 (B) LIMITATION.—Not more than 2 one-year extensions may be  
20 issued under this paragraph for a single nonattainment area.

21 (b) NEW DESIGNATIONS AND RECLASSIFICATIONS.—

22 (1) NEW DESIGNATIONS TO NONATTAINMENT.—Any area that is  
23 designated attainment or unclassifiable for carbon monoxide under sec-  
24 tion 211107(d)(4) of this title and is subsequently redesignated to non-  
25 attainment for carbon monoxide under section 211107(d)(3) of this  
26 title shall, at the time of the redesignation, be classified by operation  
27 of law in accordance with table 1. Upon its classification, the area shall  
28 be subject to the same requirements under section 211110 of this title,  
29 subchapter I, and this subchapter that would have applied had the area  
30 been so classified at the time of the notice under subsection (a)(2), ex-  
31 cept that any absolute, fixed date applicable in connection with any  
32 such requirement is extended by operation of law by a period equal to  
33 the length of time between November 15, 1990, and the date the area  
34 is classified.

35 (2) RECLASSIFICATION OF MODERATE AREAS ON FAILURE TO AT-  
36 TAIN.—

37 (A) DETERMINATION.—Within 6 months after the applicable at-  
38 tainment date for a carbon monoxide nonattainment area, the Ad-  
39 ministrator shall determine, based on the area’s design value as  
40 of the attainment date, whether the area has attained the NAAQS  
41 by that date.



1 (B) RECLASSIFICATION.—Any moderate area that the Adminis-  
2 trator finds has not attained the NAAQS by that date shall be re-  
3 classified by operation of law in accordance with table 1 as a seri-  
4 ous area.

5 (C) NOTICE.—The Administrator shall publish a notice in the  
6 Federal Register, not later than 6 months after the attainment  
7 date, identifying each area that the Administrator has determined,  
8 under subparagraph (A), as having failed to attain the NAAQS  
9 and identifying the reclassification, if any, described under sub-  
10 paragraph (B).

11 **§ 215303. Plan submissions and requirements**

12 (a) MODERATE AREAS.—

13 (1) IN GENERAL.—Each State in which all or part of a moderate  
14 area is located shall, with respect to the moderate area (or portion  
15 thereof, to the extent specified in guidance of the Administrator issued  
16 before November 15, 1990), submit to the Administrator the State im-  
17 plementation plan provisions (including the plan items) described under  
18 this subsection, within such periods as are prescribed under this sub-  
19 section, except to the extent that the State has made such submissions  
20 as of November 15, 1990.

21 (2) INVENTORY.—A State shall submit a comprehensive, accurate,  
22 current inventory of actual emissions from all sources, as described in  
23 section 215102(c)(3) of this title, in accordance with guidance provided  
24 by the Administrator.

25 (3) VEHICLE MILES TRAVELED; SPECIAL RULE FOR DENVER.—

26 (A) VEHICLE MILES TRAVELED.—For areas with a design value  
27 above 12.7 parts per million at the time of classification, the plan  
28 provision shall contain a forecast of vehicle miles traveled in a  
29 nonattainment area for each year before the year in which the  
30 plan projects the NAAQS for carbon monoxide to be attained in  
31 the area. The forecast shall be based on guidance published by the  
32 Administrator, in consultation with the Secretary of Transpor-  
33 tation. The plan provision shall provide for annual updates of the  
34 forecasts to be submitted to the Administrator together with an-  
35 nual reports regarding the extent to which the forecasts proved to  
36 be accurate. The annual reports shall contain estimates of actual  
37 vehicle miles traveled in each year for which a forecast was re-  
38 quired.

39 (B) SPECIAL RULE FOR DENVER.—In the case of Denver, the  
40 State shall submit a provision that includes the transportation  
41 control measures as required in section 215203(d)(3)(A) of this

1 title, except that the provision shall be for the purpose of reducing  
2 carbon monoxide emissions rather than volatile organic compound  
3 emissions. If the State fails to include any such measure, the im-  
4 plementation plan shall contain—

5 (i) an explanation why such a measure was not adopted  
6 and what emissions reduction measure was adopted to provide  
7 a comparable reduction in emissions; or

8 (ii) reasons why such a reduction is not necessary to attain  
9 the primary NAAQS for carbon monoxide.

10 (C) ADJUSTMENT.—The Administrator may make the same ad-  
11 justment for purposes of this paragraph as may be made under  
12 section 215302(a)(3) of this title.

13 (4) CONTINGENCY PROVISIONS.—

14 (A) IN GENERAL.—For areas with a design value above 12.7  
15 parts per million at the time of classification, the plan provision  
16 shall provide for the implementation of specific measures to be  
17 undertaken if—

18 (i) any estimate of vehicle miles traveled in the area that  
19 is submitted in an annual report under paragraph (3) exceeds  
20 the number predicted in the most recent prior forecast; or

21 (ii) if the area fails to attain the primary NAAQS for car-  
22 bon monoxide by the primary standard attainment date.

23 (B) INCLUSION IN PLAN PROVISION.—The measures shall be in-  
24 cluded in the plan provision as contingency measures to take effect  
25 without further action by the State or the Administrator if—

26 (i) the prior forecast has been exceeded by an updated fore-  
27 cast; or

28 (ii) the national standard is not attained by that deadline.

29 (C) ADJUSTMENT.—The Administrator may make the same ad-  
30 justment for purposes of this paragraph as may be made under  
31 section 215302(a)(3) of this title.

32 (5) SAVINGS CLAUSE FOR VEHICLE INSPECTION AND MAINTENANCE  
33 PROVISIONS OF THE STATE IMPLEMENTATION PLAN.—Immediately  
34 after November 15, 1990, for any moderate area (or, within the Ad-  
35 ministrator's discretion, portion thereof) the plan for which is of the  
36 type described in section 215203(a)(3)(C) of this title, the State shall  
37 submit any provisions necessary to ensure that the applicable imple-  
38 mentation plan includes the vehicle inspection and maintenance pro-  
39 gram described in section 215203(a)(3)(C) of this title.

40 (6) PERIODIC INVENTORY.—Not later than the end of each 3-year  
41 period after September 30, 1995, until the area is redesignated to at-

1           tainment, the State shall submit a revised inventory meeting the re-  
2           quirements of subsection (a)(1).

3           (7) ENHANCED VEHICLE INSPECTION AND MAINTENANCE.—

4           (A) IN GENERAL.—In the case of moderate areas with a design  
5           value greater than 12.7 parts per million at the time of classifica-  
6           tion, the State shall submit a provision that includes provisions for  
7           an enhanced vehicle inspection and maintenance program as re-  
8           quired in section 215203(c)(5) of this title, except that the vehicle  
9           inspection and maintenance program shall be for the purpose of  
10          reducing carbon monoxide rather than hydrocarbon emissions.

11          (B) ADJUSTMENT.—The Administrator may make the same ad-  
12          justment for purposes of this paragraph as may be made under  
13          section 215302(a)(3) of this title.

14          (8) ATTAINMENT DEMONSTRATION AND SPECIFIC ANNUAL EMISSION  
15          REDUCTIONS.—

16          (A) IN GENERAL.—In the case of moderate areas with a design  
17          value greater than 12.7 parts per million at the time of classifica-  
18          tion, the State shall submit a provision to provide, and a dem-  
19          onstration that the plan as revised will provide, for attainment of  
20          the carbon monoxide NAAQSes by the applicable attainment date  
21          and provisions for such specific annual emission reductions as are  
22          necessary to attain the standard by that date.

23          (B) ADJUSTMENT.—The Administrator may make the same ad-  
24          justment for purposes of this paragraph as may be made under  
25          section 215302(a)(3) of this title.

26          (9) SCHEDULE.—The Administrator may require States to submit a  
27          schedule for submitting any of the provisions or other items required  
28          under this subsection.

29          (10) MODERATE AREAS WITH A DESIGN VALUE OF 12.7 PARTS PER  
30          MILLION OR LOWER.—In the case of a moderate area with a design  
31          value of 12.7 parts per million or lower at the time of classification,  
32          the requirements of this subsection shall apply in lieu of any require-  
33          ment that the State submit a demonstration that the applicable imple-  
34          mentation plan provides for attainment of the carbon monoxide stand-  
35          ard by the applicable attainment date.

36          (b) SERIOUS AREAS.—

37          (1) IN GENERAL.—Each State in which all or part of a serious area  
38          is located shall, with respect to the serious area—

39                  (A) make the submissions (other than those required under sub-  
40                  section (a)(2)) applicable under subsection (a) to moderate areas

1 with a design value of 12.7 parts per million or greater at the time  
2 of classification; and

3 (B) submit the provision and other items described under this  
4 subsection.

5 (2) VEHICLE MILES TRAVELED.—

6 (A) IN GENERAL.—The State shall submit a provision that in-  
7 cludes the transportation control measures as required in section  
8 215203(d)(3) of this title, except that the provision shall be for  
9 the purpose of reducing carbon monoxide emissions rather than  
10 volatile organic compound emissions.

11 (B) CLEAN FUEL FLEET PROGRAM.—In the case of a severe  
12 area (other than an area in New York State) that is a covered  
13 area (as defined in section 225106(a)(1)(B) of this title) for pur-  
14 poses of the clean fuel fleet program under chapter 225, if the  
15 State fails to include a measure described in subparagraph (A),  
16 the implementation plan shall contain—

17 (i) an explanation why such a measure was not adopted  
18 and what emission 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 (3) OXYGENATED GASOLINE.—

23 (A) IN GENERAL.—The State shall submit a provision to require  
24 that gasoline sold, supplied, offered for sale or supply, dispensed,  
25 transported, or introduced into commerce in the larger of—

26 (i) the Consolidated Metropolitan Statistical Area (as de-  
27 fined by the Office of Management and Budget) in which the  
28 area is located; or

29 (ii) if the area is not located in a Consolidated Metropoli-  
30 tan Statistical Area, the Metropolitan Statistical Area (as de-  
31 fined by the Office of Management and Budget) in which the  
32 area is located;

33 be blended, during the portion of the year in which the area is  
34 prone to high ambient concentrations of carbon monoxide (as de-  
35 termined by the Administrator), with fuels containing such a level  
36 of oxygen as is necessary, in combination with other measures, to  
37 provide for attainment of the carbon monoxide NAAQS by the ap-  
38 plicable attainment date and maintenance of the NAAQS there-  
39 after in the area. The provision shall include a program for imple-  
40 mentation and enforcement of the requirement consistent with  
41 guidance issued by the Administrator.

1 (B) PROVISION NOT NECESSARY.—Notwithstanding subpara-  
2 graph (A), the provision described in this paragraph shall not be  
3 required for an area if the State demonstrates to the satisfaction  
4 of the Administrator that the provision is not necessary to provide  
5 for attainment of the carbon monoxide NAAQS by the applicable  
6 attainment date and maintenance of the NAAQS thereafter in the  
7 area.

8 (c) AREAS WITH SIGNIFICANT STATIONARY SOURCE EMISSIONS OF CAR-  
9 BON MONOXIDE.—

10 (1) SERIOUS AREAS.—In the case of serious areas in which station-  
11 ary sources contribute significantly to carbon monoxide levels (as deter-  
12 mined under regulations issued by the Administrator), the State shall  
13 submit a plan provision that provides that the term “major stationary  
14 source” includes (in addition to the sources described in section  
15 201101 of this title) any stationary source that emits, or has the poten-  
16 tial to emit, 50 tons per year or more of carbon monoxide.

17 (2) WAIVERS FOR CERTAIN AREAS.—The Administrator may, on a  
18 case-by-case basis, waive any requirements that pertain to transpor-  
19 tation controls, inspection and maintenance, or oxygenated fuels where  
20 the Administrator determines by regulation that mobile sources of car-  
21 bon monoxide do not contribute significantly to carbon monoxide levels  
22 in the area.

23 (3) GUIDELINES.—The Administrator shall issue guidelines for and  
24 regulations determining whether stationary sources contribute signifi-  
25 cantly to carbon monoxide levels in an area.

26 (d) CARBON MONOXIDE MILESTONE.—

27 (1) DEFINITION OF MILESTONE.—In this subsection, the term “mile-  
28 stone” means a reduction in emissions of carbon monoxide equivalent  
29 to the total of the specific annual emission reductions required by De-  
30 cember 31, 1995.

31 (2) MILESTONE DEMONSTRATION.—Each State in which all or part  
32 of a serious area is located shall submit to the Administrator a dem-  
33 onstration that the area has achieved the milestone.

34 (3) ADEQUACY OF DEMONSTRATION.—A demonstration under this  
35 paragraph shall be submitted in such form and manner, and shall con-  
36 tain such information and analysis, as the Administrator shall require.  
37 The Administrator shall determine whether or not a State’s demonstra-  
38 tion is adequate within 90 days after the Administrator’s receipt of a  
39 demonstration that contains the information and analysis required by  
40 the Administrator.

1 (4) FAILURE TO SUBMIT DEMONSTRATION OR TO MEET MILE-  
2 STONE.—If a State fails to submit a demonstration under paragraph  
3 (2) within the required period, or if the Administrator notifies the  
4 State that the State has not met the milestone, the State shall, within  
5 9 months after such a failure or notification, submit a plan revision  
6 to implement an economic incentive and transportation control program  
7 as described in section 215203(g)(4) of this title. The revision shall be  
8 sufficient to achieve the specific annual reductions in carbon monoxide  
9 emissions set forth in the plan by the attainment date.

10 (e) MULTI-STATE CARBON MONOXIDE NONATTAINMENT AREAS.—

11 (1) DEFINITION OF MULTI-STATE CARBON MONOXIDE NONATTAIN-  
12 MENT AREA.—In this subsection, the term “multi-State carbon mon-  
13 oxide nonattainment area” means a single carbon monoxide nonattain-  
14 ment area that is located in more than 1 State.

15 (2) COORDINATION AMONG STATES.—

16 (A) IN GENERAL.—A State in which there is located a portion  
17 of a multi-State carbon monoxide nonattainment area shall take  
18 all reasonable steps to coordinate, substantively and procedurally,  
19 the provisions and implementation of State implementation plans  
20 applicable to the multi-State carbon monoxide nonattainment area.

21 (B) NO PLAN PROVISION APPROVAL ABSENT COMPLIANCE.—

22 The Administrator shall not approve any provision of a State im-  
23 plementation plan submitted under this chapter for a State in  
24 which part of a volatile organic compound located if the plan pro-  
25 vision for that State fails to comply with the requirements of this  
26 paragraph.

27 (3) FAILURE TO DEMONSTRATE ATTAINMENT.—If any State in  
28 which there is located a portion of a multi-State carbon monoxide non-  
29 attainment area fails to provide a demonstration of attainment of the  
30 NAAQS for carbon monoxide in that portion within the period required  
31 under this chapter, the State may petition the Administrator to make  
32 a finding that the State would have been able to make such a dem-  
33 onstration but for the failure of 1 or more other States in which other  
34 portions of the multi-State carbon monoxide nonattainment area are lo-  
35 cated to commit to the implementation of all measures required under  
36 this section. If the Administrator makes such a finding, in the portion  
37 of the multi-State carbon monoxide nonattainment area within the  
38 State submitting the petition, no sanction shall be imposed under sec-  
39 tion 215111 of this title or under any other provision of this division  
40 by reason of the failure to make such a demonstration.

1 (f) RECLASSIFIED AREAS.—Each State containing a carbon monoxide  
2 nonattainment area reclassified under section 215302(b)(2) of this title  
3 shall meet the requirements of subsection (b), as may be applicable to the  
4 area as reclassified, according to the schedules prescribed in connection with  
5 those requirements, except that the Administrator may adjust any applica-  
6 ble deadlines (other than the attainment date) where such deadlines are  
7 shown to be infeasible.

8 (g) FAILURE OF SERIOUS AREA TO ATTAIN STANDARD.—If the Adminis-  
9 trator determines under section 215302(b)(2) of this title that the primary  
10 NAAQS for carbon monoxide has not been attained in a serious area by  
11 the applicable attainment date, the State shall submit a plan revision for  
12 the area within 9 months after the date of the determination. The plan revi-  
13 sion shall provide that a program of incentives and requirements as de-  
14 scribed in section 215203(g)(4) of this title shall be applicable in the area,  
15 and the program, in combination with other elements of the revised plan,  
16 shall be adequate to reduce the total tonnage of emissions of carbon mon-  
17 oxide in the area by at least 5 percent per year in each year after approval  
18 of the plan revision and before attainment of the primary NAAQS for car-  
19 bon monoxide.

## 20 **Subchapter IV—Additional Provisions for** 21 **Particulate Matter Nonattainment Areas**

### 22 **§ 215401. Definitions**

23 In this subchapter:

24 (1) MODERATE AREA.—The term “moderate area” means an area  
25 that is classified as a moderate PM-10 nonattainment area under sec-  
26 tion 215402(a) of this title.

27 (2) SERIOUS AREA.—The term “serious area” means an area that  
28 is reclassified as a serious PM-10 nonattainment area under section  
29 215402(b) of this title.

### 30 **§ 215402. Classifications and attainment dates**

31 (a) INITIAL CLASSIFICATIONS.—

32 (1) IN GENERAL.—Every area designated nonattainment for PM-10  
33 pursuant to section 211107(d) of this title shall be classified at the  
34 time of such designation, by operation of law, as a moderate PM-10  
35 nonattainment area at the time of the designation.

36 (2) NOTICE.—At the time of publication of the notice under section  
37 211107(d)(4) of this title for each PM-10 nonattainment area, the Ad-  
38 ministrator shall publish a notice announcing the classification of such  
39 area. Section 215102(a)(1)(B) of this title shall apply with respect to  
40 such a classification.

41 (b) RECLASSIFICATION AS A SERIOUS AREA.—

1 (1) RECLASSIFICATION BEFORE ATTAINMENT DATE.—The Adminis-  
2 trator may reclassify as a serious PM-10 nonattainment area any area  
3 that the Administrator determines cannot practicably attain the  
4 NAAQS for PM-10 by the attainment date (as prescribed in subsection  
5 (c)) for moderate areas.

6 (2) RECLASSIFICATION ON FAILURE TO ATTAIN.—Within 6 months  
7 following the applicable attainment date for a PM-10 nonattainment  
8 area, the Administrator shall determine whether the area attained the  
9 standard by that date. If the Administrator finds that any moderate  
10 area is not in attainment after the applicable attainment date—

11 (A) the area shall be reclassified by operation of law as a seri-  
12 ous area; and

13 (B) the Administrator shall publish a notice in the Federal Reg-  
14 ister not later than 6 months following the attainment date, identi-  
15 fying the area as having failed to attain and identifying the reclas-  
16 sification described under subparagraph (A).

17 (c) ATTAINMENT DATES.—Except as provided under subsection (d), the  
18 attainment dates for PM-10 nonattainment areas shall be as follows:

19 (1) MODERATE AREAS.—For a moderate area, the attainment date  
20 shall be as expeditiously as practicable but not later than the end of  
21 the 6th calendar year after the area's designation as nonattainment,  
22 except that, for areas designated nonattainment for PM-10 under sec-  
23 tion 211107(d)(4) of this title, the attainment date shall not extend be-  
24 yond December 31, 1994.

25 (2) SERIOUS AREAS.—For a serious area, the attainment date shall  
26 be as expeditiously as practicable but not later than the end of the 10th  
27 calendar year beginning after the area's designation as nonattainment,  
28 except that, for areas designated nonattainment for PM-10 under sec-  
29 tion 211107(d)(4) of this title, the date shall not extend beyond De-  
30 cember 31, 2001.

31 (d) EXTENSION OF ATTAINMENT DATE FOR MODERATE AREAS.—

32 (1) IN GENERAL.—On application by any State, the Administrator  
33 may extend for 1 additional year (referred to in this subsection as an  
34 “extension year”) the date specified in subsection (c)(1) if—

35 (A) the State has complied with all requirements and commit-  
36 ments pertaining to the area in the applicable implementation  
37 plan; and

38 (B) not more than 1 exceedance of the 24-hour NAAQS level  
39 for PM-10 has occurred in the area in the year preceding the ex-  
40 tension year, and the annual mean concentration of PM-10 in the



1 area for the extension year is less than or equal to the standard  
2 level.

3 (2) LIMITATION.—Not more than 2 one-year extensions may be is-  
4 sued under this subsection for a single nonattainment area.

5 (e) EXTENSION OF ATTAINMENT DATE FOR SERIOUS AREAS.—

6 (1) IN GENERAL.—On application by any State, the Administrator  
7 may extend the attainment date for a serious area beyond the date  
8 specified under subsection (c) if—

9 (A) attainment by the date established under subsection (c)  
10 would be impracticable;

11 (B) the State has complied with all requirements and commit-  
12 ments pertaining to the serious area in the implementation plan;  
13 and

14 (C) the State demonstrates to the satisfaction of the Adminis-  
15 trator that the plan for the serious area includes the most strin-  
16 gent measures that—

17 (i) are included in the implementation plan of any State or  
18 are achieved in practice in any State; and

19 (ii) can feasibly be implemented in the serious area.

20 (2) PLAN PROVISION.—At the time of an application under para-  
21 graph (1), the State shall submit an implementation plan provision that  
22 includes a demonstration of attainment by the most expeditious alter-  
23 native date practicable.

24 (3) CONSIDERATIONS.—In determining whether to grant an exten-  
25 sion, and the appropriate length of time for any such extension, the  
26 Administrator may consider—

27 (A) the nature and extent of nonattainment;

28 (B) the types and numbers of sources or other emitting activi-  
29 ties in the serious area (including the influence of uncontrollable  
30 natural sources and transboundary emissions from foreign coun-  
31 tries);

32 (C) the population exposed to concentrations in excess of the  
33 standard;

34 (D) the presence and concentration of potentially toxic sub-  
35 stances in the mix of particulate emissions in the area; and

36 (E) the technological and economic feasibility of various control  
37 measures.

38 (4) ATTAINMENT DEMONSTRATION.—The Administrator may not ap-  
39 prove an extension until the State submits an attainment demonstra-  
40 tion for the area.

1 (5) LIMITATION.—The Administrator may grant not more than 1 ex-  
2 tension for a serious area, of not more than 5 years.

3 (f) WAIVERS FOR CERTAIN SERIOUS AREAS.—The Administrator may, on  
4 a case-by-case basis, waive any requirement applicable to any serious area  
5 under this subchapter where the Administrator determines that anthropo-  
6 genic sources of PM-10 do not contribute significantly to the violation of  
7 the PM-10 standard in the area. The Administrator may also waive a spe-  
8 cific date for attainment of the standard where the Administrator deter-  
9 mines that nonanthropogenic sources of PM-10 contribute significantly to  
10 the violation of the PM-10 standard in the area.

11 **§ 215403. Plan provisions and schedules for plan submis-**  
12 **sions**

13 (a) MODERATE AREAS.—Each State in which all or part of a moderate  
14 area is located shall submit, 18 months after the designation as nonattain-  
15 ment, an implementation plan that includes each of the following:

16 (1) For the purpose of meeting the requirements of section  
17 215102(c)(5) of this title, a permit program providing that permits  
18 meeting the requirements of section 215103 of this title are required  
19 for the construction and operation of new and modified major station-  
20 ary sources of PM-10.

21 (2)(A) A demonstration (including air quality modeling) that the  
22 plan will provide for attainment by the applicable attainment date; or

23 (B) a demonstration that attainment by that date is impracticable.

24 (3) Provisions to ensure that reasonably available control measures  
25 for the control of PM-10 shall be implemented not later than 4 years  
26 after designation as a moderate area.

27 (b) SERIOUS AREAS.—

28 (1) PLAN PROVISIONS.—In addition to the provisions submitted to  
29 meet the requirements of subsection (a), each State in which all or part  
30 of a serious area is located shall submit an implementation plan for  
31 the serious area that includes each of the following:

32 (A)(i) A demonstration (including air quality modeling) that the  
33 plan provides for attainment of the NAAQS for PM-10 by the ap-  
34 plicable attainment date; or

35 (ii) for any area for which the State is seeking, pursuant to sec-  
36 tion 215402(e) of this title, an extension of the attainment date  
37 beyond the date set forth in section 215402(e) of this title, a dem-  
38 onstration (including air quality modeling) that—

39 (I) attainment by that date would be impracticable; and

40 (II) the plan provides for attainment by the most expedi-  
41 tious alternative date practicable.

1           (B) Provisions to ensure that the best available control meas-  
2           ures for the control of PM-10 shall be implemented not later than  
3           4 years after the date on which the area is classified (or reclassi-  
4           fied) as a serious area.

5           (2) SCHEDULE FOR PLAN SUBMISSIONS.—A State shall submit the  
6           demonstration required for an area under paragraph (1)(A) not later  
7           than 4 years after reclassification of the area as a serious area, except  
8           that for areas reclassified under section 215402(b)(2) of this title, the  
9           State shall submit the attainment demonstration within 18 months  
10          after reclassification as a serious area. A State shall submit the provi-  
11          sions described under paragraph (1)(B) not later than 18 months after  
12          reclassification of the area as a serious area.

13          (3) MAJOR SOURCES.—For any serious area, the terms “major  
14          source” and “major stationary source” include any stationary source  
15          or group of stationary sources located within a contiguous area and  
16          under common control that emits, or has the potential to emit, at least  
17          70 tons per year of PM-10 or PM-10 precursors.

18          (c) MILESTONES.—

19           (1) IN GENERAL.—Plan provisions demonstrating attainment sub-  
20           mitted to the Administrator for approval under this subchapter shall  
21           contain quantitative milestones that are to be achieved every 3 years  
22           until the serious area is redesignated attainment and that demonstrate  
23           reasonable further progress (as defined in section 215101 of this title)  
24           toward attainment by the applicable date.

25           (2) DEMONSTRATION.—Not later than 90 days after the date on  
26           which a milestone applicable to the area occurs, each State in which  
27           all or part of the serious area is located shall submit to the Adminis-  
28           trator a demonstration that all measures in the plan approved under  
29           this section have been implemented and that the milestone has been  
30           met. A demonstration under this subsection shall be submitted in such  
31           form and manner, and shall contain such information and analysis, as  
32           the Administrator shall require. The Administrator shall determine  
33           whether or not a State’s demonstration under this subsection is ade-  
34           quate within 90 days after the Administrator’s receipt of a demonstra-  
35           tion that contains the information and analysis required by the Admin-  
36           istrator.

37           (3) FAILURE TO SUBMIT DEMONSTRATION OR TO MEET MILE-  
38           STONE.—If a State fails to submit a demonstration under paragraph  
39           (2) with respect to a milestone within the required period or if the Ad-  
40           ministrator determines that the area has not met any milestone, the  
41           Administrator shall require the State, within 9 months after the failure

1 or determination, to submit a plan provision that ensures that the  
2 State will achieve the next milestone (or attain the NAAQS for PM-  
3 10, if there is no next milestone) by the applicable date.

4 (d) FAILURE TO ATTAIN.—In the case of a serious area in which the  
5 NAAQS for PM-10 is not attained by the applicable attainment date, the  
6 State in which the serious area is located shall, after notice and opportunity  
7 for public comment, submit within 12 months after the applicable attain-  
8 ment date, plan provisions that provide for—

- 9 (1) attainment of the NAAQS for PM-10; and
- 10 (2) an annual reduction in PM-10 or PM-10 precursor emissions  
11 within the area, from the date of the submission until attainment, of  
12 not less than 5 percent of the amount of PM-10 or PM-10 precursor  
13 emissions as reported in the most recent inventory prepared for the se-  
14 rious area.

15 (e) PM-10 PRECURSORS.—

16 (1) IN GENERAL.—The control requirements applicable under plans  
17 in effect under this chapter for major stationary sources of PM-10  
18 shall apply to major stationary sources of PM-10 precursors, except  
19 where the Administrator determines that major stationary sources of  
20 PM-10 precursors do not contribute significantly to PM-10 levels that  
21 exceed the NAAQS in the serious area.

22 (2) GUIDELINES.—The Administrator shall issue guidelines regard-  
23 ing the application of paragraph (1).

24 **§ 215404. Issuance of RACM and BACM guidance**

25 (a) IN GENERAL.—The Administrator shall issue, in the same manner  
26 and according to the same procedure as guidance is issued under section  
27 211108(c) of this title, technical guidance on reasonably available control  
28 measures and best available control measures for—

- 29 (1) urban fugitive dust; and
- 30 (2) emissions from residential wood combustion (including curtail-  
31 ments and exemptions from curtailments) and prescribed silvicultural  
32 and agricultural burning.

33 (b) OTHER CATEGORIES OF SOURCES CONTRIBUTING TO NONATTAIN-  
34 MENT OF THE PM-10 STANDARD.—The Administrator shall—

- 35 (1) examine other categories of sources contributing to nonattain-  
36 ment of the PM-10 standard;
- 37 (2) determine whether additional guidance on reasonably available  
38 control measures and best available control measures is needed; and
- 39 (3) issue any such guidance.

40 (c) CONSIDERATIONS.—In issuing guidelines and making determinations  
41 under this section, the Administrator (in consultation with the States) shall

1 take into account emission reductions achieved, or expected to be achieved,  
2 under subdivision 5 and other provisions of this division.

3 **Subchapter V—Additional Provisions for**  
4 **Areas Designated Nonattainment for Sul-**  
5 **fur Dioxides, Nitrogen Oxide, or Lead**

6 **§ 215501. Plan submission deadlines**

7 (a) SUBMISSION.—Any State containing an area designated or redesi-  
8 gnated under section 211107(d) of this title as nonattainment with respect  
9 to the primary NAAQSeS for sulfur oxides, nitrogen dioxide, or lead subse-  
10 quent to November 15, 1990, shall submit to the Administrator, within 18  
11 months of the designation, an applicable implementation plan meeting the  
12 requirements of this chapter.

13 (b) STATES LACKING FULLY APPROVED STATE IMPLEMENTATION  
14 PLANS.—Any State containing an area designated nonattainment with re-  
15 spect to primary NAAQSeS for sulfur oxides or nitrogen dioxide under sec-  
16 tion 211107(d)(1)(C)(i) of this title, but lacking a fully approved implemen-  
17 tation plan complying with the requirements of the Clean Air Act (42  
18 U.S.C. 7401 et seq.) as in effect on November 14, 1990, shall submit to  
19 the Administrator an implementation plan meeting the requirements of sub-  
20 chapter I (except as otherwise prescribed by section 215502 of this title).

21 **§ 215502. Attainment dates**

22 (a) PLANS UNDER SECTION 215501(a).—Implementation plans required  
23 under section 215501(a) of this title shall provide for attainment of the rel-  
24 evant primary standard as expeditiously as practicable but not later than  
25 5 years after the date of the nonattainment designation.

26 (b) PLANS UNDER SECTION 215501(b).—Implementation plans required  
27 under section 215501(b) of this title shall provide for attainment of the rel-  
28 evant primary NAAQS within 5 years after November 15, 1990.

29 (c) INADEQUATE PLANS.—Implementation plans for nonattainment areas  
30 for sulfur oxides or nitrogen dioxide with plans that were approved by the  
31 Administrator before November 15, 1990, but, subsequent to approval, were  
32 found by the Administrator to be substantially inadequate, shall provide for  
33 attainment of the relevant primary standard within 5 years after the date  
34 of the finding.

35 **Subchapter VI—Savings Provisions**

36 **§ 215601. General savings clause**

37 Each regulation, standard, notice, order, and guidance promulgated or is-  
38 sued by the Administrator under the Clean Air Act (42 U.S.C. 7401 et seq.)  
39 (as in effect before November 15, 1990) shall remain in effect according to  
40 its terms, except to the extent otherwise provided under this division, incon-  
41 sistent with any provision of this division, or revised by the Administrator.

1 No control requirement in effect, or required to be adopted by an order, set-  
2 tlement agreement, or plan in effect before November 15, 1990, in any area  
3 that is a nonattainment area for any air pollutant may be modified in any  
4 manner unless the modification ensures equivalent or greater emission re-  
5 ductions of that air pollutant.

6 **Subdivision 3—Emission Standards for**  
7 **Moving Sources**  
8 **Chapter 221—Motor Vehicle Emission And**  
9 **Fuel Standards**

Sec.

221101. Definitions.

221102. Emission standards for new motor vehicles or new motor vehicle engines.

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221116. Prohibition of production of engines requiring leaded gasoline.

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10 **§ 221101. Definitions**

11 In this chapter:

12 (1) **COMMERCE.**—The term “commerce” means—

13 (A) commerce between any place in any State and any place  
14 outside the State; and

15 (B) commerce wholly within the District of Columbia.

16 (2) **DEALER.**—The term “dealer” means any person engaged in the  
17 sale or distribution of new motor vehicles or new motor vehicle engines  
18 to an ultimate purchaser.

19 (3) **GROSS VEHICLE WEIGHT RATING.**—The term “gross vehicle  
20 weight rating” has the meaning given the term in regulations promul-  
21 gated by the Administrator and in effect as of November 15, 1990.

22 (4) **GVWR.**—The term “GVWR” means gross vehicle weight rating.

23 (5) **HEAVY-DUTY VEHICLE.**—

24 (A) **IN GENERAL.**—The term “heavy-duty vehicle” means a  
25 truck, bus, or other vehicle manufactured primarily for use on the  
26 public streets, roads, and highways (not including any vehicle op-  
27 erated exclusively on a rail or rails) that has a gross vehicle weight  
28 rating (as determined under regulations promulgated by the Ad-  
29 ministrator) in excess of 6,000 pounds.

1 (B) INCLUSIONS.—The term “heavy-duty vehicle” includes any  
2 vehicle described in subparagraph (A) that has special features en-  
3 abling off-street or off-highway operation and use.

4 (6) LDT.—The term “LDT” means light-duty truck.

5 (7) LIGHT-DUTY TRUCK.—The term “light-duty truck” has the  
6 meaning given the term in regulations promulgated by the Adminis-  
7 trator and in effect as of November 15, 1990.

8 (8) LIGHT-DUTY VEHICLE.—The term “light-duty vehicle” has the  
9 meaning given the term in regulations promulgated by the Adminis-  
10 trator and in effect as of November 15, 1990.

11 (9) LOADED VEHICLE WEIGHT.—The term “loaded vehicle weight”  
12 has the meaning given the term in regulations promulgated by the Ad-  
13 ministrator and in effect as of November 15, 1990.

14 (10) LVW.—The term “LVW” means loaded vehicle weight.

15 (11) MANUFACTURER.—

16 (A) IN GENERAL.—The term “manufacturer”, as used in sec-  
17 tions 221102, 221103, 221106, 221107, and 221108 of this title,  
18 means—

19 (i) any person that is engaged in manufacturing, assem-  
20 bling, or importing for resale new motor vehicles, new motor  
21 vehicle engines, new nonroad vehicles, or new nonroad en-  
22 gines; or

23 (ii) any person that acts for and is under the control of a  
24 person described in clause (i) in connection with the distribu-  
25 tion of new motor vehicles, new motor vehicle engines, new  
26 nonroad vehicles, or new nonroad engines.

27 (B) EXCLUSIONS.—The term “manufacturer”, as used in sec-  
28 tions 221102, 221103, 221106, 221107, and 221108 of this title,  
29 does not include any dealer with respect to new motor vehicles,  
30 new motor vehicle engines, new nonroad vehicles, or new nonroad  
31 engines received by the dealer in commerce.

32 (C) MOTOR VEHICLE PARTS AND MOTOR VEHICLE ENGINE  
33 PARTS.—The term “manufacturer”, as used in sections 221107  
34 and 221108 of this title with reference to a manufacturer of a  
35 motor vehicle part or motor vehicle engine part, means any person  
36 engaged in the manufacturing, assembling or rebuilding of any de-  
37 vice, system, part, component, or element of design that is in-  
38 stalled in or on a motor vehicle or motor vehicle engine.

39 (12) MODEL YEAR.—

1 (A) IN GENERAL.—Subject to subparagraph (B), the term  
2 “model year”, with reference to any specific calendar year,  
3 means—

4 (i) a manufacturer’s annual production period (as deter-  
5 mined by the Administrator) that includes January 1 of that  
6 calendar year; or

7 (ii) with respect to a manufacturer that has no annual pro-  
8 duction period, the calendar year.

9 (B) DEFINITION BY THE ADMINISTRATOR.—For the purpose of  
10 ensuring that vehicles and engines manufactured before the begin-  
11 ning of a model year are not manufactured for purposes of cir-  
12 cumventing the effective date of a standard required to be pre-  
13 scribed by section 221102(b) of this title, the Administrator may  
14 prescribe regulations defining the term “model year” otherwise  
15 than as provided in subparagraph (A).

16 (13) MOTOR VEHICLE.—The term “motor vehicle” means any self-  
17 propelled vehicle designed for transporting persons or property on a  
18 street or highway.

19 (14) NEW MOTOR VEHICLE.—

20 (A) IN GENERAL.—Except with respect to vehicles imported or  
21 offered for importation, the term “new motor vehicle” means a  
22 motor vehicle the equitable or legal title to which has never been  
23 transferred to an ultimate purchaser.

24 (B) VEHICLES IMPORTED OR OFFERED FOR IMPORTATION.—  
25 With respect to a vehicle imported or offered for importation, the  
26 term “new motor vehicle” means a motor vehicle manufactured  
27 after the effective date of a regulation issued under section  
28 221102 of this title that is applicable to the vehicle (or that would  
29 be applicable to the vehicle had it been manufactured for importa-  
30 tion into the United States).

31 (15) NEW MOTOR VEHICLE ENGINE.—

32 (A) IN GENERAL.—Except with respect to an engine imported  
33 or offered for importation, the term “new motor vehicle engine”  
34 means—

35 (i) an engine in a new motor vehicle; or

36 (ii) a motor vehicle engine the equitable or legal title to  
37 which has never been transferred to an ultimate purchaser.

38 (B) ENGINES IMPORTED OR OFFERED FOR IMPORTATION.—  
39 With respect to an engine imported or offered for importation, the  
40 term “new motor vehicle engine” means an engine manufactured  
41 after the effective date of a regulation issued under section



1           221102 of this title that is applicable to the engine (or that would  
2           be applicable to the engine had it been manufactured for importa-  
3           tion into the United States).

4           (16) NMHC.—The term “NMHC” means nonmethane hydrocarbon.

5           (17) NONROAD ENGINE.—The term “nonroad engine” means an in-  
6           ternal combustion engine (including the fuel system) that—

7                 (A) is not used in a motor vehicle or a vehicle used solely for  
8                 competition; or

9                 (B) is not subject to standards promulgated under section  
10                211111 or 221102 of this title.

11          (18) NONROAD VEHICLE.—The term “nonroad vehicle” means a ve-  
12          hicle that—

13                 (A) is powered by a nonroad engine; and

14                 (B) is not a motor vehicle or a vehicle used solely for competi-  
15                 tion.

16          (19) TEST WEIGHT.—The term “test weight”, with reference to the  
17          test weight of a vehicle, means—

18                 (A)(i) the vehicle curb weight of the vehicle; plus

19                 (ii) the gross vehicle weight rating of the vehicle; divided by

20                 (B) 2.

21          (20) TW.—The term “TW” means test weight.

22          (21) ULTIMATE PURCHASER.—The term “ultimate purchaser”  
23          means, with respect to any new motor vehicle or new motor vehicle en-  
24          gine, the 1st person that in good faith purchases the new motor vehicle  
25          or new engine for purposes other than resale.

26          (22) VEHICLE CURB WEIGHT.—The term “vehicle curb weight” has  
27          the meaning given the term in regulations promulgated by the Adminis-  
28          trator and in effect as of November 15, 1990.

29        **§ 221102. Emission standards for new motor vehicles or new**  
30        **motor vehicle engines**

31        (a) IN GENERAL.—

32           (1) REGULATIONS.—

33                 (A) IN GENERAL.—The Administrator shall by regulation pre-  
34                 scribe (and from time to time revise) standards applicable to the  
35                 emission of any air pollutant from any class or classes of new  
36                 motor vehicles or new motor vehicle engines that, in the Adminis-  
37                 trator’s judgment, cause or contribute to air pollution that may  
38                 reasonably be anticipated to endanger public health or welfare.

39                 (B) APPLICABILITY FOR USEFUL LIFE.—The standards shall be  
40                 applicable to such vehicles and engines for their useful life, wheth-

1 er the vehicles and engines are designed as complete systems or  
2 incorporate devices to prevent or control air pollution.

3 (C) REGULATIONS.—The Administrator shall prescribe regula-  
4 tions under which the useful life of vehicles and engines shall be  
5 determined for purposes of this paragraph and section 221107 of  
6 this title. The regulations shall provide that except where a dif-  
7 ferent useful life period is specified in this subdivision—

8 (i) in the case of light-duty vehicles and light-duty vehicle  
9 engines and light-duty trucks up to 3,750 pounds loaded vehi-  
10 cle weight and up to 6,000 pounds gross vehicle weight rat-  
11 ing, useful life shall be a period of use of 5 years or 50,000  
12 miles (or the equivalent), whichever first occurs, except that  
13 in the case of any requirement of this section where the use-  
14 ful life period is not otherwise specified for light-duty vehicles  
15 and light-duty vehicle engines, the period shall be 10 years or  
16 100,000 miles (or the equivalent), whichever first occurs, with  
17 testing for purposes of in-use compliance under section  
18 221107 of this title up to (but not beyond) 7 years or 75,000  
19 miles (or the equivalent), whichever first occurs;

20 (ii) in the case of any other motor vehicle or motor vehicle  
21 engine (other than motorcycles or motorcycle engines), useful  
22 life shall be a period of use set forth in clause (i) unless the  
23 Administrator determines that a period of use of greater du-  
24 ration or mileage is appropriate; and

25 (iii) in the case of any motorcycle or motorcycle engine,  
26 useful life shall be a period of use determined by the Adminis-  
27 trator.

28 (2) EFFECTIVE DATE.—Any regulation prescribed under paragraph  
29 (1) (and any revision thereof) shall take effect after such period as the  
30 Administrator finds necessary to permit the development and applica-  
31 tion of the requisite technology, giving appropriate consideration to the  
32 cost of compliance within that period.

33 (3) HEAVY-DUTY VEHICLES AND ENGINES.—

34 (A) IN GENERAL.—

35 (i) GREATEST DEGREE OF EMISSION REDUCTION.—Unless  
36 the standard is changed as provided in subparagraph (B),  
37 regulations under paragraph (1) applicable to emissions of  
38 hydrocarbons, carbon monoxide, nitrogen oxides, and particu-  
39 late matter from classes or categories of heavy-duty vehicles  
40 or engines shall contain standards that reflect the greatest  
41 degree of emission reduction achievable through the applica-

1           tion of technology that the Administrator determines will be  
2           available for the model year to which the standards apply,  
3           giving appropriate consideration to cost, energy, and safety  
4           factors associated with the application of the technology.

5           (ii) CLASSES AND CATEGORIES.—In establishing classes or  
6           categories of vehicles or engines for purposes of regulations  
7           under this paragraph, the Administrator may base the classes  
8           or categories on gross vehicle weight, horsepower, type of fuel  
9           used, or other appropriate factors.

10       (B) REVISED STANDARDS FOR HEAVY-DUTY VEHICLES.—

11           (i) IN GENERAL.—On the basis of information available to  
12           the Administrator concerning the effects of air pollutants  
13           emitted from heavy-duty vehicles or engines and from other  
14           sources of mobile source-related pollutants on the public  
15           health and welfare, and taking costs into account, the Admin-  
16           istrator may promulgate regulations under paragraph (1) re-  
17           vising any standard promulgated under, or before the date of  
18           enactment of, Public Law 101-549 (104 Stat. 2399) (com-  
19           monly known as the Clean Air Act Amendments of 1990) (or  
20           previously revised under this subparagraph) and applicable to  
21           classes or categories of heavy-duty vehicles or engines.

22           (ii) NITROGEN OXIDES.—The regulations under paragraph  
23           (1) applicable to emissions of nitrogen oxides from gasoline-  
24           fueled heavy-duty vehicles and diesel-fueled heavy-duty vehi-  
25           cles shall contain standards that provide that such emissions  
26           may not exceed 4.0 grams per brake horsepower hour.

27       (C) LEAD TIME AND STABILITY.—Any standard promulgated or  
28       revised under this paragraph and applicable to classes or cat-  
29       egories of heavy-duty vehicles or engines shall apply for a period  
30       of not less than 3 model years beginning not earlier than the  
31       model year commencing 4 years after the revised standard is pro-  
32       mulgated.

33       (D) REBUILDING PRACTICES.—

34           (i) IN GENERAL.—The Administrator shall study the prac-  
35           tice of rebuilding heavy-duty engines and the impact rebuild-  
36           ing has on engine emissions. On the basis of that study and  
37           other information available to the Administrator, the Admin-  
38           istrator may prescribe requirements to control rebuilding  
39           practices, including standards applicable to emissions from  
40           any rebuilt heavy-duty engines (whether or not the engine is  
41           past its statutory useful life), that in the Administrator's

1 judgment, cause or contribute to air pollution that may rea-  
2 sonably be anticipated to endanger public health or welfare,  
3 taking costs into account.

4 (ii) EFFECTIVE DATE.—Any regulation shall take effect  
5 after a period that the Administrator finds necessary to per-  
6 mit the development and application of the requisite control  
7 measures, giving appropriate consideration to the cost of com-  
8 pliance within the period and energy and safety factors.

9 (E) MOTORCYCLES.—For purposes of this paragraph, motor-  
10 cycles and motorcycle engines shall be treated in the same manner  
11 as heavy-duty vehicles and engines (except as otherwise permitted  
12 under section 221106(f) of this title) unless the Administrator  
13 promulgates a regulation reclassifying motorcycles as light-duty  
14 vehicles within the meaning of this section or unless the Adminis-  
15 trator promulgates regulations under this subsection applying  
16 standards applicable to the emission of air pollutants from motor-  
17 cycles as a separate class or category. In any case in which such  
18 standards are promulgated for such emissions from motorcycles as  
19 a separate class or category, the Administrator, in promulgating  
20 the standards, shall consider the need to achieve equivalency of  
21 emission reductions between motorcycles and other motor vehicles  
22 to the maximum extent practicable.

23 (4) NO CAUSATION OF CONTRIBUTION TO UNREASONABLE RISK TO  
24 PUBLIC HEALTH OR SAFETY.—

25 (A) IN GENERAL.—No emission control device, system, or ele-  
26 ment of design shall be used in a new motor vehicle or new motor  
27 vehicle engine for purposes of complying with requirements pre-  
28 scribed under this subdivision if the device, system, or element of  
29 design will cause or contribute to an unreasonable risk to public  
30 health, welfare, or safety in its operation or function.

31 (B) CONSIDERATIONS.—In determining whether an unreason-  
32 able risk exists under subparagraph (A), the Administrator shall  
33 consider, among other factors—

34 (i) whether and to what extent the use of any device, sys-  
35 tem, or element of design causes, increases, reduces, or elimi-  
36 nates emissions of any unregulated pollutants;

37 (ii) available methods for reducing or eliminating any risk  
38 to public health, welfare, or safety that may be associated  
39 with the use of the device, system, or element of design;

40 (iii) the availability of other devices, systems, or elements  
41 of design that may be used to conform to requirements pre-

1                   scribed under this subdivision without causing or contributing  
2                   to the unreasonable risk; and

3                   (iv) all relevant information developed pursuant to section  
4                   214 of the Clean Air Act (42 U.S.C. 7548) (as in effect be-  
5                   fore the repeal of that section).

6                   (5) FILL PIPE STANDARDS.—

7                   (A) DEFINITION OF FILL PIPE.—In this paragraph, the term  
8                   “fill pipe” includes a fuel tank fill pipe, fill neck, fill inlet, and  
9                   closure.

10                  (B) IN GENERAL.—If the Administrator promulgates final regu-  
11                  lations that define the degree of control required and the test pro-  
12                  cedures by which compliance could be determined for gasoline  
13                  vapor recovery of uncontrolled emissions from the fueling of motor  
14                  vehicles, the Administrator shall, after consultation with the Sec-  
15                  retary of Transportation with respect to motor vehicle safety, pre-  
16                  scribe, by regulation, fill pipe standards for new motor vehicles to  
17                  ensure effective connection between the fill pipe and any vapor re-  
18                  covery system that the Administrator determines may be required  
19                  to comply with the vapor recovery regulations.

20                  (C) CONSIDERATIONS.—In promulgating standards under sub-  
21                  paragraph (B), the Administrator shall take into consideration—

- 22                   (i) limits on fill pipe diameter;  
23                   (ii) minimum design criteria for nozzle retainer lips;  
24                   (iii) limits on the location of the unleaded fuel restrictors;  
25                   (iv) a minimum access zone surrounding a fill pipe;  
26                   (v) a minimum pipe or nozzle insertion angle; and  
27                   (vi) such other factors as the Administrator considers perti-  
28                   nent.

29                  (D) EFFECTIVE DATE.—Regulations prescribing standards  
30                  under subparagraph (B) shall not become effective until the intro-  
31                  duction of the model year for which it would be feasible to imple-  
32                  ment the standards, taking into consideration the restraints of an  
33                  adequate leadtime for design and production.

34                  (E) EFFECT OF PARAGRAPH.—Nothing in this paragraph  
35                  shall—

- 36                   (i) prevent the Administrator from specifying different noz-  
37                   zle and fill neck sizes for gasoline with additives and gasoline  
38                   without additives; or

39                   (ii) permit the Administrator to require a specific location,  
40                   configuration, modeling, or styling of a motor vehicle body

1 with respect to the fuel tank fill neck or fill nozzle clearance  
 2 envelope.

3 (6) ONBOARD VAPOR RECOVERY.—

4 (A) IN GENERAL.—After consultation with the Secretary of  
 5 Transportation regarding the safety of vehicle-based (“onboard”)  
 6 systems for the control of vehicle refueling emissions, the Adminis-  
 7 trator shall promulgate standards under this section requiring that  
 8 new light-duty vehicles manufactured beginning in the 4th model  
 9 year after the model year in which the standards are promulgated  
 10 and thereafter shall be equipped with onboard vapor recovery sys-  
 11 tems.

12 (B) IMPLEMENTATION SCHEDULE.—Beginning with the 4th  
 13 model year after the model year in which the standards are pro-  
 14 mulgated, the standards required under this paragraph shall apply  
 15 to the following percentages of each manufacturer’s fleet of new  
 16 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.

17 (C) MINIMUM EVAPORATIVE EMISSION CAPTURE EFFICIENCY.—  
 18 The standards required under this paragraph shall require that  
 19 onboard vapor recovery systems provide a minimum evaporative  
 20 emission capture efficiency of 95 percent.

21 (D) OTHER REQUIREMENTS.—The requirements of section  
 22 215203(b)(4) of this title for areas classified under section  
 23 215202 of this title as a moderate area for ozone shall not apply  
 24 after promulgation of standards under this paragraph, and the  
 25 Administrator may, by regulation, revise or waive the application  
 26 of the requirements of section 215203(b)(4) of this title for areas  
 27 classified under section 215202 of this title as a serious area, se-  
 28 vere area, or extreme area for ozone, as appropriate, after such  
 29 time as the Administrator determines that onboard emission con-  
 30 trol systems required under this paragraph are in widespread use  
 31 throughout the motor vehicle fleet.

32 (b) CARBON MONOXIDE, HYDROCARBONS, AND NITROGEN OXIDES.—

33 (1) IN GENERAL.—

34 (A) CARBON MONOXIDE AND HYDROCARBONS.—

35 (i) HYDROCARBONS.—The regulations under subsection (a)  
 36 applicable to emissions of hydrocarbons from light-duty vehi-

1           cles and engines shall contain standards that require a reduc-  
2           tion of at least 90 percent from emissions of hydrocarbons al-  
3           lowable under the standards under this section applicable to  
4           light-duty vehicles and engines manufactured in model year  
5           1970.

6           (ii) CARBON MONOXIDE.—Unless waived as provided in  
7           paragraph (2), the regulations under subsection (a) applicable  
8           to emissions of carbon monoxide from light-duty vehicles and  
9           engines shall contain standards that require a reduction of at  
10          least 90 percent from emissions of carbon monoxide allowable  
11          under the standards under this section applicable to light-  
12          duty vehicles and engines manufactured in model year 1970.

13          (B) NITROGEN OXIDES.—The regulations under subsection (a)  
14          applicable to emissions of nitrogen oxides from light-duty vehicles  
15          and engines shall contain standards that provide that such emis-  
16          sions from such vehicles and engines may not exceed 1.0 gram per  
17          vehicle mile.

18          (C) REVISION OF STANDARDS.—The Administrator may pro-  
19          mulgate regulations under subsection (a)(1) revising any standard  
20          prescribed or previously revised under this subsection, as needed  
21          to protect public health or welfare, taking costs, energy, and safety  
22          into account. Any revised standard shall require a reduction of  
23          emissions from the standard that was previously applicable. Any  
24          such revision under this subdivision may provide for a phase-in of  
25          the standard.

26          (2) MEASUREMENT TECHNIQUES.—With any emission standard pro-  
27          mulgated under paragraph (1), the Administrator shall promulgate  
28          measurement techniques on which the emission standard is based.

29          (3) WAIVER.—

30                  (A) IN GENERAL.—On the petition of any manufacturer, the  
31                  Administrator, after notice and opportunity for public hearing,  
32                  may waive the standard required under paragraph (1)(B) to not  
33                  exceed 1.5 grams of nitrogen oxides per vehicle mile for any class  
34                  or category of light-duty vehicles or engines manufactured by the  
35                  manufacturer during any period of up to 4 model years if the  
36                  manufacturer demonstrates that—

37                          (i) the waiver is necessary to permit the use of an innova-  
38                          tive power train technology, or innovative emission control de-  
39                          vice or system, in that class or category of vehicles or engines;  
40                          and

1 (ii) that technology or system was not utilized by more  
2 than 1 percent of the light-duty vehicles sold in the United  
3 States in the 1975 model year.

4 (B) DETERMINATIONS.—A waiver under subparagraph (A) may  
5 be granted only if the Administrator determines that—

6 (i) the waiver would not endanger public health;

7 (ii) there is a substantial likelihood that the vehicles or en-  
8 gines will be able to comply with the applicable standard  
9 under this section on expiration of the waiver; and

10 (iii) the technology or system has a potential for long-term  
11 air quality benefit and has the potential to meet or exceed the  
12 average fuel economy standard applicable under the Energy  
13 Policy and Conservation Act (42 U.S.C. 6201 et seq.) on the  
14 expiration of the waiver.

15 (C) LIMITATION.—No waiver under this paragraph granted to  
16 any manufacturer shall apply to more than the greater of—

17 (i) 5 percent of the manufacturer's production; or

18 (ii) 50,000 vehicles or engines.

19 (e) NEW POWER SOURCES OR PROPULSION SYSTEMS.—If a new power  
20 source or propulsion system for new motor vehicles or new motor vehicle en-  
21 gines is submitted for certification pursuant to section 221106(a) of this  
22 title, the Administrator may postpone certification until the Administrator  
23 has prescribed standards for any air pollutants emitted by the vehicle or en-  
24 gine that in the Administrator's judgment cause or contribute to air pollu-  
25 tion that may reasonably be anticipated to endanger the public health or  
26 welfare but for which standards have not been prescribed under subsection  
27 (a).

28 (d) HIGH ALTITUDE REGULATIONS.—

29 (1) IN GENERAL.—Any high altitude regulation with respect to  
30 motor vehicles or engines shall not require a percentage of reduction  
31 in emissions that is greater than the required percentage of reduction  
32 in emissions from motor vehicles and engines set forth in subsection  
33 (b). The percentage reduction shall be determined by comparing any  
34 proposed high altitude emission standards to high altitude emissions  
35 from vehicles and engines manufactured during model year 1970.

36 (2) DOCKET.—Section 203102(d) of this title shall apply to any high  
37 altitude regulation under paragraph (1).

38 (3) CONSIDERATIONS.—Before promulgating any regulation under  
39 paragraph (1), the Administrator shall consider and make a finding  
40 with respect to—



1 (A) the economic impact on consumers, individual high altitude  
 2 dealers, and the automobile industry of any such regulation, in-  
 3 cluding the economic impact that was experienced as a result of  
 4 the regulation imposed during model year 1977 with respect to  
 5 high altitude certification requirements;

6 (B) the present and future availability of emission control tech-  
 7 nology capable of meeting the applicable vehicle and engine emis-  
 8 sion requirements without reducing model availability; and

9 (C) the likelihood that the adoption of such a high altitude reg-  
 10 ulation will result in any significant improvement in air quality in  
 11 any area to which the regulation will apply.

12 (4) INAPPLICABILITY OF EARLIER REGULATION.—The high altitude  
 13 regulation in effect with respect to model year 1977 motor vehicles  
 14 shall not apply to the manufacture, distribution, or sale of later model  
 15 year motor vehicles.

16 (e) BUSES.—The regulations under subsection (a) applicable to buses  
 17 other than those subject to standards under section 221117 of this title  
 18 shall contain a standard that provides that emissions of particulate matter  
 19 from such buses may not exceed 0.10 grams per brake horsepower hour.

20 (f) LIGHT-DUTY TRUCKS UP TO 6,000 POUNDS GROSS VEHICLE  
 21 WEIGHT RATING AND LIGHT-DUTY VEHICLES; STANDARDS.—

22 (1) NONMETHANE HYDROCARBONS, CARBON MONOXIDE, AND NITRO-  
 23 GEN OXIDE.—The regulations under subsection (a) applicable to emis-  
 24 sions of nonmethane hydrocarbons, carbon monoxide, and nitrogen ox-  
 25 ides from light-duty trucks of up to 6,000 pounds gross vehicle weight  
 26 rating and light-duty vehicles shall contain standards that provide that  
 27 emissions from 100 percent of each manufacturer’s sales volume of  
 28 light-duty trucks of up to 6,000 pounds gross vehicle weight rating and  
 29 light-duty vehicles shall comply with the levels specified in table G.

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND NO<sub>x</sub> 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 <sub>x</sub>	NMHC	CO	NO <sub>x</sub>
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 <sub>x</sub>	NMHC	CO	NO <sub>x</sub>	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.

16 (h) PHASE II STUDY FOR CERTAIN LIGHT-DUTY VEHICLES AND LIGHT-  
 17 DUTY TRUCKS.—

18 (1) IN GENERAL.—The Administrator shall study whether or not  
 19 further reductions in emissions from light-duty vehicles and light-duty  
 20 trucks should be required pursuant to this subdivision. The study shall  
 21 consider whether to establish the standards and useful life period for  
 22 gasoline-fueled and diesel-fueled light-duty vehicles and light-duty  
 23 trucks with a loaded vehicle weight of 3,750 pounds or less specified  
 24 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 <sub>x</sub> .....	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.

1           (2) OTHER STANDARDS AND USEFUL LIFE PERIODS.—The study  
2           under paragraph (1) shall also consider other standards and useful life  
3           periods that are more stringent or less stringent than those set forth  
4           in table 3 (but more stringent than those described in subsections (f)  
5           and (g)).

6           (3) EXAMINATION OF NEED FOR FURTHER REDUCTIONS.—

7           (A) IN GENERAL.—As part of the study under paragraph (1),  
8           the Administrator shall examine the need for further reductions in  
9           emissions in order to attain or maintain the NAAQSeS, taking into  
10          consideration the waiver provisions of section 221109 of this title.  
11          As part of the study, the Administrator shall examine—

12           (i) the availability of technology (including the costs there-  
13           of), in the case of light-duty vehicles and light-duty trucks  
14           with a loaded vehicle weight of 3,750 pounds or less, for  
15           meeting more stringent emission standards than those pro-  
16           vided in subsections (f) and (g) for model years commencing  
17           not earlier than after January 1, 2003, and not later than  
18           model year 2006, including the lead time and safety and en-  
19           ergy impacts of meeting more stringent emission standards;  
20           and

21           (ii) the need for, and cost effectiveness of, obtaining fur-  
22           ther reductions in emissions from light-duty vehicles and  
23           light-duty trucks with a loaded vehicle weight of 3,750  
24           pounds or less, taking into consideration alternative means of  
25           attaining or maintaining the primary NAAQSeS pursuant to  
26           State implementation plans and other requirements of this di-  
27           vision, including their feasibility and cost effectiveness.

28           (B) REPORT.—The Administrator shall submit a report to Con-  
29           gress containing the results of the study under this subsection, in-  
30           cluding the results of the examination conducted under subpara-  
31           graph (A). Before submittal of the report the Administrator shall  
32           provide a reasonable opportunity for public comment and shall in-  
33           clude a summary of public comments in the report to Congress.

34           (4) DETERMINATION.—

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1 (A) IN GENERAL.—Based on the study under paragraph (1),  
2 the Administrator shall determine, by regulation, whether—

3 (i) there is a need for further reductions in emissions as  
4 provided in paragraph (3)(A);

5 (ii) the technology for meeting more stringent emission  
6 standards will be available, as provided in paragraph  
7 (3)(A)(i), in the case of light-duty vehicles and light-duty  
8 trucks with a loaded vehicle weight of 3,750 pounds or less,  
9 for model years commencing not earlier than January 1,  
10 2003, and not later than model year 2006, considering the  
11 factors listed in paragraph (3)(A)(i); and

12 (iii) obtaining further reductions in emissions from such ve-  
13 hicles will be needed and cost effective, taking into consider-  
14 ation alternatives as provided in paragraph (3)(A)(ii).

15 (B) NO MORE STRINGENT STANDARDS.—

16 (i) IN GENERAL.—If the Administrator determines under  
17 subparagraph (A) that—

18 (I) there is no need for further reductions in emissions  
19 as provided in paragraph (3)(A);

20 (II) the technology for meeting more stringent emis-  
21 sion standards will not be available as provided in para-  
22 graph (3)(A)(i), in the case of light-duty vehicles and  
23 light-duty trucks with a loaded vehicle weight of 3,750  
24 pounds or less, for model years commencing not earlier  
25 than January 1, 2003, and not later than model year  
26 2006, considering the factors listed in paragraph  
27 (3)(A)(i); or

28 (III) obtaining further reductions in emissions from  
29 such vehicles will not be needed or cost effective, taking  
30 into consideration alternatives as provided in paragraph  
31 (3)(A)(ii);

32 the Administrator shall not promulgate more stringent stand-  
33 ards than those in effect pursuant to subsections (f) and (g).

34 (ii) EFFECT OF SUBPARAGRAPH.—Nothing in this subpara-  
35 graph shall prohibit the Administrator from exercising the  
36 Administrator's authority under subsection (a) to promulgate  
37 more stringent standards for light-duty vehicles and light-  
38 duty trucks with a loaded vehicle weight of 3,750 pounds or  
39 less at any other time thereafter in accordance with sub-  
40 section (a).

1 (C) MORE STRINGENT STANDARDS.—If the Administrator de-  
2 termines under subparagraph (A) that—

3 (i) there is a need for further reductions in emissions as  
4 provided in paragraph (3)(A);

5 (ii) the technology for meeting more stringent emission  
6 standards will be available, as provided in paragraph  
7 (3)(A)(i), in the case of light-duty vehicles and light-duty  
8 trucks with a loaded vehicle weight of 3,750 pounds or less,  
9 for model years commencing not earlier than January 1,  
10 2003, and not later than model year 2006, considering the  
11 factors listed in paragraph (3)(A)(i); and

12 (iii) obtaining further reductions in emissions from such ve-  
13 hicles will be needed and cost effective, taking into consider-  
14 ation alternatives as provided in paragraph (3)(A)(ii);

15 the Administrator shall promulgate the standards (and useful life  
16 periods) set forth in table 3 in paragraph (1) or promulgate alter-  
17 native standards (and useful life periods) that are more stringent  
18 than those described in subsections (f) and (g).

19 (D) EFFECT OF PARAGRAPH.—Nothing in this paragraph shall  
20 be construed by the Administrator or by a court as a presumption  
21 that any standards (or useful life period) set forth in table 3 shall  
22 be promulgated in the rulemaking required under this paragraph.

23 (E) NONDISCRETIONARY DUTY.—The action required of the Ad-  
24 ministrator in accordance with this paragraph shall be treated as  
25 a nondiscretionary duty for purposes of section 203104(b)(2) of  
26 this title.

27 (F) APPLICABILITY OF EMISSION STANDARDS IN TABLE 3.—The  
28 regulations under subsection (a) applicable to emissions of non-  
29 methane hydrocarbons, nitrogen oxides, and carbon monoxide from  
30 motor vehicles and motor vehicle engines in the classes specified  
31 in table 3 in paragraph (1) shall contain standards that provide  
32 that emissions may not exceed the pending emission levels speci-  
33 fied in table 3 in paragraph (1) unless—

34 (i) the Administrator determines not to promulgate more  
35 stringent standards as provided in subparagraph (B);

36 (ii) the Administrator determines to postpone the effective  
37 date of standards described in table 3 in paragraph (1); or

38 (iii) the Administrator determines to establish alternative  
39 standards as provided in subparagraph (C).

40 (i) COLD CARBON MONOXIDE STANDARD.—

41 (1) IN GENERAL.—

1 (A) REGULATIONS.—The Administrator shall promulgate regu-  
2 lations under subsection (a) applicable to emissions of carbon  
3 monoxide from light-duty vehicles and light-duty trucks when op-  
4 erated at 20 degrees Fahrenheit.

5 (B) STANDARDS.—The regulations shall contain standards that  
6 provide that emissions of carbon monoxide from 100 percent of  
7 each manufacturer's vehicles when operated at 20 degrees Fahr-  
8 enheit may not exceed—

9 (i) in the case of light-duty vehicles, 10.0 grams per mile;  
10 and

11 (ii) in the case of light-duty trucks, a level comparable in  
12 stringency to the standard applicable to light-duty vehicles.

13 (2) USEFUL LIFE STANDARDS.—In the case of the standards under  
14 paragraph (1), for purposes of certification under section 221106 of  
15 this title and in-use compliance under section 221107 of this title, the  
16 applicable useful life period shall be 5 years or 50,000 miles, whichever  
17 first occurs, except that the Administrator may extend the useful life  
18 period (for purposes of section 221106 or 221107 of this title, or both)  
19 if the Administrator determines that it is feasible for vehicles and en-  
20 gines subject to the standards to meet the standards for a longer useful  
21 life. If the Administrator extends the useful life period, the Adminis-  
22 trator may make an appropriate adjustment of applicable standards for  
23 the extended useful life. No such extended useful life shall extend be-  
24 yond the useful life period provided in regulations under subsection  
25 (a)(1)(C).

26 (3) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may  
27 promulgate regulations under subsection (a)(1) applicable to emissions  
28 of carbon monoxide from heavy-duty vehicles and engines when oper-  
29 ated at cold temperatures.

30 (j) CONTROL OF EVAPORATIVE EMISSIONS.—

31 (1) IN GENERAL.—The Administrator shall promulgate (and from  
32 time to time revise) regulations applicable to evaporative emissions of  
33 hydrocarbons from all gasoline-fueled motor vehicles—

34 (A) during operation; and

35 (B) over 2 or more days of nonuse;

36 under ozone-prone summertime conditions (as determined by regula-  
37 tions of the Administrator).

38 (2) EFFECTIVE DATE; EMISSION REDUCTION.—The regulations—

39 (A) shall take effect as expeditiously as possible; and

40 (B) shall require the greatest degree of emission reduction  
41 achievable by means reasonably expected to be available for pro-

1           duction during any model year to which the regulations apply, giving  
2           appropriate consideration to fuel volatility and to cost, energy,  
3           and safety factors associated with the application of the appropriate  
4           technology.

5       (k) MOBILE SOURCE-RELATED AIR TOXICS.—

6           (1) STUDY.—The Administrator shall complete a study of the need  
7           for, and feasibility of, controlling emissions of toxic air pollutants that  
8           are unregulated under this division and associated with motor vehicles  
9           and motor vehicle fuels, and the need for, and feasibility of, controlling  
10          such emissions and the means and measures for such controls. The  
11          study shall focus on the categories of emissions that pose the greatest  
12          risk to human health or about which significant uncertainties remain,  
13          including emissions of benzene, formaldehyde, and 1,3 butadiene. The  
14          proposed report shall be available for public review and comment and  
15          shall include a summary of all comments.

16          (2) STANDARDS.—

17               (A) IN GENERAL.—Based on the study under paragraph (1),  
18               the Administrator shall promulgate (and from time to time revise)  
19               regulations under subsection (a)(1) or section 221111(d)(1) of this  
20               title containing reasonable requirements to control hazardous air  
21               pollutants from motor vehicles and motor vehicle fuels.

22               (B) CONTENTS.—The regulations shall contain standards for  
23               fuels, vehicles, or both, that the Administrator determines reflect  
24               the greatest degree of emission reduction achievable through the  
25               application of technology that will be available, taking into consid-  
26               eration—

- 27                       (i) the standards established under subsection (a);  
28                       (ii) the availability and costs of the technology;  
29                       (iii) noise, energy, and safety factors; and  
30                       (iv) lead time.

31               (C) NO INCONSISTENCY.—The regulations shall not be incon-  
32               sistent with standards under subsection (a).

33               (D) BENZENE AND FORMALDEHYDE.—The regulations shall, at  
34               a minimum, apply to emissions of benzene and formaldehyde.

35       (l) EMISSION CONTROL DIAGNOSTICS.—

36           (1) REGULATIONS.—The Administrator shall promulgate regulations  
37           under subsection (a) requiring manufacturers to install on all new  
38           light-duty vehicles and light-duty trucks diagnostics systems capable  
39           of—

40               (A) accurately identifying, for the vehicle's useful life, as estab-  
41               lished under this section, emission-related systems deterioration or

1 malfunction (including, at a minimum, the catalytic converter and  
2 oxygen sensor) that could cause or result in failure of a vehicle  
3 to comply with emission standards established under this section;

4 (B) alerting the vehicle's owner or operator to the likely need  
5 for emission-related components or systems maintenance or repair;

6 (C) storing and retrieving fault codes specified by the Adminis-  
7 trator; and

8 (D) providing access to stored information in a manner specified  
9 by the Administrator.

10 (2) HEAVY-DUTY VEHICLES AND ENGINES.—The Administrator may  
11 promulgate regulations requiring manufacturers to install onboard di-  
12 agnostic systems described in paragraph (1) on heavy-duty vehicles and  
13 engines.

14 (3) STATE INSPECTION.—

15 (A) IN GENERAL.—The Administrator shall by regulation re-  
16 quire States that have implementation plans containing motor ve-  
17 hicle inspection and maintenance programs to provide in the plans  
18 for—

19 (i) inspection of onboard diagnostics systems (as prescribed  
20 by regulations under paragraph (1)); and

21 (ii) maintenance or repair of malfunctions or system dete-  
22 rioration identified by or affecting such diagnostics systems.

23 (B) NO INCONSISTENCY.—The regulations shall not be incon-  
24 sistent with the provisions for warranties promulgated under sub-  
25 sections (b) and (c) of section 221107 of this title.

26 (4) SPECIFIC REQUIREMENTS.—In promulgating regulations under  
27 this subsection, the Administrator shall require—

28 (A) that any connectors through which the emission control  
29 diagnostics system is accessed for inspection, diagnosis, service, or  
30 repair shall be standard and uniform on all motor vehicles and  
31 motor vehicle engines;

32 (B) that access to the emission control diagnostics system  
33 through such connectors shall be unrestricted and shall not require  
34 any access code or any device that is available only from a vehicle  
35 manufacturer; and

36 (C) that the output of the data from the emission control diag-  
37 nostics system through such connectors shall be usable without the  
38 need for any unique decoding information or device.

39 (5) INFORMATION AVAILABILITY.—

40 (A) IN GENERAL.—The Administrator, by regulation, shall re-  
41 quire (subject to the provisions of section 221108(e) of this title



1 regarding the protection of methods or processes entitled to pro-  
2 tection as trade secrets) manufacturers to provide promptly to any  
3 person engaged in the repairing or servicing of motor vehicles or  
4 motor vehicle engines, and the Administrator for use by any such  
5 persons—

6 (i) all information needed to make use of the emission con-  
7 trol diagnostics system prescribed under this subsection; and

8 (ii) other information including instructions for making  
9 emission related diagnosis and repairs.

10 (B) NO WITHHOLDING OF INFORMATION.—No information de-  
11 scribed in subparagraph (A) may be withheld under section  
12 221108(c) of this title if the information is provided (directly or  
13 indirectly) by the manufacturer to franchised dealers or other per-  
14 sons engaged in the repair, diagnosing, or servicing of motor vehi-  
15 cles or motor vehicle engines.

16 (C) AVAILABILITY TO THE ADMINISTRATOR.—The information  
17 shall be available to the Administrator, subject to section  
18 221108(c) of this title, in carrying out the Administrator's respon-  
19 sibilities under this section.

20 **§ 221103. Prohibited acts**

21 (a) ENUMERATED PROHIBITIONS.—

22 (1) IN GENERAL.—The following acts and the causing thereof are  
23 prohibited:

24 (A)(i) In the case of a manufacturer of new motor vehicles or  
25 new motor vehicle engines for distribution in commerce, the sale,  
26 offering for sale, introduction or delivery for introduction into  
27 commerce; or

28 (ii) in the case of any person, except as provided by regulation  
29 of the Administrator, the importation into the United States;  
30 of any new motor vehicle or new motor vehicle engine, manufac-  
31 tured after the effective date of regulations under this subchapter  
32 that are applicable to the motor vehicle or engine, unless the vehi-  
33 cle or engine is covered by a certificate of conformity issued (and  
34 in effect) under regulations prescribed under this subchapter or  
35 chapter 225 in the case of clean-fuel vehicles (except as provided  
36 in subsection (b)).

37 (B)(i) For any person to fail or refuse to permit access to or  
38 copying of records or to fail to make reports or provide informa-  
39 tion required under section 221108 of this title.

1 (ii) For any person to fail or refuse to permit entry, testing, or  
2 inspection authorized under section 221106(e) or 221108 of this  
3 title.

4 (iii) For any person to fail or refuse to perform tests, or have  
5 tests performed, as required under section 221108 of this title.

6 (iv) For any manufacturer to fail to make information available  
7 as provided by regulation under section 221102(l)(5) of this title.

8 (C)(i) For any person to remove or render inoperative any de-  
9 vice or element of design installed on or in a motor vehicle or  
10 motor vehicle engine in compliance with regulations under this  
11 subdivision prior to its sale and delivery to the ultimate purchaser,  
12 or for any person knowingly to remove or render inoperative any  
13 such device or element of design after such sale and delivery to  
14 the ultimate purchaser.

15 (ii) For any person to manufacture or sell, offer to sell, or in-  
16 stall any part or component intended for use with, or as part of,  
17 any motor vehicle or motor vehicle engine, where a principal effect  
18 of the part or component is to bypass, defeat, or render inoper-  
19 ative any device or element of design installed on or in a motor  
20 vehicle or motor vehicle engine in compliance with regulations  
21 under this subdivision, and where the person knows or should  
22 know that the part or component is being offered for sale or in-  
23 stalled for such use or put to such use.

24 (D) For any manufacturer of a new motor vehicle or new motor  
25 vehicle engine subject to standards prescribed under section  
26 221102 of this title or chapter 225—

27 (i) to sell or lease any such vehicle or engine unless the  
28 manufacturer has complied with—

29 (I) the requirements of subsections (b) and (c) of sec-  
30 tion 221107 of this title with respect to the vehicle or  
31 engine, and unless a label or tag is affixed to the vehicle  
32 or engine in accordance with section 221107(d)(4)(C) of  
33 this title; or

34 (II) the corresponding requirements of chapter 225 in  
35 the case of clean fuel vehicles unless the manufacturer  
36 has complied with the corresponding requirements of  
37 chapter 225;

38 (ii) to fail or refuse to comply with the requirements of  
39 subsection (d) or (f) of section 221107 of this title, or the  
40 corresponding requirements of chapter 225 in the case of  
41 clean fuel vehicles;

1 (iii) except as provided in section 221107(d)(4) of this title  
2 and the corresponding requirements of chapter 225 in the  
3 case of clean fuel vehicles, to provide directly or indirectly in  
4 any communication to an ultimate purchaser or any subse-  
5 quent purchaser that the coverage of any warranty under this  
6 division is conditioned on use of any part, component, or sys-  
7 tem manufactured by the manufacturer or any person acting  
8 for the manufacturer or under the manufacturer's control, or  
9 conditioned on service performed by any such person; or

10 (iv) to fail or refuse to comply with the terms and condi-  
11 tions of the warranty under subsection (b) or (c) of section  
12 221107 of this title or the corresponding requirements of  
13 chapter 225 in the case of clean fuel vehicles with respect to  
14 any vehicle.

15 (E) For any person to violate section 221116 or 221117 of this  
16 title or chapter 225 (including any regulation under section  
17 221116 or 221117 of this title or chapter 225).

18 (2) HIGH ALTITUDE PERFORMANCE ADJUSTMENTS.—

19 (A) DEFINITION OF MANUFACTURER PART.—In this paragraph,  
20 the term “manufacturer part” means, with respect to a motor ve-  
21 hicle engine, a part produced or sold by the manufacturer of the  
22 motor vehicle or motor vehicle engine.

23 (B) ACTION WITH RESPECT TO ELEMENT OF DESIGN.—No ac-  
24 tion with respect to any element of design described in paragraph  
25 (1)(C) (including any adjustment or alteration of any such ele-  
26 ment) shall be treated as a prohibited act under paragraph (1)(C)  
27 if the action is in accordance with section 221114 of this title.

28 (C) EFFECT OF PARAGRAPH (1)(C).—Nothing in paragraph  
29 (1)(C) shall be construed to require the use of manufacturer parts  
30 in maintaining or repairing any motor vehicle or motor vehicle en-  
31 gine.

32 (D) ACTION WITH RESPECT TO DEVICE OR ELEMENT OF DE-  
33 SIGN.—No action with respect to any device or element of design  
34 described in paragraph (1)(C) shall be treated as a prohibited act  
35 under paragraph (1)(C) if—

36 (i) the action is for the purpose of repair or replacement  
37 of the device or element, or is a necessary and temporary pro-  
38 cedure to repair or replace any other item and the device or  
39 element is replaced on completion of the procedure; and

40 (ii) the action thereafter results in the proper functioning  
41 of the device or element.

1 (E) CONVERSION FOR USE OF CLEAN ALTERNATIVE FUEL.—No  
2 action with respect to any device or element of design described  
3 in paragraph (1)(C) shall be treated as a prohibited act under  
4 paragraph (1)(C) if—

5 (i) the action is for the purpose of a conversion of a motor  
6 vehicle for use of a clean alternative fuel (as defined in sec-  
7 tion 225101 of this title);

8 (ii) the vehicle complies with the applicable standard under  
9 section 221102 of this title when operating on such fuel; and

10 (iii) in the case of a clean alternative fuel vehicle (as de-  
11 fined by regulation by the Administrator)—

12 (I) the device or element is replaced on completion of  
13 the conversion procedure; and

14 (II) that action results in proper functioning of the de-  
15 vice or element when the motor vehicle operates on con-  
16 ventional fuel.

17 (b) EXEMPTIONS; REFUSAL TO ADMIT VEHICLE OR ENGINE INTO  
18 UNITED STATES; VEHICLES OR ENGINES INTENDED FOR EXPORT.—

19 (1) EXEMPTIONS.—The Administrator may exempt any new motor  
20 vehicle or new motor vehicle engine from subsection (a) on such terms  
21 and conditions as the Administrator may find necessary—

22 (A) for the purpose of research, investigations, studies, dem-  
23 onstrations, or training; or

24 (B) for reasons of national security.

25 (2) REFUSAL TO ADMIT VEHICLE OR ENGINE INTO UNITED  
26 STATES.—A new motor vehicle or new motor vehicle engine offered for  
27 importation or imported by any person in violation of subsection (a)  
28 shall be refused admission into the United States, but the Secretary  
29 of the Treasury and the Administrator may, by joint regulation, pro-  
30 vide for deferring final determination as to admission and authorizing  
31 the delivery of such a motor vehicle or engine offered for import to the  
32 owner or consignee thereof on such terms and conditions (including the  
33 furnishing of a bond) as may appear to them appropriate to ensure  
34 that any such motor vehicle or engine will be brought into conformity  
35 with the standards, requirements, and limitations applicable to it under  
36 this chapter. The Secretary of the Treasury shall, if a motor vehicle  
37 or engine is finally refused admission under this paragraph, cause dis-  
38 position of the motor vehicle or engine in accordance with the customs  
39 laws unless the motor vehicle or engine is exported, under regulations  
40 prescribed by the Secretary, within 90 days after the date of notice of  
41 that refusal or such additional time as may be permitted pursuant to

1 the regulations, except that disposition in accordance with the customs  
2 laws may not be made in such manner as may result, directly or indi-  
3 rectly, in the sale to an ultimate consumer of a new motor vehicle or  
4 new motor vehicle engine that fails to comply with applicable standards  
5 of the Administrator under this chapter.

6 (3) VEHICLES OR ENGINES INTENDED FOR EXPORT.—A new motor  
7 vehicle or new motor vehicle engine intended solely for export, and so  
8 labeled or tagged on the outside of the container and on the vehicle  
9 or engine itself, shall be subject to subsection (a), except that if the  
10 country that is to receive the vehicle or engine has emission standards  
11 that differ from the standards prescribed under section 221102 of this  
12 title, the vehicle or engine shall comply with the standards of that  
13 country.

14 **§ 221104. Injunction proceedings**

15 (a) JURISDICTION.—The United States district courts shall have jurisdic-  
16 tion to restrain violations of section 221103(a) of this title.

17 (b) ACTIONS BROUGHT BY OR IN NAME OF UNITED STATES.—An action  
18 to restrain a violation of section 221103(a) of this title shall be brought by  
19 and in the name of the United States.

20 (c) SUBPOENAS.—In an action under subsection (b), a subpoena for a  
21 witness who is required to attend a United States district court in any judi-  
22 cial district may run into any other judicial district.

23 **§ 221105. Civil penalties**

24 (a) VIOLATIONS.—

25 (1) SUBPARAGRAPH (A), (D), OR (E) OF SECTION 221103(a)(1).—Any  
26 person that violates subparagraph (A), (D), or (E) of section  
27 221103(a)(1) of this title shall be subject to a civil penalty of not more  
28 than \$25,000.

29 (2) SECTION 221103(a)(1)(B).—Any person that violates section  
30 221103(a)(1)(B) of this title shall be subject to a civil penalty of not  
31 more than \$25,000 per day of violation.

32 (3) SECTION 221103(a)(1)(C).—

33 (A) CLAUSE (i).—

34 (i) MANUFACTURER OR DEALER.—Any manufacturer or  
35 dealer that violates section 221103(a)(1)(C)(i) of this title  
36 shall be subject to a civil penalty of not more than \$25,000.

37 (ii) PERSON OTHER THAN MANUFACTURER OR DEALER.—  
38 Any person other than a manufacturer or dealer that violates  
39 section 221103(a)(1)(C)(i) of this title shall be subject to a  
40 civil penalty of not more than \$2,500.

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1 (B) CLAUSE (ii).—Any person that violates section  
2 221103(a)(1)(C)(ii) of this title shall be subject to a civil penalty  
3 of not more than \$2,500.

4 (4) SEPARATE OFFENSES.—

5 (A) MOTOR VEHICLES AND MOTOR VEHICLE ENGINES.—Any  
6 such violation of subparagraph (A), (C)(i), or (D) of section  
7 221103(a)(1) of this title shall constitute a separate offense with  
8 respect to each motor vehicle or motor vehicle engine.

9 (B) PARTS AND COMPONENTS.—Any such violation of section  
10 221103(a)(1)(C)(ii) of this title shall constitute a separate offense  
11 with respect to each part or component.

12 (b) CIVIL ACTIONS.—

13 (1) IN GENERAL.—The Administrator may commence a civil action  
14 to assess and recover any civil penalty under subsection (a) or section  
15 221111(s) or 221113(e) of this title.

16 (2) PLACE FOR ACTION.—Any action under this subsection may be  
17 brought in the United States district court for the district in which the  
18 violation is alleged to have occurred or in which the defendant resides  
19 or has its principal place of business, and the court shall have jurisdic-  
20 tion to assess a civil penalty.

21 (3) CONSIDERATIONS.—In determining the amount of any civil pen-  
22 alty to be assessed under this subsection, the court shall take into ac-  
23 count—

24 (A) the gravity of the violation;

25 (B) the economic benefit or savings (if any) resulting from the  
26 violation;

27 (C) the size of the violator's business;

28 (D) the violator's history of compliance with this subdivision;

29 (E) action taken to remedy the violation;

30 (F) the effect of the penalty on the violator's ability to continue  
31 in business; and

32 (G) such other matters as justice may require.

33 (4) SUBPOENAS.—In any action under this subsection, a subpoena  
34 for a witness who is required to attend a district court in any judicial  
35 district may run into any other judicial district.

36 (c) ADMINISTRATIVE ASSESSMENT OF CERTAIN PENALTIES.—

37 (1) ADMINISTRATIVE PENALTY AUTHORITY.—

38 (A) IN GENERAL.—In lieu of commencing a civil action under  
39 subsection (b), the Administrator may assess any civil penalty pre-  
40 scribed in subsection (a) or section 221111(s) or 221113(e) of this  
41 title, except that the maximum amount of penalty sought against

1 each violator in a penalty assessment proceeding shall not exceed  
2 \$200,000, unless the Administrator and the Attorney General  
3 jointly determine that a matter involving a larger penalty amount  
4 is appropriate for administrative penalty assessment. Any such de-  
5 termination by the Administrator and the Attorney General shall  
6 not be subject to judicial review.

7 (B) PROCEDURE.—Assessment of a civil penalty under this sub-  
8 section shall be by an order made on the record after opportunity  
9 for a hearing in accordance with sections 554 and 556 of title 5.  
10 The Administrator shall issue reasonable rules for discovery and  
11 other procedures for hearings under this paragraph. Before issu-  
12 ing such an order, the Administrator shall give written notice to  
13 the person to be assessed an administrative penalty of the Admin-  
14 istrator's proposal to issue the order and provide the person an  
15 opportunity to request a hearing on the order, within 30 days of  
16 the date the notice is received by the person.

17 (C) COMPROMISE OR REMISSION.—The Administrator may com-  
18 promise, or remit, with or without conditions, any administrative  
19 penalty that may be imposed under this section.

20 (2) CONSIDERATIONS.—In determining the amount of any civil pen-  
21 alty assessed under this subsection, the Administrator shall take into  
22 account the factors listed in subsection (b)(3).

23 (3) EFFECT OF ADMINISTRATOR'S ACTION.—

24 (A) ENFORCEMENT AUTHORITY.—Action by the Administrator  
25 under this subsection shall not affect or limit the Administrator's  
26 authority to enforce any provision of this division, except that any  
27 violation—

28 (i) with respect to which the Administrator has commenced  
29 and is diligently prosecuting an action under this subsection;  
30 or

31 (ii) for which the Administrator has issued a final order  
32 not subject to further judicial review and the violator has paid  
33 a penalty assessment under this subsection;

34 shall not be the subject of civil penalty action under subsection  
35 (b).

36 (B) OBLIGATION TO COMPLY.—No action by the Administrator  
37 under this subsection shall affect any person's obligation to comply  
38 with any section of this division.

39 (4) FINALITY OF ORDER.—An order issued under this subsection  
40 shall become final 30 days after its issuance unless a petition for judi-  
41 cial review is filed under paragraph (5).

1 (5) JUDICIAL REVIEW.—

2 (A) IN GENERAL.—Any person against which a civil penalty is  
3 assessed in accordance with this subsection may seek review of the  
4 assessment in the United States District Court for the District of  
5 Columbia, or for the district in which the violation is alleged to  
6 have occurred, in which the person resides, or where such person's  
7 principal place of business is located, within the 30-day period be-  
8 ginning on the date on which a civil penalty order is issued. The  
9 person shall simultaneously send a copy of the filing by certified  
10 mail to the Administrator and the Attorney General.

11 (B) RECORD.—The Administrator shall file in the court a cer-  
12 tified copy, or certified index, as appropriate, of the record on  
13 which the order was issued within 30 days.

14 (C) SCOPE OF REVIEW.—The court shall not set aside or re-  
15 mand any order issued in accordance with the requirements of this  
16 subsection unless there is not substantial evidence in the record,  
17 taken as a whole, to support the finding of a violation or unless  
18 the Administrator's assessment of the penalty constitutes an abuse  
19 of discretion, and the court shall not impose additional civil pen-  
20 alties unless the Administrator's assessment of the penalty con-  
21 stitutes an abuse of discretion.

22 (D) CIVIL PENALTIES.—In any proceedings, the United States  
23 may seek to recover civil penalties assessed under this section.

24 (6) COLLECTION.—

25 (A) IN GENERAL.—If any person fails to pay an assessment of  
26 a civil penalty imposed by the Administrator as provided in this  
27 subsection—

28 (i) after the order making the assessment has become final;

29 or

30 (ii) after a court in an action brought under paragraph (5)  
31 has entered a final judgment in favor of the Administrator;  
32 the Administrator shall request the Attorney General to bring a  
33 civil action in an appropriate district court to recover the amount  
34 assessed (plus interest at rates established pursuant to section  
35 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C.  
36 6621(a)(2)) from the date of the final order or the date of the  
37 final judgment, as the case may be).

38 (B) SCOPE OF REVIEW.—In such an action, the validity,  
39 amount, and appropriateness of the penalty shall not be subject  
40 to review.

41 (C) ENFORCEMENT EXPENSES; NONPAYMENT PENALTY.—



1 (i) IN GENERAL.—Any person that fails to pay on a timely  
2 basis the amount of an assessment of a civil penalty as de-  
3 scribed in subparagraph (A) shall be required to pay, in addi-  
4 tion to that amount and interest—

5 (I) the enforcement expenses of the United States, in-  
6 cluding attorney's fees and costs for collection proceed-  
7 ings; and

8 (II) a quarterly nonpayment penalty for each quarter  
9 during which the failure to pay persists.

10 (ii) AMOUNT.—The nonpayment penalty for a quarter shall  
11 be in an amount equal to 10 percent of the aggregate amount  
12 of the person's penalties and nonpayment penalties that are  
13 unpaid as of the beginning of the quarter.

14 **§ 221106. Motor vehicle and motor vehicle engine compli-**  
15 **ance testing and certification**

16 (a) TESTING AND ISSUANCE OF CERTIFICATE OF CONFORMITY.—

17 (1) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES SUB-  
18 MITTED BY A MANUFACTURER.—

19 (A) IN GENERAL.—The Administrator shall test, or require to  
20 be tested in such manner as the Administrator considers appro-  
21 priate, any new motor vehicle or new motor vehicle engine submit-  
22 ted by a manufacturer to determine whether the vehicle or engine  
23 conforms with the regulations prescribed under section 221102 of  
24 this title. If the vehicle or engine conforms to the regulations, the  
25 Administrator shall issue a certificate of conformity on such terms,  
26 and for such period (not in excess of 1 year), as the Administrator  
27 may prescribe.

28 (B) PROJECTED SALES NOT EXCEEDING 300.—In the case of  
29 any original equipment manufacturer (as defined by the Adminis-  
30 trator in regulations promulgated before November 15, 1990) of  
31 vehicles or vehicle engines whose projected sales in the United  
32 States for any model year (as determined by the Administrator)  
33 will not exceed 300, the Administrator shall not require, for pur-  
34 poses of determining compliance with regulations under section  
35 221102 of this title for the useful life of the vehicle or engine, op-  
36 eration of any vehicle or engine manufactured during that model  
37 year for more than 5,000 miles or 160 hours, respectively, unless  
38 the Administrator, by regulation, prescribes otherwise. The Ad-  
39 ministrator shall apply any adjustment factors that the Adminis-  
40 trator considers appropriate to ensure that each vehicle or engine  
41 will comply during its useful life (as determined under section

1           221102(a)(1)(C) of this title) with the regulations prescribed  
2           under section 221102 of this title.

3           (2) EMISSION CONTROL SYSTEMS SUBMITTED BY ANY PERSON.—The  
4           Administrator shall test any emission control system incorporated in a  
5           motor vehicle or motor vehicle engine submitted to the Administrator  
6           by any person to determine whether the system enables the vehicle or  
7           engine to conform to the standards required to be prescribed under sec-  
8           tion 221102(b) of this title. If the Administrator finds on the basis of  
9           such tests that the vehicle or engine conforms to the standards, the Ad-  
10          ministrators shall issue a verification of compliance with emission stand-  
11          ards for the system when incorporated in vehicles of a class of which  
12          the tested vehicle is representative. The Administrator shall inform  
13          manufacturers and the National Academy of Sciences, and make avail-  
14          able to the public, the results of the tests. Tests under this paragraph  
15          shall be conducted under such terms and conditions (including require-  
16          ments for preliminary testing by qualified independent laboratories) as  
17          the Administrator may prescribe by regulation.

18          (3) CONFORMITY TO REQUIREMENTS.—

19                (A) IN GENERAL.—A certificate of conformity may be issued  
20                under this section only if the Administrator determines that the  
21                manufacturer (or in the case of a vehicle or engine for import, any  
22                person) has established to the satisfaction of the Administrator  
23                that any emission control device, system, or element of design in-  
24                stalled on, or incorporated in, a vehicle or engine conforms to ap-  
25                plicable requirements of section 221102(a)(4) of this title.

26                (B) TESTS.—The Administrator may conduct such tests and  
27                may require the manufacturer (or any such person) to conduct  
28                such tests and provide such information as are necessary to carry  
29                out subparagraph (A). Such requirements shall include a require-  
30                ment for prompt reporting of the emission of any unregulated pol-  
31                lutant from a system, device, or element of design if the pollutant  
32                was not emitted, or was emitted in significantly lesser amounts,  
33                from the vehicle or engine without use of the system, device, or  
34                element of design.

35          (4) LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS.—The regula-  
36          tions promulgated under this subsection shall include test procedures  
37          capable of determining whether light-duty vehicles and light-duty  
38          trucks, when properly maintained and used, will pass the inspection  
39          methods and procedures established under section 221107(e) of this  
40          title under conditions reasonably likely to be encountered in the con-  
41          duct of inspection and maintenance programs, but which those pro-

1           grams cannot reasonably influence or control. The conditions shall in-  
2           clude fuel characteristics, ambient temperature, and short (30 minutes  
3           or less) waiting periods before tests are conducted. The Administrator  
4           shall not grant a certificate of conformity under this subsection for any  
5           vehicle or engine that the Administrator concludes cannot pass the test  
6           procedures established under this paragraph.

7           (b) NEW MOTOR VEHICLES AND NEW MOTOR VEHICLE ENGINES BEING  
8           MANUFACTURED.—

9                   (1) IN GENERAL.—To determine whether new motor vehicles or new  
10                  motor vehicle engines conform to the regulations with respect to which  
11                  a certificate of conformity is issued, the Administrator may test the  
12                  new motor vehicles and new motor vehicle engines. The tests may be  
13                  conducted by the Administrator directly or, in accordance with condi-  
14                  tions specified by the Administrator, by the manufacturer of the new  
15                  motor vehicles or new motor vehicle engines.

16                  (2) NONCONFORMITY.—

17                          (A) IN GENERAL.—

18                                  (i) DETERMINATION ON TEST OF SAMPLE OF NEW MOTOR  
19                                  VEHICLES OR NEW MOTOR VEHICLE ENGINES.—If, based on  
20                                  tests conducted under paragraph (1) on a sample of new  
21                                  motor vehicles or new motor vehicle engines covered by a cer-  
22                                  tificate of conformity, the Administrator determines that all  
23                                  or part of the new motor vehicles or new motor vehicle en-  
24                                  gines do not conform with the regulations with respect to  
25                                  which the certificate of conformity was issued and with the  
26                                  requirements of section 221102(a)(4) of this title, the Admin-  
27                                  istrator may suspend or revoke the certificate in whole or in  
28                                  part, and shall so notify the manufacturer. The suspension or  
29                                  revocation shall apply in the case of any new motor vehicles  
30                                  or new motor vehicle engines manufactured after the date of  
31                                  such notification (or manufactured before that date if still in  
32                                  the possession of the manufacturer), and shall apply until  
33                                  such time as the Administrator finds that new motor vehicles  
34                                  and new motor vehicle engines manufactured by the manufac-  
35                                  turer conform to the regulations and requirements. If, during  
36                                  any period of suspension or revocation, the Administrator  
37                                  finds that a new motor vehicle or new motor vehicle engine  
38                                  conforms to the regulations and requirements, the Adminis-  
39                                  trator shall issue a certificate of conformity applicable to the  
40                                  new motor vehicle or new motor vehicle engine.

1 (ii) DETERMINATION ON TEST OF ANY NEW MOTOR VEHI-  
2 CLE OR NEW MOTOR VEHICLE ENGINE.—If, based on tests  
3 conducted under paragraph (1) on any new vehicle or engine,  
4 the Administrator determines that the vehicle or engine does  
5 not conform with the regulations with respect to which the  
6 certificate of conformity was issued and with the require-  
7 ments of section 221102(a)(4) of this title, the Administrator  
8 may suspend or revoke the certificate insofar as it applies to  
9 the vehicle or engine until such time as the Administrator  
10 finds that the vehicle or engine actually conforms with those  
11 regulations and requirements, and the Administrator shall so  
12 notify the manufacturer.

13 (B) HEARING.—At the request of any manufacturer the Admin-  
14 istrator shall grant the manufacturer a hearing as to whether the  
15 tests have been properly conducted or any sampling methods have  
16 been properly applied, and make a determination on the record  
17 with respect to any suspension or revocation under subparagraph  
18 (A); but suspension or revocation under subparagraph (A) shall  
19 not be stayed by reason of such a hearing.

20 (C) JUDICIAL REVIEW.—

21 (i) IN GENERAL.—In any case of actual controversy as to  
22 the validity of any determination under subparagraph (B),  
23 the manufacturer may at any time prior to the 60th day after  
24 the determination is made file a petition with the United  
25 States court of appeals for the circuit in which the manufac-  
26 turer resides or has its principal place of business for a judi-  
27 cial review of the determination. A copy of the petition shall  
28 be forthwith transmitted by the clerk of the court to the Ad-  
29 ministrator or other officer designated by the Administrator  
30 for that purpose. The Administrator thereupon shall file in  
31 the court the record of the proceedings on which the Adminis-  
32 trator based the Administrator's determination, as provided  
33 in section 2112 of title 28.

34 (ii) ADDITIONAL EVIDENCE.—If the petitioner applies to  
35 the court for leave to adduce additional evidence, and shows  
36 to the satisfaction of the court that the additional evidence  
37 is material and that there were reasonable grounds for the  
38 failure to adduce the evidence in the proceeding before the  
39 Administrator, the court may order the additional evidence  
40 (and evidence in rebuttal thereof) to be taken before the Ad-  
41 ministrator, in such manner and on such terms and condi-

1 tions as the court considers proper. The Administrator may  
2 modify the Administrator's findings as to the facts, or make  
3 new findings, by reason of the additional evidence so taken,  
4 and the Administrator shall file the modified or new findings,  
5 and the Administrator's recommendation, if any, for the  
6 modification or setting aside of the Administrator's original  
7 determination, with the return of the additional evidence.

8 (iii) JURISDICTION; RELIEF.—On the filing of the petition  
9 under clause (i), the court shall have jurisdiction to review  
10 the order in accordance with chapter 7 of title 5 and to grant  
11 appropriate relief as provided in that chapter.

12 (c) INSPECTION.—

13 (1) IN GENERAL.—For purposes of enforcement of this section, offi-  
14 cers or employees duly designated by the Administrator, on presenting  
15 appropriate credentials to the manufacturer or person in charge, may—

16 (A) enter, at reasonable times, any plant or other establishment  
17 of a manufacturer, for the purpose of conducting tests of vehicles  
18 or engines in the possession of the manufacturer; or

19 (B) inspect, at reasonable times, records, processes, controls,  
20 and facilities used by a manufacturer in conducting tests under  
21 regulations of the Administrator.

22 (2) PROMPTNESS.—An inspection under paragraph (1) shall be com-  
23 menced and completed with reasonable promptness.

24 (d) METHODS AND PROCEDURES FOR MAKING TESTS.—The Adminis-  
25 trator shall by regulation establish methods and procedures for making tests  
26 under this section.

27 (e) PUBLICATION OF TEST RESULTS.—At the beginning of each model  
28 year, the Administrator shall make available to the public the results of the  
29 Administrator's tests of any motor vehicle or motor vehicle engine submitted  
30 by a manufacturer under subsection (a). The results shall be described in  
31 such a nontechnical manner as will reasonably disclose to prospective ulti-  
32 mate purchasers of new motor vehicles and new motor vehicle engines the  
33 comparative performance of the vehicles and engines tested in meeting the  
34 standards prescribed under section 221101 of this title.

35 (f) HIGH ALTITUDE REGULATIONS.—All light-duty vehicles and engines  
36 and all light-duty trucks shall comply with the requirements of section  
37 221102 of this title regardless of the altitude at which they are sold.

38 (g) NONCONFORMANCE PENALTY.—

39 (1) IN GENERAL.—In the case of any class or category of heavy-duty  
40 vehicles or engines or motorcycles to which a standard promulgated  
41 under section 221102(a) of this title applies, except as provided in

1 paragraph (2), a certificate of conformity shall be issued under sub-  
2 section (a) and shall not be suspended or revoked under subsection  
3 (b)(2) for such vehicles or engines or motorcycles manufactured by a  
4 manufacturer notwithstanding the failure of the vehicles or engines or  
5 motorcycles to meet that standard if the manufacturer pays a non-  
6 conformance penalty as provided under regulations promulgated by the  
7 Administrator after notice and opportunity for public hearing.

8 (2) EXCESSIVE DEGREE OF FAILURE.—No certificate of conformity  
9 may be issued under paragraph (1) with respect to any class or cat-  
10 egory of vehicle or engine if the degree by which the manufacturer fails  
11 to meet any standard promulgated under section 221102(a) of this title  
12 with respect to that class or category exceeds the percentage deter-  
13 mined under regulations promulgated by the Administrator to be prac-  
14 ticable. The regulations shall require such testing of vehicles or engines  
15 being produced as may be necessary to determine the percentage of the  
16 classes or categories of vehicles or engines that are not in compliance  
17 with the regulations with respect to which a certificate of conformity  
18 is issued.

19 (3) AMOUNT OF NONCONFORMANCE PENALTY.—The regulations pro-  
20 mulgated under paragraph (1) shall provide for nonconformance pen-  
21 alties in amounts determined under a formula established by the Ad-  
22 ministrator. The penalties under the formula—

23 (A) may vary from pollutant to pollutant;

24 (B) may vary by class or category or vehicle or engine;

25 (C) shall take into account the extent to which actual emissions  
26 of any air pollutant exceed allowable emissions under the stand-  
27 ards promulgated under section 221102 of this title;

28 (D) shall be increased periodically to create incentives for the  
29 development of production vehicles or engines that achieve the re-  
30 quired degree of emission reduction; and

31 (E) shall remove any competitive disadvantage to manufacturers  
32 whose engines or vehicles achieve the required degree of emission  
33 reduction (including any such disadvantage arising from the appli-  
34 cation of paragraph (4)).

35 (4) WARRANTY; ACTIONS.—In any case in which a certificate of con-  
36 formity has been issued under this subsection, any warranty required  
37 under section 221107(e)(2)(B) of this title and any action under sec-  
38 tion 221107(d) of this title shall be required to be effective only for  
39 the emission levels for which the Administrator determines that the cer-  
40 tificate was issued and not for the emission levels required under the  
41 applicable standard.

1 (5) AUTHORITIES.—The authorities of section 221108(a) of this title  
2 shall apply, subject to the conditions of section 221108(b) of this title,  
3 for purposes of this subsection.

4 (h) TESTING UNDER CIRCUMSTANCES THAT REFLECT ACTUAL CUR-  
5 RENT DRIVING CONDITIONS.—The regulations under subsections (a) and  
6 (b) regarding the testing of motor vehicles and motor vehicle engines shall  
7 ensure that vehicles are tested under circumstances that reflect the actual  
8 current driving conditions under which motor vehicles are used, including  
9 conditions relating to fuel, temperature, acceleration, and altitude.

10 **§ 221107. Compliance by vehicles and engines in actual use**

11 (a) DEFINITIONS.—In this section:

12 (1) ONBOARD EMISSION DIAGNOSTIC DEVICE.—

13 (A) IN GENERAL.—The term “onboard emission diagnostic de-  
14 vice” means any device installed for the purpose of storing or  
15 processing emission-related diagnostic information.

16 (B) EXCLUSIONS.—The term “onboard emission diagnostic de-  
17 vice” does not include any part or other system that a device de-  
18 scribed in subparagraph (A) monitors except for a specified major  
19 emission control component.

20 (2) SPECIFIED MAJOR EMISSION CONTROL COMPONENT.—

21 (A) IN GENERAL.—The term “specified major emission control  
22 component” means a catalytic converter, an electronic emission  
23 control unit, and an onboard emissions diagnostic device.

24 (B) OTHER DEVICES.—The Administrator may designate any  
25 other pollution control device or component as a specified major  
26 emission control component if—

27 (i) the device or component was not in general use on vehi-  
28 cles and engines manufactured prior to model year 1990; and

29 (ii) the Administrator determines that the retail cost (ex-  
30 clusive of installation costs) of the device or component ex-  
31 ceeds \$200 (in 1989 dollars), adjusted for inflation or defla-  
32 tion as calculated by the Administrator at the time of the de-  
33 termination.

34 (3) WARRANTY PERIOD.—

35 (A) NEW LIGHT-DUTY TRUCKS AND NEW LIGHT-DUTY VEHI-  
36 CLES AND ENGINES MANUFACTURED IN MODEL YEAR 1995 AND  
37 THEREAFTER.—

38 (i) IN GENERAL.—The term “warranty period”, with re-  
39 spect to a new light-duty truck or new light-duty vehicle or  
40 engine manufactured in model year 1995 or thereafter, means

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1 the 1st 2 years or 24,000 miles of use (whichever first oc-  
2 curs), except as provided in subparagraph (B).

3 (ii) OTHER VEHICLES AND ENGINES.—The term “warranty  
4 period”, with respect to a vehicle or engine other than a vehi-  
5 cle or engine described in clause (i), means a period estab-  
6 lished by the Administrator by regulation.

7 (B) SPECIFIED MAJOR EMISSION CONTROL COMPONENTS.—The  
8 term “warranty period”, with respect to a specified major emission  
9 control component of a new light-duty truck or new light-duty ve-  
10 hicle or engine manufactured in model year 1995 or thereafter,  
11 means the 1st 8 years or 80,000 miles of use (whichever first oc-  
12 curs).

13 (b) IN GENERAL.—

14 (1) NEW MOTOR VEHICLE AND NEW MOTOR VEHICLE ENGINE WAR-  
15 RANTY.—The manufacturer of each new motor vehicle and new motor  
16 vehicle engine shall warrant to the ultimate purchaser and each subse-  
17 quent purchaser that the vehicle or engine is—

18 (A) designed, built, and equipped so as to conform at the time  
19 of sale with applicable regulations under section 221102 of this  
20 title; and

21 (B) free from defects in materials and workmanship that cause  
22 such a vehicle or engine to fail to conform with applicable regula-  
23 tions for its useful life (as determined under section  
24 221102(a)(1)(C) of this title).

25 (2) MOTOR VEHICLE PART OR MOTOR VEHICLE ENGINE PART CER-  
26 TIFICATION.—In the case of a motor vehicle part or motor vehicle en-  
27 gine part, the manufacturer or rebuilder of the part may certify that  
28 use of the part will not result in a failure of the vehicle or engine to  
29 comply with emission standards promulgated under section 221102 of  
30 this title. Such a certification shall be made only under such regula-  
31 tions as the Administrator may promulgate to carry out subsection (c).

32 (3) PAYMENT OF REPLACEMENT COSTS OF PARTS, DEVICES, OR  
33 COMPONENTS DESIGNED FOR EMISSION CONTROL.—

34 (A) DEFINITION OF PART, DEVICE, OR COMPONENT OF A  
35 LIGHT-DUTY VEHICLE THAT IS DESIGNED FOR EMISSION CON-  
36 TROL.—In this paragraph:

37 (i) IN GENERAL.—The term “part, device, or component of  
38 a light-duty vehicle that is designed for emission control”  
39 means a catalytic converter, thermal reactor, or other compo-  
40 nent installed on or in a vehicle for the sole or primary pur-  
41 pose of reducing vehicle emissions.



1 (ii) EXCLUSIONS.—The term “part, device, or component  
2 of a light-duty vehicle that is designed for emission control”  
3 does not include a vehicle component that was in general use  
4 prior to model year 1968 and the primary function of which  
5 is not related to emission control.

6 (B) PAYMENT BY MANUFACTURER.—The cost of any part, de-  
7 vice, or component of a light-duty vehicle that is designed for  
8 emission control and that, under the instructions issued pursuant  
9 to subsection (d)(4), is scheduled for replacement during the use-  
10 ful life of a vehicle to maintain compliance with regulations under  
11 section 221102 of this title, the failure of which shall not interfere  
12 with the normal performance of the vehicle, and the expected retail  
13 price of which, including installation costs, is greater than 2 per-  
14 cent of the suggested retail price of the vehicle, shall be borne or  
15 reimbursed at the time of replacement by the vehicle manufact-  
16 urer, and the replacement shall be provided without cost to an ul-  
17 timate purchaser, subsequent purchaser, or dealer.

18 (c) TESTING METHODS AND PROCEDURES.—

19 (1) DETERMINATION.—The Administrator shall take the actions de-  
20 scribed in paragraph (2) if the Administrator determines that—

21 (A) there are available testing methods and procedures to ascer-  
22 tain whether, when in actual use throughout the warranty period,  
23 each vehicle and engine to which regulations under section 221102  
24 of this title apply complies with the emission standards of those  
25 regulations;

26 (B) those methods and procedures are in accordance with good  
27 engineering practices; and

28 (C) those methods and procedures are reasonably capable of  
29 being correlated with tests conducted under section 221106(a)(1)  
30 of this title.

31 (2) ACTIONS.—If the Administrator makes the determination de-  
32 scribed in paragraph (1)—

33 (A) the Administrator shall establish the methods and proce-  
34 dures described in paragraph (1) by regulation; and

35 (B) at such time as the Administrator determines that inspec-  
36 tion facilities or equipment are available for purposes of carrying  
37 out testing methods and procedures established under paragraph  
38 (1)(A), the Administrator shall prescribe regulations that require  
39 manufacturers to warrant the emission control device or system of  
40 each new motor vehicle or new motor vehicle engine to which a  
41 regulation under section 221102 of this title applies and that is



1 (ii) require the manufacturer to submit a plan for remedy-  
2 ing the nonconformity of the vehicles or engines with respect  
3 to which such notification is given.

4 (B) PLAN PROVISIONS.—The plan shall provide that the non-  
5 conformity of any such vehicles or engines that are properly used  
6 and maintained will be remedied at the expense of the manufac-  
7 turer.

8 (C) HEARING.—If the manufacturer disagrees with a deter-  
9 mination of nonconformity and so advises the Administrator, the  
10 Administrator shall afford the manufacturer and other interested  
11 persons an opportunity to present their views and evidence in sup-  
12 port thereof at a public hearing.

13 (D) ORDER.—Unless, as a result of a hearing, the Adminis-  
14 trator withdraws the determination of nonconformity, the Adminis-  
15 trator shall, within 60 days after the completion of the hearing,  
16 order the manufacturer to provide prompt notification of the non-  
17 conformity in accordance with paragraph (3).

18 (3) NOTIFICATION OF DEALERS, ULTIMATE PURCHASERS, AND SUB-  
19 SEQUENT PURCHASERS.—Any notification required by paragraph (2)  
20 with respect to any class or category of vehicles or engines shall be  
21 given to dealers, ultimate purchasers, and subsequent purchasers (if  
22 known) in such manner and containing such information as the Admin-  
23 istrator may by regulation require.

24 (4) INSTRUCTIONS.—

25 (A) IN GENERAL.—A manufacturer shall furnish with each new  
26 motor vehicle or motor vehicle engine written instructions for the  
27 proper maintenance and use of the vehicle or engine by the ulti-  
28 mate purchaser, and the instructions shall correspond to regula-  
29 tions that the Administrator shall promulgate. The manufacturer  
30 shall provide in boldface type on the 1st page of the written main-  
31 tenance instructions notice that maintenance, replacement, or re-  
32 pair of the emission control devices and systems may be performed  
33 by any automotive repair establishment or individual using any  
34 automotive part that has been certified as provided in subsection  
35 (b)(2).

36 (B) NO CONDITIONS.—

37 (i) IN GENERAL.—The instruction under subparagraph (A)  
38 shall not include—

39 (I) any condition on the ultimate purchaser's using, in  
40 connection with the vehicle or engine, any component or  
41 service (other than a component or service provided with-

1 out charge under the terms of the purchase agreement)  
2 that is identified by brand, trade, or corporate name; or

3 (II) any condition directly or indirectly distinguishing  
4 between—

5 (aa) service performed by the franchised dealers  
6 of the manufacturer or any other service establish-  
7 ments with which the manufacturer has a commer-  
8 cial relationship; and

9 (bb) service performed by independent automotive  
10 repair facilities with which the manufacturer has no  
11 commercial relationship.

12 (ii) WAIVER.—The prohibition of this subparagraph may be  
13 waived by the Administrator if—

14 (I) the manufacturer satisfies the Administrator that  
15 the vehicle or engine will function properly only if the  
16 component or service identified by brand, trade, or cor-  
17 porate name is used in connection with the vehicle or en-  
18 gine; and

19 (II) the Administrator finds that such a waiver is in  
20 the public interest.

21 (C) LABEL OR TAG.—The manufacturer shall indicate by means  
22 of a label or tag permanently affixed to the vehicle or engine that  
23 the vehicle or engine is covered by a certificate of conformity is-  
24 sued for the purpose of ensuring achievement of emission stand-  
25 ards prescribed under section 221102 of this title. The label or tag  
26 shall contain such other information relating to control of motor  
27 vehicle emissions as the Administrator shall prescribe by regula-  
28 tion.

29 (5) IN-USE STANDARDS.—

30 (A) LIGHT-DUTY TRUCKS OF UP TO 6,000 POUNDS.—For pur-  
31 poses of applying this subsection, in the case of 100 percent of  
32 each manufacturer's sales volume of light-duty trucks of up to  
33 6,000 pounds gross vehicle weight rating and light-duty vehicles,  
34 the standards for nonmethane hydrocarbons, carbon monoxide,  
35 and nitrogen oxides shall be as provided in table G in section  
36 221102(f)(1) of this title, except that in applying the standards  
37 set forth in table G for purposes of determining compliance with  
38 this subsection, the applicable useful life shall be—

39 (i) 5 years or 50,000 miles (or the equivalent), whichever  
40 first occurs, in the case of standards applicable for purposes  
41 of certification at 50,000 miles; and

1 (ii) 10 years or 100,000 miles (or the equivalent), which-  
2 ever first occurs, in the case of standards applicable for pur-  
3 poses of certification at 100,000 miles;

4 except that no testing shall be done beyond 7 years or 75,000  
5 miles (or the equivalent), whichever first occurs.

6 (B) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—For  
7 purposes of applying this subsection, in the case of 100 percent  
8 of each manufacturer's sales volume of light-duty trucks of more  
9 than 6,000 pounds gross vehicle weight rating, the standards for  
10 nonmethane hydrocarbons, carbon monoxide, and nitrogen oxides  
11 shall be as provided in table H in section 221102(g) of this title,  
12 except that in applying the standards set forth in table H for pur-  
13 poses of determining compliance with this subsection, the applica-  
14 ble useful life shall be—

15 (i) 5 years or 50,000 miles (or the equivalent), whichever  
16 first occurs, in the case of standards applicable for purposes  
17 of certification at 50,000 miles; and

18 (ii) 11 years or 120,000 miles (or the equivalent), which-  
19 ever first occurs, in the case of standards applicable for pur-  
20 poses of certification at 120,000 miles;

21 except that no testing shall be done beyond 7 years or 90,000  
22 miles (or the equivalent), whichever first occurs.

23 (6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—

24 (A) DIESEL-FUELED LIGHT-DUTY TRUCKS OF UP TO 6,000  
25 POUNDS.—In the case of diesel-fueled light-duty trucks up to  
26 6,000 pounds gross vehicle weight rating and light-duty vehicles,  
27 the useful life for purposes of determining in-use compliance with  
28 the standards under section 221102(f) of this title for nitrogen ox-  
29 ides shall be a period of 10 years or 100,000 miles (or the equiva-  
30 lent), whichever first occurs, in the case of standards applicable  
31 for purposes of certification at 100,000 miles, except that testing  
32 shall not be done for a period beyond 7 years or 75,000 miles (or  
33 the equivalent), whichever first occurs.

34 (B) DIESEL-FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000  
35 POUNDS.—In the case of diesel-fueled light-duty trucks of 6,000  
36 pounds gross vehicle weight rating or more, the useful life for pur-  
37 poses of determining in-use compliance with the standards under  
38 section 221102(g) of this title for nitrogen oxides shall be a period  
39 of 11 years or 120,000 miles (or the equivalent), whichever first  
40 occurs, in the case of standards applicable for purposes of certifi-  
41 cation at 120,000 miles, except that testing shall not be done for

1 a period beyond 7 years or 90,000 miles (or the equivalent) which-  
2 ever first occurs.

3 (e) DEALER COSTS BORNE BY MANUFACTURER.—Any cost obligation of  
4 any dealer incurred as a result of any requirement imposed by subsection  
5 (b), (c), or (d) shall be borne by the manufacturer. The transfer of any such  
6 cost obligation from a manufacturer to any dealer through franchise or  
7 other agreement is prohibited.

8 (f) COST STATEMENT.—If a manufacturer includes in any advertisement  
9 a statement respecting the cost or value of emission control devices or sys-  
10 tems, the manufacturer shall set forth in the statement the cost or value  
11 attributed to those devices or systems by the Secretary of Labor (through  
12 the Bureau of Labor Statistics). The Secretary of Labor, and the Sec-  
13 retary's representatives, shall have the same access for this purpose to the  
14 records of a manufacturer as the Comptroller General has to those of a re-  
15 cipient of assistance for purposes of section 209105 of this title.

16 (g) INSPECTION AFTER SALE TO ULTIMATE PURCHASER.—Any inspec-  
17 tion of a motor vehicle or a motor vehicle engine for purposes of subsection  
18 (d)(2), after its sale to an ultimate purchaser, shall be made only if the  
19 owner of the vehicle or engine voluntarily permits such an inspection to be  
20 made, except as may be provided by any State or local inspection program.

21 (h) REPLACEMENT AND MAINTENANCE COSTS BORNE BY OWNER.—For  
22 the purposes of this section, the owner of any motor vehicle or motor vehicle  
23 engine warranted under this section is responsible in the proper mainte-  
24 nance of the vehicle or engine to replace and to maintain, at the owner's  
25 expense at any service establishment or facility of the owner's choosing,  
26 such items as spark plugs, points, condensers, and any other part, item, or  
27 device related to emission control (but not designed for emission control  
28 under the terms of subsection (b)(3)(A)), unless the part, item, or device  
29 is covered by any warranty not mandated by this division.

30 (i) DEALER CERTIFICATION; REMEDIATION OF NONCONFORMITY.—

31 (1) DEALER CERTIFICATION.—On the sale of each new light-duty  
32 motor vehicle by a dealer, the dealer shall furnish to the purchaser a  
33 certificate that the motor vehicle conforms to the applicable regulations  
34 under section 221102 of this title, including notice of the purchaser's  
35 rights under paragraph (2).

36 (2) REMEDIATION OF NONCONFORMITY.—If at any time during the  
37 period for which the warranty applies under subsection (c), a motor ve-  
38 hicle fails to conform to the applicable regulations under section  
39 221102 of this title as determined under subsection (c), the non-  
40 conformity shall be remedied by the manufacturer at the cost of the  
41 manufacturer pursuant to the warranty as provided in subparagraph

1 (B) of subsection (c)(3) (without regard to clause (iii) of that subpara-  
2 graph).

3 (3) TESTING.—Nothing in section 221109(a) of this title shall be  
4 construed to prohibit a State from testing, or requiring testing of, a  
5 motor vehicle after the date of sale of the vehicle to an ultimate pur-  
6 chaser (except that no new motor vehicle manufacturer or dealer may  
7 be required to conduct testing under this paragraph).

8 (j) EFFECT OF DIVISION.—Nothing in this division shall be construed to  
9 provide that any part other than a part described in subsection (a)(1) shall  
10 be required to be warranted under this division for the period of 8 years  
11 or 80,000 miles described in subsection (a)(3)(B).

12 **§ 221108. Information collection**

13 (a) MANUFACTURER'S RESPONSIBILITY.—Every manufacturer of new  
14 motor vehicles or new motor vehicle engines, every manufacturer of new  
15 motor vehicle or engine parts or components, and every other person subject  
16 to the requirements of this chapter or chapter 225 shall—

17 (1) establish and maintain records, perform tests where such testing  
18 is not otherwise reasonably available under this chapter and chapter  
19 225 (including fees for testing), make reports, and provide information  
20 that the Administrator may reasonably require to determine whether  
21 the manufacturer or other person has acted or is acting in compliance  
22 with this chapter and chapter 225 (including regulations thereunder,  
23 or to otherwise carry out this chapter and chapter 225; and

24 (2) on request of an officer or employee duly designated by the Ad-  
25 ministrator, permit the officer or employee at reasonable times to have  
26 access to and copy such records.

27 (b) ENFORCEMENT AUTHORITY.—For the purposes of enforcement of  
28 this section, officers or employees duly designated by the Administrator on  
29 presenting appropriate credentials may—

30 (1) enter, at reasonable times, any establishment of a manufacturer,  
31 or of any person that a manufacturer engages to perform any activity  
32 required by subsection (a), for the purposes of inspecting or observing  
33 any activity conducted pursuant to subsection (a); and

34 (2) inspect records, processes, controls, and facilities used in per-  
35 forming any activity required by subsection (a), by the manufacturer  
36 or by any person that the manufacturer engages to perform any such  
37 activity.

38 (c) AVAILABILITY TO PUBLIC; TRADE SECRETS.—Any records, reports,  
39 or information obtained under this chapter or chapter 225 shall be available  
40 to the public, except that on a showing satisfactory to the Administrator  
41 by any person that records, reports, or information, or a particular portion

1     thereof (other than emission data), to which the Administrator has access  
2     under this section, if made public, would divulge methods or processes enti-  
3     tled to protection as trade secrets of that person, the Administrator shall  
4     consider the record, report, or information or particular portion thereof con-  
5     fidential in accordance with section 1905 of title 18. Any authorized rep-  
6     resentative of the Administrator shall be considered an employee of the  
7     United States for purposes of section 1905 of title 18.

8     (d) EFFECT OF SECTION.—Nothing in this section prohibits the Adminis-  
9     trator or authorized representative of the Administrator from disclosing  
10    records, reports, or information to other officers, employees, or authorized  
11    representatives of the United States concerned with carrying out this divi-  
12    sion or when relevant in any proceeding under this division. Nothing in this  
13    section authorizes the withholding of information by the Administrator or  
14    any officer or employee under the Administrator's control from the duly au-  
15    thorized committees of Congress.

16    **§ 221109. State standards**

17    (a) PROHIBITIONS.—

18       (1) STANDARDS.—No State or any political subdivision thereof shall  
19       adopt or attempt to enforce any standard relating to the control of  
20       emissions from new motor vehicles or new motor vehicle engines subject  
21       to this chapter.

22       (2) APPROVAL.—No State shall require certification, inspection, or  
23       any other approval relating to the control of emissions from any new  
24       motor vehicle or new motor vehicle engine as a condition precedent to  
25       the initial retail sale, titling (if any), or registration of the motor vehi-  
26       cle, motor vehicle engine, or equipment.

27    (b) WAIVER.—

28       (1) IN GENERAL.—The Administrator shall, after notice and oppor-  
29       tunity for public hearing, waive application of this section to any State  
30       that adopted standards (other than crankcase emission standards) for  
31       the control of emissions from new motor vehicles or new motor vehicle  
32       engines prior to March 30, 1966, if the State determines that the State  
33       standards will be, in the aggregate, at least as protective of public  
34       health and welfare as applicable Federal standards.

35       (2) LIMITATION.—No such waiver shall be granted if the Adminis-  
36       trator finds that—

37           (A) the determination of the State is arbitrary and capricious;

38           (B) the State does not need such State standards to meet com-  
39           pelling and extraordinary conditions; or

40           (C) the State standards and accompanying enforcement proce-  
41           dures are not consistent with section 221102(a) of this title.



1           (3) PROTECTIVENESS.—If each State standard is at least as strin-  
2           gent as the comparable applicable Federal standard, the State standard  
3           shall be deemed to be at least as protective of health and welfare as  
4           the Federal standards for purposes of paragraphs (1) and (2).

5           (4) TREATMENT AS COMPLIANCE WITH FEDERAL STANDARDS.—In  
6           the case of any new motor vehicle or new motor vehicle engine to which  
7           State standards apply pursuant to a waiver granted under paragraph  
8           (1), compliance with the State standards shall be treated as compliance  
9           with applicable Federal standards for purposes of this subdivision.

10       (e) CERTIFICATION OF VEHICLE PARTS OR ENGINE PARTS.—

11           (1) IN GENERAL.—Whenever a regulation with respect to any motor  
12           vehicle part or motor vehicle engine part is in effect under section  
13           221107(b)(2) of this title, no State or political subdivision thereof shall  
14           adopt or attempt to enforce any standard or any requirement of certifi-  
15           cation, inspection, or approval that relates to motor vehicle emissions  
16           and is applicable to the same aspect of that part.

17           (2) APPLICABILITY.—Paragraph (1) shall not apply in the case of  
18           a State with respect to which a waiver is in effect under subsection (b).

19       (d) CONTROL, REGULATION, OR RESTRICTIONS ON REGISTERED OR LI-  
20       CENSED MOTOR VEHICLES.—Nothing in this chapter precludes or denies to  
21       any State or political subdivision thereof the right otherwise to control, reg-  
22       ulate, or restrict the use, operation, or movement of registered or licensed  
23       motor vehicles.

24       (e) NONROAD ENGINES OR VEHICLES.—

25           (1) PROHIBITION OF CERTAIN STATE STANDARDS.—

26           (A) IN GENERAL.—No State or any political subdivision thereof  
27           shall adopt or attempt to enforce any standard or other require-  
28           ment relating to the control of emissions from either of the follow-  
29           ing new nonroad engines or nonroad vehicles subject to regulation  
30           under this division:

31               (i) New engines that—

32                   (I) are used in construction equipment or vehicles or  
33                   used in farm equipment or vehicles; and

34                   (II) are smaller than 175 horsepower.

35               (ii) New locomotives or new engines used in locomotives.

36           (B) NO WAIVER.—Subsection (b) shall not apply for purposes  
37           of this paragraph.

38           (2) OTHER NONROAD ENGINES OR VEHICLES.—

39           (A) CALIFORNIA.—In the case of any nonroad vehicles or en-  
40           gines other than those described to in clause (i) or (ii) of para-  
41           graph (1)(A), the Administrator shall, after notice and opportunity

1 for public hearing, authorize California to adopt and enforce  
2 standards and other requirements relating to the control of emis-  
3 sions from such vehicles or engines if California determines that  
4 California standards will be, in the aggregate, at least as protec-  
5 tive of public health and welfare as applicable Federal standards.  
6 No such authorization shall be granted if the Administrator finds  
7 that—

8 (i) the determination of California is arbitrary and capri-  
9 cious;

10 (ii) California does not need such California standards to  
11 meet compelling and extraordinary conditions; or

12 (iii) California standards and accompanying enforcement  
13 procedures are not consistent with this section.

14 (B) OTHER STATES.—Any State other than California that has  
15 plan provisions approved under chapter 215 may adopt and en-  
16 force, after notice to the Administrator, for any period, standards  
17 relating to control of emissions from nonroad vehicles or engines  
18 (other than those described in clause (i) or (ii) of paragraph  
19 (1)(A)) and take such other actions as are described in subpara-  
20 graph (A) of this paragraph respecting such vehicles or engines  
21 if—

22 (i) the standards and implementation and enforcement are  
23 identical, for the period concerned, to the California stand-  
24 ards authorized by the Administrator under subparagraph  
25 (A); and

26 (ii) California and that State adopt the standards at least  
27 2 years before commencement of the period for which the  
28 standards take effect.

29 (3) REGULATIONS.—The Administrator shall issue regulations to im-  
30 plement this subsection.

31 **§ 221110. State grants**

32 (a) IN GENERAL.—The Administrator may make grants to appropriate  
33 State agencies in an amount up to  $\frac{2}{3}$  of the cost of developing and main-  
34 taining effective vehicle emission devices and systems inspection and emis-  
35 sion testing and control programs.

36 (b) LIMITATIONS.—No grant under subsection (a) shall be made—

37 (1) for any part of any State vehicle inspection program that does  
38 not directly relate to the cost of the air pollution control aspects of  
39 such a program;

1 (2) unless the Secretary of Transportation has certified to the Ad-  
2 ministrator that the program is consistent with any highway safety pro-  
3 gram developed pursuant to section 402 of title 23; and

4 (3) unless the program includes provisions designed to ensure that  
5 emission control devices and systems on vehicles in actual use have not  
6 been discontinued or rendered inoperative.

7 (c) REIMBURSEMENT.—Grants may be made under this section by way  
8 of reimbursement in any case in which amounts have been expended by the  
9 State before the date on which any such grant was made.

10 **§ 221111. Regulation of fuels**

11 (a) DEFINITIONS.—In this section:

12 (1) MANUFACTURE.—The term “manufacture” includes importation.

13 (2) MANUFACTURER.—The term “manufacturer” includes an im-  
14 porter.

15 (b) AUTHORITY OF ADMINISTRATOR TO REGULATE.—The Administrator  
16 may by regulation designate any fuel or fuel additive (including any fuel or  
17 fuel additive used exclusively in nonroad engines or nonroad vehicles) and,  
18 after such date or dates as the Administrator may prescribe, no manufac-  
19 turer or processor of any such fuel or additive may sell, offer for sale, or  
20 introduce into commerce that fuel or additive unless the Administrator has  
21 registered the fuel or additive in accordance with subsection (c).

22 (c) REGISTRATION REQUIREMENT.—

23 (1) NOTIFICATION TO THE ADMINISTRATOR.—For the purpose of  
24 registration of fuels and fuel additives, the Administrator shall—

25 (A) require the manufacturer of any fuel to notify the Adminis-  
26 trator of—

27 (i) the commercial identifying name and manufacturer of  
28 any additive contained in the fuel;

29 (ii) the range of concentration of any additive in the fuel;  
30 and

31 (iii) the purpose-in-use of any such additive; and

32 (B) require the manufacturer of any additive to notify the Ad-  
33 ministrator as to the chemical composition of the additive.

34 (2) TESTS; FURNISHING OF INFORMATION.—

35 (A) IN GENERAL.—For the purpose of registration of fuels and  
36 fuel additives, the Administrator shall, on a regular basis, require  
37 the manufacturer of any fuel or fuel additive—

38 (i) to conduct tests to determine potential public health and  
39 environmental effects of the fuel or additive (including car-  
40 cinogenic, teratogenic, or mutagenic effects); and

41 (ii) to furnish—

- 1 (I) the description of any analytical technique that can  
2 be used to detect and measure any additive in the fuel;  
3 (II) the recommended range of concentration of the  
4 additive;  
5 (III) the recommended purpose-in-use of the additive;  
6 and  
7 (IV) such other information as is reasonable and nec-  
8 essary to determine—  
9 (aa) the emissions resulting from the use of the  
10 fuel or additive contained in the fuel;  
11 (bb) the effect of the fuel or additive on the emis-  
12 sion control performance of any vehicle, vehicle en-  
13 gine, nonroad engine, or nonroad vehicle; or  
14 (cc) the extent to which such emissions affect the  
15 public health or welfare.

16 (B) TEST PROCEDURES AND PROTOCOLS; NO CONFIDENTIAL-  
17 ITY.—Tests under subparagraph (A)(i) shall be conducted in con-  
18 formity with test procedures and protocols established by the Ad-  
19 ministrator. The result of such tests shall not be considered con-  
20 fidential.

21 (3) REGISTRATION.—On compliance with this subsection, including  
22 assurances that the Administrator will receive changes in the informa-  
23 tion required, the Administrator shall register the fuel or fuel additive.

24 (d) CONTROL OR PROHIBITION OF FUELS AND FUEL ADDITIVES.—

25 (1) IN GENERAL.—The Administrator may, from time to time on the  
26 basis of information obtained under subsection (c) or other information  
27 available to the Administrator, by regulation, control or prohibit the  
28 manufacture, introduction into commerce, offering for sale, or sale of  
29 any fuel or fuel additive for use in a motor vehicle, motor vehicle en-  
30 gine, or nonroad engine or nonroad vehicle if—

31 (A) in the judgment of the Administrator, any fuel or fuel addi-  
32 tive or any emission product of the fuel or fuel additive causes,  
33 or contributes to, air pollution or water pollution (including any  
34 degradation in the quality of groundwater) that may reasonably be  
35 anticipated to endanger the public health or welfare; or

36 (B) emission products of the fuel or fuel additive will impair to  
37 a significant degree the performance of any emission control device  
38 or system that is in general use, or that the Administrator finds  
39 has been developed to a point where in a reasonable time it would  
40 be in general use were such a regulation to be promulgated.

41 (2) REQUIREMENTS FOR CONTROL OR PROHIBITION.—

1 (A) CAUSATION OF OR CONTRIBUTION TO AIR POLLUTION.—No  
2 fuel, class of fuels, or fuel additive may be controlled or prohibited  
3 by the Administrator under paragraph (1)(A) except after consid-  
4 eration of all relevant medical and scientific evidence available to  
5 the Administrator, including consideration of other technologically  
6 or economically feasible means of achieving emission standards  
7 under section 221102 of this title.

8 (B) IMPAIRMENT OF PERFORMANCE OF EMISSION CONTROL DE-  
9 VICE OR SYSTEM.—

10 (i) IN GENERAL.—No fuel or fuel additive may be con-  
11 trolled or prohibited by the Administrator under paragraph  
12 (1)(B) except after consideration of available scientific and  
13 economic data, including a cost benefit analysis comparing—

14 (I) emission control devices or systems that are or will  
15 be in general use and require the proposed control or  
16 prohibition; with

17 (II) emission control devices or systems that are or  
18 will be in general use and do not require the proposed  
19 control or prohibition.

20 (ii) HEARING; FINDINGS.—On request of a manufacturer of  
21 motor vehicles, motor vehicle engines, fuels, or fuel additives  
22 that is submitted within 10 days of notice of proposed rule-  
23 making, the Administrator shall hold a public hearing and  
24 publish findings with respect to any matter that the Adminis-  
25 trator is required to consider under this subparagraph. Such  
26 findings shall be published at the time of promulgation of  
27 final regulations.

28 (C) OTHER FUELS AND FUEL ADDITIVES.—No fuel or fuel addi-  
29 tive may be prohibited by the Administrator under paragraph (1)  
30 unless the Administrator finds, and publishes the finding, that in  
31 the Administrator's judgment, such a prohibition will not cause  
32 the use of any other fuel or fuel additive that will produce emis-  
33 sions that will endanger the public health or welfare to the same  
34 degree as or a greater degree than the use of the fuel or fuel addi-  
35 tive proposed to be prohibited.

36 (3) EVIDENCE AND DATA.—

37 (A) IN GENERAL.—For the purpose of obtaining evidence and  
38 data to carry out paragraph (2), the Administrator may require  
39 the manufacturer of any motor vehicle or motor vehicle engine to  
40 furnish any information that has been developed concerning the  
41 emissions from motor vehicles resulting from the use of any fuel

1 or fuel additive, or the effect of such use on the performance of  
2 any emission control device or system.

3 (B) SUBPOENAS.—In obtaining information under subpara-  
4 graph (A), section 203102(a) of this title shall be applicable.

5 (4) LIMITATION ON STATE CONTROL OR PROHIBITION.—

6 (A) IN GENERAL.—Except as otherwise provided in subpara-  
7 graph (B) or (C), no State (or political subdivision thereof) may  
8 prescribe or attempt to enforce, for purposes of motor vehicle  
9 emission control, any control or prohibition respecting any char-  
10 acteristic or component of a fuel or fuel additive in a motor vehicle  
11 or motor vehicle engine—

12 (i) if the Administrator has found that no control or prohi-  
13 bition of the characteristic or component of a fuel or fuel ad-  
14 ditive under paragraph (1) is necessary and has published the  
15 finding in the Federal Register; or

16 (ii) if the Administrator has prescribed under paragraph  
17 (1) a control or prohibition applicable to the characteristic or  
18 component of a fuel or fuel additive, unless State prohibition  
19 or control is identical to the prohibition or control prescribed  
20 by the Administrator.

21 (B) STATES WITH WAIVERS.—Any State for which application  
22 of section 221109(a) of this title has at any time been waived  
23 under section 221109 of this title may at any time prescribe and  
24 enforce, for the purpose of motor vehicle emission control, a con-  
25 trol or prohibition respecting any fuel or fuel additive.

26 (C) IMPLEMENTATION PLANS.—

27 (i) IN GENERAL.—A State may prescribe and enforce, for  
28 purposes of motor vehicle emission control, a control or prohi-  
29 bition respecting the use of a fuel or fuel additive in a motor  
30 vehicle or motor vehicle engine if an applicable implementa-  
31 tion plan for the State under section 211110 of this title so  
32 provides. The Administrator may approve such a provision in  
33 an implementation plan, or promulgate an implementation  
34 plan containing such a provision, only if the Administrator  
35 finds that the State control or prohibition is necessary to  
36 achieve the primary or secondary NAAQS that the plan im-  
37 plements. The Administrator may find that a State control or  
38 prohibition is necessary to achieve that standard if no other  
39 measures that would bring about timely attainment exist, or  
40 if other measures exist and are technically possible to imple-  
41 ment, but are unreasonable or impracticable. The Adminis-

1 trator may make a finding of necessity under this subpara-  
2 graph even if the plan for the area does not contain an ap-  
3 proved demonstration of timely attainment.

4 (ii) TEMPORARY WAIVER.—The Administrator may tempo-  
5 rarily waive a control or prohibition respecting the use of a  
6 fuel or fuel additive required or regulated by the Adminis-  
7 trator pursuant to this subsection or subsection (h), (i), (m),  
8 or (n) or prescribed in an applicable implementation plan  
9 under section 211110 of this title approved by the Adminis-  
10 trator under clause (i) if, after consultation with, and concu-  
11 rrence by, the Secretary of Energy, the Administrator deter-  
12 mines that—

13 (I) extreme and unusual fuel or fuel additive supply  
14 circumstances exist in a State or region of the Nation  
15 that prevent the distribution of an adequate supply of  
16 the fuel or fuel additive to consumers;

17 (II) the extreme and unusual fuel and fuel additive  
18 supply circumstances are the result of a natural disaster,  
19 an Act of God, a pipeline or refinery equipment failure,  
20 or another event that could not reasonably have been  
21 foreseen or prevented and not the lack of prudent plan-  
22 ning on the part of the suppliers of the fuel or fuel addi-  
23 tive to the State or region; and

24 (III) it is in the public interest to grant the waiver,  
25 such as when a waiver is necessary to meet projected  
26 temporary shortfalls in the supply of the fuel or fuel ad-  
27 ditive in a State or region of the Nation that cannot  
28 otherwise be compensated for.

29 (iii) ADDITIONAL REQUIREMENTS.—If the Administrator  
30 makes the determinations described in clause (ii), a tem-  
31 porary extreme and unusual fuel and fuel additive supply cir-  
32 cumstances waiver shall be permitted only if—

33 (I) the waiver applies to the smallest geographic area  
34 necessary to address the extreme and unusual fuel and  
35 fuel additive supply circumstances;

36 (II) the waiver is effective for a period of 20 calendar  
37 days or, if the Administrator determines that a shorter  
38 waiver period is adequate, for the shortest practicable  
39 time period necessary to permit the correction of the ex-  
40 treme and unusual fuel and fuel additive supply circum-  
41 stances and to mitigate impact on air quality;

1 (III) the waiver permits a transitional period, the  
2 exact duration of which shall be determined by the Ad-  
3 ministrator (but which shall be for the shortest prac-  
4 ticable period), after the termination of the temporary  
5 waiver to permit wholesalers and retailers to blend down  
6 their wholesale and retail inventory;

7 (IV) the waiver applies to all persons in the motor fuel  
8 distribution system (as defined by the Administrator  
9 through rulemaking); and

10 (V) the Administrator has given public notice to all  
11 parties in the motor fuel distribution system, and local  
12 and State regulators, in the State or region to be covered  
13 by the waiver.

14 (iv) REGULATIONS.—The Administrator shall promulgate  
15 regulations to implement clauses (ii) and (iii).

16 (v) EFFECT OF SUBPARAGRAPH.—Nothing in this subpara-  
17 graph shall—

18 (I) limit or otherwise affect the application of any  
19 other waiver authority of the Administrator pursuant to  
20 this section (including a regulation promulgated pursu-  
21 ant to this section); or

22 (II) subject any State or person to an enforcement ac-  
23 tion, penalties, or liability solely arising from actions  
24 taken pursuant to the issuance of a waiver under this  
25 subparagraph.

26 (vi) LIMITATION.—

27 (I) IN GENERAL.—The Administrator shall have no  
28 authority, when considering a State implementation plan  
29 or a State implementation plan revision, to approve  
30 under this paragraph any fuel included in the plan or re-  
31 vision if the effect of the approval would be to increase  
32 the total number of fuels approved under this paragraph  
33 as of September 1, 2004, in all State implementation  
34 plans.

35 (II) LIST OF APPROVED FUELS.—The Administrator,  
36 in consultation with the Secretary of Energy, shall deter-  
37 mine the total number of fuels approved under this para-  
38 graph as of September 1, 2004, in all State implementa-  
39 tion plans and shall publish a list of such fuels, including  
40 the States and Petroleum Administration for Defense



1 Districts in which the fuels are used, in the Federal Reg-  
2 ister for public review and comment.

3 (III) REMOVAL FROM LIST.—The Administrator shall  
4 remove a fuel from the list published under subclause  
5 (II) if a fuel ceases to be included in a State implemen-  
6 tation plan or if a fuel in a State implementation plan  
7 is identical to a Federal fuel formulation implemented by  
8 the Administrator, but the Administrator shall not re-  
9 duce the total number of fuels authorized under the list  
10 published under subclause (II).

11 (IV) NEW FUELS.—

12 (aa) IN GENERAL.—Subclause (I) shall not limit  
13 the Administrator’s authority to approve a control  
14 or prohibition respecting any new fuel under this  
15 paragraph in a State implementation plan or revi-  
16 sion to a State implementation plan if the new  
17 fuel—

18 (AA) completely replaces a fuel on the list  
19 published under subclause (II); or

20 (BB) does not increase the total number of  
21 fuels on the list published under subclause (II)  
22 as of September 1, 2004.

23 (bb) LOWER NUMBER OF FUELS ON LIST.—If the  
24 total number of fuels on the list published under  
25 subclause (II) at the time of the Administrator’s  
26 consideration of a control or prohibition respecting  
27 a new fuel is lower than the total number of fuels  
28 on such list as of September 1, 2004, the Adminis-  
29 trator may approve a control or prohibition respect-  
30 ing a new fuel under this subclause if the Adminis-  
31 trator, after consultation with the Secretary of En-  
32 ergy, publishes in the Federal Register after notice  
33 and comment a finding that, in the Administrator’s  
34 judgment, the control or prohibition respecting a  
35 new fuel will not cause fuel supply or distribution  
36 interruptions or have a significant adverse impact  
37 on fuel producibility in the affected area or contig-  
38 uous areas.

39 (V) FURTHER LIMITATION.—The Administrator shall  
40 have no authority under this paragraph, when consider-  
41 ing any particular State’s implementation plan or a revi-

1 sion to that State's implementation plan, to approve any  
2 fuel unless that fuel was, as of the date of such consider-  
3 ation, approved in at least 1 State implementation plan  
4 in the applicable Petroleum Administration for Defense  
5 District. However, the Administrator may approve as  
6 part of a State implementation plan or State implemen-  
7 tation plan revision a fuel with a summertime Reid vapor  
8 pressure of 7.0 per square inch. In no event shall such  
9 approval by the Administrator cause an increase in the  
10 total number of fuels on the list published under sub-  
11 clause (II).

12 (VI) EFFECT OF CLAUSE.—Nothing in this clause  
13 shall be construed to have any effect regarding any avail-  
14 able authority of States to require the use of any fuel ad-  
15 ditive registered in accordance with subsection (c).

16 (e) TESTING OF FUELS AND FUEL ADDITIVES.—

17 (1) REGULATIONS.—After notice and opportunity for a public hear-  
18 ing, the Administrator shall promulgate regulations that implement the  
19 authority under clauses (i) and (ii) of subsection (c)(2)(A) with respect  
20 to each fuel or fuel additive that is registered on the date of promulga-  
21 tion of the regulations and with respect to each fuel or fuel additive  
22 for which an application for registration is filed thereafter.

23 (2) PROVISION OF INFORMATION.—Regulations under subsection (c)  
24 to carry out this subsection shall require that the requisite information  
25 be provided to the Administrator by each manufacturer—

26 (A) prior to registration, in the case of any fuel or fuel additive  
27 that is not registered on the date of promulgation of such regula-  
28 tions; or

29 (B) not later than 3 years after the date of promulgation of  
30 such regulations, in the case of any fuel or fuel additive that is  
31 registered on that date.

32 (3) EXEMPTIONS; COST SHARING.—In promulgating the regulations,  
33 the Administrator may—

34 (A) exempt any small business (as defined in the regulations)  
35 from, or defer or modify the requirements of, the regulations with  
36 respect to any small business;

37 (B) provide for cost sharing with respect to the testing of any  
38 fuel or fuel additive that is manufactured or processed by 2 or  
39 more persons or otherwise provide for shared responsibility to  
40 meet the requirements of this section without duplication; or

1 (C) exempt any person from the regulations with respect to a  
2 particular fuel or fuel additive on a finding that any additional  
3 testing of that fuel or fuel additive would be duplicative of ade-  
4 quate existing testing.

5 (f) NEW FUELS AND FUEL ADDITIVES.—

6 (1) FUELS AND FUEL ADDITIVES.—

7 (A) FUELS AND FUEL ADDITIVES FOR GENERAL USE IN LIGHT-  
8 DUTY MOTOR VEHICLES MANUFACTURED AFTER MODEL YEAR  
9 1974.—It shall be unlawful for any manufacturer of any fuel or  
10 fuel additive to first introduce into commerce, or to increase the  
11 concentration in use of, any fuel or fuel additive for general use  
12 in light-duty motor vehicles manufactured after model year 1974  
13 that is not substantially similar to any fuel or fuel additive utilized  
14 in the certification of any model year 1975, or subsequent model  
15 year, vehicle or engine under section 221106 of this title.

16 (B) FUELS AND FUEL ADDITIVES FOR USE BY ANY PERSON IN  
17 MOTOR VEHICLES MANUFACTURED AFTER MODEL YEAR 1974.—It  
18 shall be unlawful for any manufacturer of any fuel or fuel additive  
19 to first introduce into commerce, or to increase the concentration  
20 in use of, any fuel or fuel additive for use by any person in motor  
21 vehicles manufactured after model year 1974 that is not substan-  
22 tially similar to any fuel or fuel additive utilized in the certifi-  
23 cation of any model year 1975, or subsequent model year, vehicle  
24 or engine under section 221106 of this title.

25 (2) GASOLINE CONTAINING MANGANESE.—It shall be unlawful for  
26 any manufacturer of any fuel to introduce into commerce any gasoline  
27 that contains a concentration of manganese in excess of .0625 grams  
28 per gallon of fuel, except as otherwise provided pursuant to a waiver  
29 under paragraph (3).

30 (3) WAIVER.—The Administrator, on application of any manufac-  
31 turer of any fuel or fuel additive, may waive the prohibitions estab-  
32 lished under paragraph (1) or the limitation specified in paragraph (2)  
33 if the Administrator determines that the applicant has established that  
34 the fuel or fuel additive or a specified concentration thereof, and the  
35 emission products of the fuel or additive or specified concentration  
36 thereof, will not cause or contribute to a failure of any emission control  
37 device or system (over the useful life of any motor vehicle, motor vehi-  
38 cle engine, nonroad vehicle, or nonroad engine in which the device or  
39 system is used) to achieve compliance by the motor vehicle, motor vehi-  
40 cle engine, nonroad vehicle, or nonroad engine with the emission stand-  
41 ards with respect to which it has been certified pursuant to sections

1 221106 and 221113(a) of this title. The Administrator shall take final  
2 action to grant or deny an application under this paragraph, after pub-  
3 lic notice and comment, within 270 days after receipt of the applica-  
4 tion.

5 (4) NO STAY.—No action of the Administrator under this section  
6 may be stayed by any court pending judicial review of the action.

7 (g) MISFUELING.—

8 (1) LEADED GASOLINE.—No person shall introduce, or cause or  
9 allow the introduction of, leaded gasoline into any motor vehicle—

10 (A) that is labeled “unleaded gasoline only”;

11 (B) that is equipped with a gasoline tank filler inlet designed  
12 for the introduction of unleaded gasoline;

13 (C) that is a 1990 or later model year motor vehicle; or

14 (D) that the person knows or should know is a vehicle designed  
15 solely for the use of unleaded gasoline.

16 (2) DIESEL FUEL CONTAINING SULFUR.—No person shall introduce  
17 or cause or allow the introduction into any motor vehicle of diesel fuel  
18 that the person knows or should know contains a concentration of sul-  
19 fur in excess of 0.05 percent (by weight) or that fails to meet a cetane  
20 index minimum of 40 or such equivalent alternative aromatic level as  
21 the Administrator may prescribe under subsection (i)(2).

22 (h) REID VAPOR PRESSURE REQUIREMENTS.—

23 (1) PROHIBITION.—The Administrator shall promulgate regulations  
24 making it unlawful for any person during the high ozone season (as  
25 defined by the Administrator) to sell, offer for sale, dispense, supply,  
26 offer for supply, transport, or introduce into commerce gasoline with  
27 a Reid vapor pressure in excess of 9.0 pounds per square inch. The  
28 regulations shall establish more stringent Reid vapor pressure stand-  
29 ards in a nonattainment area as the Administrator finds necessary to  
30 generally achieve comparable evaporative emissions (on a per-vehicle  
31 basis) in nonattainment areas, taking into consideration the enforce-  
32 ability of the standards, the need of an area for emission control, and  
33 economic factors.

34 (2) ATTAINMENT AREAS.—

35 (A) IN GENERAL.—The regulations under this subsection shall  
36 not make it unlawful for any person to sell, offer for supply, trans-  
37 port, or introduce into commerce gasoline with a Reid vapor pres-  
38 sure of 9.0 pounds per square inch or lower in any area designated  
39 under section 211107 of this title as an attainment area.

40 (B) FORMER OZONE NONATTAINMENT AREAS REDESIGNATED  
41 AS AN ATTAINMENT AREA.—Notwithstanding subparagraph (A),

1 the Administrator may impose a Reid vapor pressure requirement  
2 lower than 9.0 pounds per square inch in any area, formerly an  
3 ozone nonattainment area, that has been redesignated as an at-  
4 tainment area.

5 (3) ENFORCEMENT.—The regulations under this subsection shall in-  
6 clude such provisions as the Administrator determines are necessary to  
7 implement and enforce the requirements of this subsection.

8 (4) ETHANOL WAIVER.—

9 (A) IN GENERAL.—Subject to subparagraph (B), for fuel blends  
10 containing gasoline and 10 percent denatured anhydrous ethanol,  
11 the Reid vapor pressure limitation under this subsection shall be  
12 1 pound per square inch greater than the applicable Reid vapor  
13 pressure limitations established under paragraph (1).

14 (B) DISTRIBUTORS, BLENDEES, MARKETERS, RESELLERS, CAR-  
15 RRIERS, RETAILERS, AND WHOLESALE PURCHASER-CONSUMERS  
16 DEEMED TO BE IN FULL COMPLIANCE.—A distributor, blender,  
17 marketer, reseller, carrier, retailer, or wholesale purchaser-con-  
18 sumer shall be deemed to be in full compliance with this sub-  
19 section (including the regulations promulgated thereunder) if it  
20 can demonstrate (by showing receipt of a certification or other evi-  
21 dence acceptable to the Administrator) that—

22 (i) the gasoline portion of the blend complies with the Reid  
23 vapor pressure limitations promulgated pursuant to this sub-  
24 section;

25 (ii) the ethanol portion of the blend does not exceed its  
26 waiver condition under subsection (f)(5); and

27 (iii) no additional alcohol or other additive has been added  
28 to increase the Reid vapor pressure of the ethanol portion of  
29 the blend.

30 (5) EXCLUSION FROM ETHANOL WAIVER.—

31 (A) PROMULGATION OF REGULATIONS.—On notification, accom-  
32 panied by supporting documentation, from the Governor of a State  
33 that the Reid vapor pressure limitation established by paragraph  
34 (4) will increase emissions that contribute to air pollution in any  
35 area in the State, the Administrator shall, by regulation, apply, in  
36 lieu of the Reid vapor pressure limitation established by paragraph  
37 (4), the Reid vapor pressure limitation established by paragraph  
38 (1) to all fuel blends containing gasoline and 10 percent denatured  
39 anhydrous ethanol that are sold, offered for sale, dispensed, sup-  
40 plied, offered for supply, transported, or introduced into commerce  
41 in the area during the high ozone season.

1 (B) DEADLINE FOR PROMULGATION.—The Administrator shall  
2 promulgate regulations under subparagraph (A) not later than 90  
3 days after the date of receipt of a notification from a Governor  
4 under that subparagraph.

5 (C) EFFECTIVE DATE.—

6 (i) IN GENERAL.—With respect to an area in a State for  
7 which the Governor submits a notification under subpara-  
8 graph (A), the regulations under that subparagraph shall  
9 take effect on the later of—

10 (I) the 1st day of the 1st high ozone season for the  
11 area that begins after the date of receipt of the notifica-  
12 tion; or

13 (II) 1 year after the date of receipt of the notification.

14 (ii) EXTENSION OF EFFECTIVE DATE BASED ON DETER-  
15 MINATION OF INSUFFICIENT SUPPLY.—

16 (I) IN GENERAL.—If, after receipt of a notification  
17 with respect to an area from a Governor of a State  
18 under subparagraph (A), the Administrator determines,  
19 on the Administrator's own motion or on petition of any  
20 person and after consultation with the Secretary of En-  
21 ergy, that the promulgation of regulations described in  
22 subparagraph (A) would result in an insufficient supply  
23 of gasoline in the State, the Administrator, by regula-  
24 tion—

25 (aa) shall extend the effective date of the regula-  
26 tions under clause (i) with respect to the area for  
27 not more than 1 year; and

28 (bb) may renew the extension under item (aa) for  
29 2 additional periods, neither of which shall exceed 1  
30 year.

31 (II) DEADLINE FOR ACTION ON PETITIONS.—The Ad-  
32 ministrator shall act on any petition submitted under  
33 subclause (I) not later than 180 days after the date of  
34 receipt of the petition.

35 (6) AREAS COVERED.—This subsection shall apply only to the 48  
36 contiguous States and the District of Columbia.

37 (i) SULFUR CONTENT REQUIREMENTS FOR DIESEL FUEL.—

38 (1) PROHIBITION.—No person shall manufacture, sell, supply, offer  
39 for sale or supply, dispense, transport, or introduce into commerce  
40 motor vehicle diesel fuel that contains a concentration of sulfur in ex-

1           cess of 0.05 percent (by weight) or that fails to meet a cetane index  
2           minimum of 40.

3           (2) REGULATIONS.—The Administrator shall promulgate regulations  
4           to implement and enforce the requirements of paragraph (1). The Ad-  
5           ministrators may require manufacturers and importers of diesel fuel not  
6           intended for use in motor vehicles to dye the diesel fuel in a particular  
7           manner to distinguish the non-motor vehicle diesel fuel from motor ve-  
8           hicle diesel fuel. The Administrator may establish an equivalent alter-  
9           native aromatic level to the cetane index specification in paragraph (1).

10          (3) SULFUR CONTENT AND CETANE INDEX MINIMUM.—The sulfur  
11          content and cetane index minimum of fuel required to be used in the  
12          certification of heavy-duty diesel vehicles and engines shall comply with  
13          the regulations promulgated under paragraph (2).

14          (4) EXEMPTION.—Alaska and Hawaii may be exempted from the re-  
15          quirements of this subsection in the same manner as is provided in sec-  
16          tion 209115 of this title. The Administrator shall take final action on  
17          any petition filed under section 209115 of this title or this paragraph  
18          for an exemption from the requirements of this subsection within 12  
19          months after the date of the petition.

20          (j) LEAD SUBSTITUTE GASOLINE ADDITIVES.—

21           (1) REGISTRATION.—Any person proposing to register any gasoline  
22           additive under subsection (b) or to use any previously registered addi-  
23           tive as a lead substitute may also elect to register the additive as a  
24           lead substitute gasoline additive for reducing valve seat wear by provid-  
25           ing the Administrator with such relevant information regarding product  
26           identity and composition as the Administrator considers necessary for  
27           carrying out the responsibilities of paragraph (2) (in addition to other  
28           information that may be required under subsection (c)).

29           (2) TESTING.—

30           (A) TEST PROCEDURE.—In addition to the other testing which  
31           may be required under subsection (c), in the case of the lead sub-  
32           stitute gasoline additives described in paragraph (1), the Adminis-  
33           trator shall develop and publish a test procedure to determine an  
34           additive's effectiveness in reducing valve seat wear and an addi-  
35           tive's tendencies to produce engine deposits and other adverse side  
36           effects. The test procedure shall be developed in cooperation with  
37           the Secretary of Agriculture and with the input of additive manu-  
38           facturers, engine and engine components manufacturers, and other  
39           interested persons.

40           (B) TESTING.—The Administrator shall enter into arrange-  
41           ments with an independent laboratory to conduct tests of each ad-

1           ditive using the test procedures developed and published pursuant  
 2           to subparagraph (A). The Administrator shall publish the results  
 3           of the tests by company and additive name in the Federal Register  
 4           with, for comparison purposes, the results of applying the same  
 5           test procedures to gasoline containing 0.1 gram of lead per gallon  
 6           in lieu of the lead substitute gasoline additive. The Administrator  
 7           shall not rank or otherwise rate the lead substitute additives. Ad-  
 8           ditives shall be tested within 6 months after the lead substitute  
 9           additives are identified to the Administrator.

10           (3) USER FEE.—The Administrator may impose a user fee to recover  
 11           the costs of testing of any fuel additive under this subsection. The fee  
 12           shall be paid by the person proposing to register the fuel additive. The  
 13           fee shall not exceed \$20,000 for a single fuel additive.

14           (4) SPECIAL FUND FOR LICENSING AND OTHER SERVICES.—Any fees  
 15           collected under this subsection shall be deposited in the Treasury in a  
 16           special fund for licensing and other services, which thereafter shall be  
 17           available for appropriation, to remain available until expended, to carry  
 18           out EPA’s activities for which the fees were collected.

19           (k) REFORMULATED GASOLINE FOR CONVENTIONAL VEHICLES.—

20           (1) DEFINITIONS.—In this subsection:

21           (A) BASELINE GASOLINE.—

22           (i) SUMMERTIME.—The term “baseline gasoline”, with re-  
 23           spect to gasoline sold during the high ozone period (as de-  
 24           fined by the Administrator), means a gasoline that meets the  
 25           following specifications:

**BASELINE GASOLINE FUEL PROPERTIES**

API Gravity .....	57.4
Sulfur, ppm .....	339
Benzene, % .....	1.53
RVP, psi .....	8.7
Octane, R+M/2 .....	87.3
IBP, F .....	91
10%, F .....	128
50%, F .....	218
90%, F .....	330
End Point, F .....	415
Aromatics, % .....	32.0
Olefins, % .....	9.2
Saturates, % .....	58.8

26           (ii) WINTERTIME.—The Administrator shall establish the  
 27           specifications of baseline gasoline for gasoline sold at times  
 28           other than the high ozone period (as defined by the Adminis-  
 29           trator). Those specifications shall be the specifications of  
 30           1990 industry average gasoline sold during that period.

31           (B) BASELINE VEHICLES.—The term “baseline vehicles” means  
 32           representative model year 1990 vehicles.



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1 (C) CONVENTIONAL GASOLINE.—The term “conventional gaso-  
2 line” means any gasoline that does not meet specifications set by  
3 a certification under this subsection.

4 (D) COVERED AREA.—The term “covered area” means—  
5 (i) 1 of the 9 ozone nonattainment areas having a 1980  
6 population in excess of 250,000 and having the highest ozone  
7 design value during the period 1987 to 1989; and  
8 (ii) effective 1 year after the reclassification of any ozone  
9 nonattainment area as a severe ozone nonattainment area  
10 under section 215202(b) of this title, the severe area.

11 (E) REFORMULATED GASOLINE.—The term “reformulated gaso-  
12 line” means any gasoline that is certified by the Administrator  
13 under this section as complying with this subsection.

14 (F) TOXIC AIR POLLUTANTS.—The term “toxic air pollutants”  
15 means the aggregate emissions of the following:

Benzene  
1,3 Butadiene  
Polycyclic organic matter (POM)  
Acetaldehyde  
Formaldehyde.

16 (2) EPA REGULATIONS.—

17 (A) IN GENERAL.—The Administrator shall promulgate regula-  
18 tions establishing requirements for reformulated gasoline to be  
19 used in gasoline-fueled vehicles in specified nonattainment areas.  
20 The regulations shall require the greatest reduction in emissions  
21 of ozone-forming volatile organic compounds (during the high  
22 ozone season) and emissions of toxic air pollutants (during the en-  
23 tire year) achievable through the reformulation of conventional  
24 gasoline, taking into consideration—

25 (i) the cost of achieving the emission reductions; and  
26 (ii) any air-quality related and non-air-quality related  
27 health and environmental impacts and energy requirements.

28 (B) MAINTENANCE OF TOXIC AIR POLLUTANT EMISSIONS RE-  
29 Ductions FROM REFORMULATED GASOLINE.—The Administrator  
30 shall promulgate regulations to control hazardous air pollutants  
31 from motor vehicles and motor vehicle fuels, as provided for in sec-  
32 tion 80.1045 of title 40, Code of Federal Regulations (as in effect  
33 on August 8, 2005), and as authorized under section 221102(k)  
34 of this title.

35 (3) GENERAL REQUIREMENTS.—

36 (A) IN GENERAL.—The regulations under paragraph (2) shall  
37 require that reformulated gasoline comply with paragraph (4) and

1 with each of the requirements stated in this paragraph (subject to  
2 paragraph (8)).

3 (B) NITROGEN OXIDE EMISSIONS.—

4 (i) IN GENERAL.—The emissions of nitrogen oxides from  
5 baseline vehicles when using the reformulated gasoline shall  
6 be not greater than the level of such emissions from such ve-  
7 hicles when using baseline gasoline.

8 (ii) TECHNICAL INFEASIBILITY.—If the Administrator de-  
9 termines that compliance with the limitation on emissions of  
10 nitrogen oxides under clause (i) is technically infeasible, con-  
11 sidering the other requirements applicable under this sub-  
12 section to reformulated gasoline, the Administrator may, as  
13 appropriate to ensure compliance with this subparagraph, ad-  
14 just (or waive entirely), any other requirements of this para-  
15 graph or any requirements applicable under paragraph  
16 (4)(B).

17 (C) BENZENE CONTENT.—The benzene content of the reformu-  
18 lated gasoline shall not exceed 1.0 percent by volume.

19 (D) HEAVY METALS.—

20 (i) IN GENERAL.—The reformulated gasoline shall have no  
21 heavy metals, including lead or manganese.

22 (ii) WAIVER.—The Administrator may waive the prohibi-  
23 tion contained in clause (i) for a heavy metal (other than  
24 lead) if the Administrator determines that addition of the  
25 heavy metal to the reformulated gasoline will not increase, on  
26 an aggregate mass or cancer-risk basis, toxic air pollutant  
27 emissions from motor vehicles.

28 (4) MORE STRINGENT OF FORMULA OR PERFORMANCE STAND-  
29 ARDS.—

30 (A) IN GENERAL.—The regulations under paragraph (2) shall  
31 require compliance with the more stringent of the requirements set  
32 forth in subparagraph (B) or the requirements of subparagraph  
33 (C). For purposes of determining the more stringent provision,  
34 subclauses (I) and (II) of subparagraph (C)(i) shall be considered  
35 independently.

36 (B) FORMULA.—

37 (i) BENZENE.—The benzene content of the reformulated  
38 gasoline shall not exceed 1.0 percent by volume.

39 (ii) AROMATICS.—The aromatic hydrocarbon content of the  
40 reformulated gasoline shall not exceed 25 percent by volume.

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1 (iii) LEAD.—The reformulated gasoline shall have no lead  
2 content.

3 (iv) DETERGENTS.—The reformulated gasoline shall con-  
4 tain additives to prevent the accumulation of deposits in en-  
5 gines or vehicle fuel supply systems.

6 (C) PERFORMANCE STANDARD.—

7 (i) IN GENERAL.—

8 (I) VOLATILE ORGANIC COMPOUND EMISSIONS.—

9 (aa) IN GENERAL.—During the high ozone season  
10 (as defined by the Administrator), the aggregate  
11 emissions of ozone-forming volatile organic com-  
12 pounds from baseline vehicles when using the refor-  
13 mulated gasoline shall be 25 percent below the ag-  
14 gregate emissions of ozone-forming volatile organic  
15 compounds from baseline vehicles when using base-  
16 line gasoline.

17 (bb) ADJUSTMENT.—The Administrator may ad-  
18 just the 25 percent requirement under item (aa) to  
19 provide for a lesser or greater reduction based on  
20 technological feasibility, considering the cost of  
21 achieving the reductions in emissions of volatile or-  
22 ganic compounds. No such adjustment shall provide  
23 for less than a 20 percent reduction below the ag-  
24 gregate emissions of volatile organic compounds  
25 from baseline vehicles when using baseline gasoline.

26 (cc) MASS BASIS.—The reductions required under  
27 this subclause shall be on a mass basis.

28 (II) TOXIC AIR POLLUTANTS.—

29 (aa) IN GENERAL.—During the entire year, the  
30 aggregate emissions of toxic air pollutants from  
31 baseline vehicles when using the reformulated gaso-  
32 line shall be 25 percent below the aggregate emis-  
33 sions of toxic air pollutants from baseline vehicles  
34 when using baseline gasoline.

35 (bb) ADJUSTMENT.—The Administrator may ad-  
36 just the 25 percent requirement under item (aa) to  
37 provide for a lesser or greater reduction based on  
38 technological feasibility, considering the cost of  
39 achieving the reductions in toxic air pollutants. No  
40 such adjustment shall provide for less than a 20  
41 percent reduction below the aggregate emissions of

1 toxic air pollutants from baseline vehicles when  
2 using baseline gasoline.

3 (cc) MASS BASIS.—The reductions required under  
4 this subclause shall be on a mass basis.

5 (ii) TREATMENT OF REDUCTION GREATER THAN A SPE-  
6 CIFIC PERCENTAGE REDUCTION.—Any reduction greater than  
7 a specific percentage reduction required under this subpara-  
8 graph shall be treated as satisfying that percentage reduction  
9 requirement.

10 (5) CERTIFICATION PROCEDURES.—

11 (A) REGULATIONS.—The regulations under this subsection shall  
12 include procedures under which the Administrator shall certify re-  
13 formulated gasoline as complying with the requirements estab-  
14 lished pursuant to this subsection. Under the regulations, the Ad-  
15 ministrator shall establish procedures for any person to petition  
16 the Administrator to certify a fuel formulation or slate of fuel for-  
17 mulations. The procedures shall require that the Administrator  
18 shall approve or deny a petition within 180 days after receipt. If  
19 the Administrator fails to act within the 180-day period, the fuel  
20 shall be deemed to be certified until the Administrator completes  
21 action on the petition.

22 (B) CERTIFICATION; EQUIVALENCY.—The Administrator shall  
23 certify a fuel formulation or slate of fuel formulations as comply-  
24 ing with this subsection if the fuel or fuels—

25 (i) comply with the requirements of paragraph (3); and

26 (ii) achieve equivalent or greater reductions in emissions of  
27 ozone-forming volatile organic compounds and emissions of  
28 toxic air pollutants than are achieved by a reformulated gaso-  
29 line meeting the applicable requirements of paragraph (4).

30 (C) DETERMINATION OF EMISSIONS LEVEL.—The Adminis-  
31 trator shall determine the level of emissions of ozone-forming vola-  
32 tile organic compounds and emissions of toxic air pollutants emit-  
33 ted by baseline vehicles when operating on baseline gasoline. For  
34 purposes of this subsection, the Administrator shall, by regulation,  
35 determine appropriate measures of, and methodology for, ascer-  
36 taining the emissions of air pollutants (including calculations,  
37 equipment, and testing tolerances).

38 (6) PROHIBITIONS.—

39 (A) SALE OR DISPENSING.—Each of the following shall be a vio-  
40 lation of this subsection:

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1 (i) The sale or dispensing by any person of conventional  
2 gasoline to ultimate consumers in any covered area.

3 (ii) The sale or dispensing by any refiner, blender, im-  
4 porter, or marketer of conventional gasoline for resale in any  
5 covered area without—

6 (I) segregating the conventional gasoline from refor-  
7 mulated gasoline; and

8 (II) clearly marking the conventional gasoline as “con-  
9 ventional gasoline, not for sale to ultimate consumer in  
10 a covered area”.

11 (B) LABELING, REPRESENTING, OR WHOLESALING CONVEN-  
12 TIONAL GASOLINE AS REFORMULATED GASOLINE.—Any refiner,  
13 blender, importer or marketer that purchases properly segregated  
14 and marked conventional gasoline, and thereafter labels, rep-  
15 represents, or wholesales conventional gasoline as reformulated gaso-  
16 line shall be in violation of this subsection.

17 (C) SAMPLING, TESTING, AND RECORDKEEPING REQUIRE-  
18 MENTS.—The Administrator may impose sampling, testing, and  
19 recordkeeping requirements on any refiner, blender, importer, or  
20 marketer to prevent violations of this section.

21 (7) OPT-IN AREAS.—

22 (A) CLASSIFIED AREAS.—

23 (i) IN GENERAL.—On the application of the Governor of a  
24 State, the Administrator shall apply the prohibitions set forth  
25 in paragraph (6) in any area in the State classified under  
26 subchapter II of chapter 215 as a marginal area, moderate  
27 area, serious area, or severe area (without regard to whether  
28 or not the 1980 population of the area exceeds 250,000). In  
29 any such case, the Administrator shall establish an effective  
30 date for the prohibitions as the Administrator considers ap-  
31 propriate not later than 1 year after the application is re-  
32 ceived. The Administrator shall publish the application in the  
33 Federal Register on receipt.

34 (ii) EFFECT OF INSUFFICIENT DOMESTIC CAPACITY TO  
35 PRODUCE REFORMULATED GASOLINE.—

36 (I) IN GENERAL.—If the Administrator determines, on  
37 the Administrator’s own motion or on petition of any  
38 person, after consultation with the Secretary of Energy,  
39 that there is insufficient domestic capacity to produce  
40 gasoline certified under this subsection, the Adminis-  
41 trator, by regulation—

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1 (aa) shall extend the effective date of the prohibi-  
2 tions in marginal areas, moderate areas, serious  
3 areas, or severe areas described in clause (i) for 1  
4 additional year, and

5 (bb) may renew such an extension for 2 addi-  
6 tional one-year periods.

7 (II) PRIORITY.— The Administrator shall issue exten-  
8 sions under subclause (I) for areas with a lower ozone  
9 classification before issuing any such extension for areas  
10 with a higher classification.

11 (iii) ACTION ON PETITION.—The Administrator shall act on  
12 any petition submitted under this subparagraph within 6  
13 months after receipt of the petition.

14 (B) OZONE TRANSPORT REGION.—

15 (i) APPLICATION OF PROHIBITION.—

16 (I) IN GENERAL.—On application of the Governor of  
17 a State in the ozone transport region established by sec-  
18 tion 215205(a) of this title, the Administrator, not later  
19 than 180 days after the date of receipt of the applica-  
20 tion, shall apply the prohibitions specified in paragraph  
21 (6) to any area in the State (other than an area classi-  
22 fied as a marginal ozone nonattainment area, moderate  
23 ozone nonattainment area, serious ozone nonattainment  
24 area, or severe ozone nonattainment area under sub-  
25 chapter II of chapter 215) unless the Administrator de-  
26 termines under clause (iii) that there is insufficient ca-  
27 pacity to supply reformulated gasoline.

28 (II) PUBLICATION OF APPLICATION.—As soon as prac-  
29 ticable after the date of receipt of an application under  
30 subclause (I), the Administrator shall publish the appli-  
31 cation in the Federal Register.

32 (ii) PERIOD OF APPLICABILITY.—Under clause (i), the pro-  
33 hibitions specified in paragraph (6) shall apply in a State—

34 (I) commencing as soon as practicable but not later  
35 than 2 years after the date of approval by the Adminis-  
36 trator of the application of the Governor of the State;  
37 and

38 (II) ending not earlier than 4 years after the com-  
39 mencement date determined under subclause (I).

40 (iii) EXTENSION OF COMMENCEMENT DATE BASED ON IN-  
41 SUFFICIENT CAPACITY.—

1 (I) IN GENERAL.—If, after receipt of an application  
2 from a Governor of a State under clause (i), the Admin-  
3 istrator determines, on the Administrator’s own motion  
4 or on petition of any person, after consultation with the  
5 Secretary of Energy, that there is insufficient capacity to  
6 supply reformulated gasoline, the Administrator, by reg-  
7 ulation—

8 (aa) shall extend the commencement date with re-  
9 spect to the State under clause (ii)(I) for not more  
10 than 1 year; and

11 (bb) may renew the extension under item (aa) for  
12 2 additional periods, each of which shall not exceed  
13 1 year.

14 (II) DEADLINE FOR ACTION ON PETITIONS.—The Ad-  
15 istrator shall act on any petition submitted under  
16 subclause (I) not later than 180 days after the date of  
17 receipt of the petition.

18 (8) CREDITS.—

19 (A) IN GENERAL.—The regulations promulgated under this sub-  
20 section shall provide for the granting of an appropriate amount of  
21 credits to a person that refines, blends, or imports and certifies  
22 a gasoline or slate of gasoline that—

23 (i) has an aromatic hydrocarbon content (by volume) that  
24 is less than the maximum aromatic hydrocarbon content re-  
25 quired to comply with paragraph (4); or

26 (ii) has a benzene content (by volume) that is less than the  
27 maximum benzene content specified in paragraph (3).

28 (B) USE.—The regulations described in subparagraph (A) shall  
29 provide that a person that is granted credits may use the credits,  
30 or transfer all or a portion of the credits to another person for  
31 use within the same nonattainment area, for the purpose of com-  
32 plying with this subsection.

33 (C) ENFORCEMENT.—The regulations promulgated under sub-  
34 paragraphs (A) and (B) shall ensure the enforcement of the re-  
35 quirements for the issuance, application, and transfer of credits.  
36 The regulations shall prohibit the granting or transfer of credits  
37 for use with respect to any gasoline in a nonattainment area, to  
38 the extent that the use of the credits would result in—

39 (i) an average gasoline aromatic hydrocarbon content (by  
40 volume) for the nonattainment area (taking into account all  
41 gasoline sold for use in conventional gasoline-fueled vehicles

1 in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in  
2 the absence of using any such credits; or  
3

4 (ii) an average benzene content (by volume) for the non-  
5 attainment area (taking into account all gasoline sold for use  
6 in conventional gasoline-fueled vehicles in the nonattainment  
7 area) higher than the average benzene content (by volume)  
8 that would occur in the absence of using any such credits.

9 (9) ANTIDUMPING REGULATIONS.—

10 (A) IN GENERAL.—The Administrator shall promulgate regula-  
11 tions applicable to each refiner, blender, or importer of gasoline  
12 ensuring that gasoline sold or introduced into commerce by the re-  
13 finer, blender, or importer (other than reformulated gasoline sub-  
14 ject to the requirements of paragraph (2)) does not result in average  
15 per gallon emissions (measured on a mass basis) of—

16 (i) volatile organic compounds;

17 (ii) nitrogen oxides;

18 (iii) carbon monoxide; and

19 (iv) toxic air pollutants;

20 in excess of emissions of those pollutants attributable to gasoline  
21 sold or introduced into commerce in calendar year 1990 by that  
22 refiner, blender, or importer.

23 (B) ADJUSTMENTS.—In evaluating compliance with the require-  
24 ments of subparagraph (A), the Administrator shall make appropriate  
25 adjustments to ensure that no credit is provided for improvement  
26 in motor vehicle emission control in motor vehicles sold  
27 after calendar year 1990.

28 (C) COMPLIANCE DETERMINED FOR EACH POLLUTANT INDE-  
29 PENDENTLY.—In determining whether there is an increase in  
30 emissions in violation of the prohibition contained in subparagraph  
31 (A), the Administrator shall consider an increase in each air pol-  
32 lutant described in clauses (i) through (iv) of subparagraph (A)  
33 as a separate violation of the prohibition, except that the Adminis-  
34 trator shall promulgate regulations to provide that any increase in  
35 emissions of nitrogen oxides resulting from adding oxygenates to  
36 gasoline may be offset by an equivalent or greater reduction (on  
37 a mass basis) in emissions of volatile organic compounds, carbon  
38 monoxide, or toxic air pollutants, or any combination of the fore-  
39 going.

40 (D) COMPLIANCE PERIOD.—The Administrator shall promulgate  
41 an appropriate compliance period or appropriate compliance peri-



1           ods to be used for assessing compliance with the prohibition con-  
2           tained in subparagraph (A).

3           (E) BASELINE FOR DETERMINING COMPLIANCE.—If the Admin-  
4           istrator determines that no adequate and reliable data exist re-  
5           garding the composition of gasoline sold or introduced into com-  
6           merce by a refiner, blender, or importer in calendar year 1990, for  
7           that refiner, blender, or importer, baseline gasoline shall be sub-  
8           stituted for 1990 gasoline in determining compliance with sub-  
9           paragraph (A).

10          (10) EMISSIONS FROM ENTIRE VEHICLE.—In applying the require-  
11          ments of this subsection, the Administrator shall take into account  
12          emissions from the entire motor vehicle, including evaporative, running,  
13          refueling, and exhaust emissions.

14          (l) DETERGENTS.—No person may sell or dispense to an ultimate con-  
15          sumer in the United States, and no refiner or marketer may directly or indi-  
16          rectly sell or dispense to persons that sell or dispense to ultimate consumers  
17          in the United States, any gasoline that does not contain additives to prevent  
18          the accumulation of deposits in engines or fuel supply systems. The Admin-  
19          istrator shall promulgate a regulation establishing specifications for such ad-  
20          ditives.

21          (m) OXYGENATED FUELS.—

22          (1) PLAN REVISIONS FOR CARBON MONOXIDE NONATTAINMENT  
23          AREAS.—

24                (A) STATES IN WHICH THERE IS LOCATED ALL OR PART OF AN  
25                AREA THAT IS DESIGNATED AS A NONATTAINMENT AREA FOR CAR-  
26                BON MONOXIDE AND THAT HAS A CARBON MONOXIDE DESIGN  
27                VALUE OF 9.5 OR MORE PARTS PER MILLION.—The applicable im-  
28                plementation plan of a State in which there is located all or part  
29                of an area that is designated under subdivision 2 as a nonattain-  
30                ment area for carbon monoxide and that has a carbon monoxide  
31                design value of 9.5 or more parts per million based on data for  
32                the 2-year period of 1988 and 1989 and calculated according to  
33                the most recent interpretation methodology issued by the Adminis-  
34                trator prior to November 15, 1990, shall contain for that area the  
35                provisions specified under this subsection regarding oxygenated  
36                gasoline.

37                (B) STATES IN WHICH THERE IS LOCATED ANY AREA THAT,  
38                FOR ANY 2-YEAR PERIOD AFTER 1989, HAS A CARBON MONOXIDE  
39                DESIGN VALUE OF 9.5 OR MORE PARTS PER MILLION.—Each State  
40                in which there is located any area that, for any 2-year period after  
41                1989, has a carbon monoxide design value of 9.5 or more parts

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1 per million shall, within 18 months after that 2-year period, sub-  
2 mit a plan provision that contains the provisions specified under  
3 this subsection regarding oxygenated gasoline.

4 (2) OXYGENATED GASOLINE IN CARBON MONOXIDE NONATTAINMENT  
5 AREAS.—

6 (A) IN GENERAL.—Each plan provision under this subsection  
7 shall contain provisions to require that any gasoline sold or dis-  
8 pensed to an ultimate consumer in the carbon monoxide nonattain-  
9 ment area or sold or dispensed directly or indirectly by fuel refin-  
10 ers or marketers to persons that sell or dispense to ultimate con-  
11 sumers, in the larger of—

12 (i) the Consolidated Metropolitan Statistical Area in which  
13 the area is located; or

14 (ii) if the area is not located in a Consolidated Metropoli-  
15 tan Statistical Area, the Metropolitan Statistical Area in  
16 which the area is located;

17 be blended, during the portion of the year in which the area is  
18 prone to high ambient concentrations of carbon monoxide, to con-  
19 tain not less than 2.7 percent oxygen by weight (subject to a test-  
20 ing tolerance established by the Administrator).

21 (B) PORTION OF YEAR.—

22 (i) IN GENERAL.—The portion of the year in which the  
23 area is prone to high ambient concentrations of carbon mon-  
24 oxide shall be as determined by the Administrator, but shall  
25 not be less than 4 months.

26 (ii) REDUCTION.—At the request of a State with respect to  
27 any area designated as nonattainment for carbon monoxide,  
28 the Administrator may reduce the period specified in clause  
29 (i) if the State can demonstrate that because of meteorologi-  
30 cal conditions, a reduced period will ensure that there will be  
31 no exceedances of the carbon monoxide standard outside the  
32 reduced period.

33 (C) EFFECTIVE DATE.—A plan provision under this subsection  
34 shall provide that the requirement shall take effect not later than  
35 November 1 of the 3d year after the last year of the applicable  
36 2-year period described in paragraph (1) (or at such other date  
37 during the 3d year as the Administrator establishes under sub-  
38 paragraphs (A) and (B)).

39 (D) IMPLEMENTATION AND ENFORCEMENT.—A plan provision  
40 under this subsection shall include a program for implementation

1 and enforcement of the requirement consistent with guidance is-  
2 sued by the Administrator.

3 (3) WAIVERS.—

4 (A) PREVENTION OF OR INTERFERENCE WITH ATTAINMENT  
5 FOR AIR POLLUTANT OTHER THAN CARBON MONOXIDE.—The Ad-  
6 ministrator shall waive, in whole or in part, the requirements of  
7 paragraph (2) on a demonstration by the State to the satisfaction  
8 of the Administrator that the use of oxygenated gasoline would  
9 prevent or interfere with the attainment by the area of a primary  
10 NAAQS (or a State or local ambient air quality standard) for any  
11 air pollutant other than carbon monoxide.

12 (B) NO SIGNIFICANT CONTRIBUTION TO CARBON MONOXIDE  
13 LEVELS.—The Administrator shall, on demonstration by the State  
14 satisfactory to the Administrator, waive the requirements of para-  
15 graph (2) where the Administrator determines that mobile sources  
16 of carbon monoxide do not contribute significantly to carbon mon-  
17 oxide levels in an area.

18 (C) INADEQUATE SUPPLY OR CAPACITY.—

19 (i) DEFINITION OF DISTRIBUTION CAPACITY.—In this sub-  
20 paragraph, the term “distribution capacity” includes capacity  
21 for transportation, storage, and blending.

22 (ii) PETITION.—Any person may petition the Administrator  
23 to make a finding that there is, or is likely to be, for any  
24 area, an inadequate domestic supply of, or distribution capac-  
25 ity for, oxygenated gasoline meeting the requirements of para-  
26 graph (2) or fuel additives (oxygenates) necessary to meet  
27 those requirements. The Administrator shall act on such a pe-  
28 tition within 6 months after receipt of the petition.

29 (iii) DETERMINATION OF INADEQUACY.—If the Adminis-  
30 trator determines, in response to a petition under clause (ii),  
31 that there is an inadequate supply or capacity described in  
32 clause (ii), the Administrator shall delay the effective date of  
33 paragraph (2) for 1 year. On petition, the Administrator may  
34 extend the effective date for 1 additional year. No partial  
35 delay or lesser waiver may be granted under this clause.

36 (iv) CONSIDERATIONS.—In granting waivers under this  
37 subparagraph, the Administrator shall consider distribution  
38 capacity separately from the adequacy of domestic supply and  
39 shall grant such waivers in such a manner as will ensure that,  
40 if supplies of oxygenated gasoline are limited, areas having  
41 the highest design value for carbon monoxide will have a pri-

1 ority in obtaining oxygenated gasoline that meets the require-  
2 ments of paragraph (2).

3 (4) FUEL DISPENSING SYSTEMS.—Any person selling oxygenated  
4 gasoline at retail pursuant to this subsection shall be required under  
5 regulations promulgated by the Administrator to label the fuel dispens-  
6 ing system with a notice that the gasoline is oxygenated and will reduce  
7 the carbon monoxide emissions from the motor vehicle.

8 (5) GUIDELINES FOR CREDIT.—The Administrator shall promulgate  
9 guidelines allowing the use, during the portion of the year specified in  
10 paragraph (2), of marketable oxygen credits from gasolines with higher  
11 oxygen content than required to offset the sale or use of gasoline with  
12 a lower oxygen content than is required. No credits may be transferred  
13 between nonattainment areas.

14 (6) ATTAINMENT AREAS.—Nothing in this subsection shall be inter-  
15 preted as requiring an oxygenated gasoline program in an area that is  
16 in attainment for carbon monoxide, except that in a carbon monoxide  
17 nonattainment area that is redesignated as attainment for carbon mon-  
18 oxide, the requirements of this subsection shall remain in effect to the  
19 extent that the program is necessary to maintain the standard there-  
20 after in the area.

21 (7) FAILURE TO ATTAIN CARBON MONOXIDE STANDARD.—If the Ad-  
22 ministrator determines under section 215302(b)(2) of this title that the  
23 primary NAAQS for carbon monoxide has not been attained in a seri-  
24 ous area by the applicable attainment date, the State shall submit a  
25 plan provision for the area within 9 months after the date of the deter-  
26 mination. The plan revision shall provide that the minimum oxygen  
27 content of gasoline described in paragraph (2) shall be 3.1 percent by  
28 weight unless the requirement is waived in accordance with this sub-  
29 section.

30 (n) PROHIBITION OF LEADED GASOLINE FOR HIGHWAY USE.—It shall  
31 be unlawful for any person to sell, offer for sale, supply, offer for supply,  
32 dispense, transport, or introduce into commerce, for use as fuel in any  
33 motor vehicle (as defined in section 221101 of this title) any gasoline that  
34 contains lead or lead additives.

35 (o) RENEWABLE FUEL PROGRAM.—

36 (1) DEFINITIONS.—In this subsection:

37 (A) ADDITIONAL RENEWABLE FUEL.—The term “additional re-  
38 newable fuel” means fuel that is produced from renewable biomass  
39 and that is used to replace or reduce the quantity of fossil fuel  
40 in home heating oil or jet fuel.

41 (B) ADVANCED BIOFUEL.—

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1 (i) IN GENERAL.—The term “advanced biofuel” means re-  
2 newable fuel, other than ethanol derived from corn starch,  
3 that has lifecycle greenhouse gas emissions, as determined by  
4 the Administrator, after notice and opportunity for comment,  
5 that are at least 50 percent less than baseline lifecycle green-  
6 house gas emissions.

7 (ii) INCLUSIONS.—The types of fuels eligible for consider-  
8 ation as “advanced biofuel” may include any of the following:

9 (I) Ethanol derived from cellulose, hemicellulose, or  
10 lignin.

11 (II) Ethanol derived from sugar or starch (other than  
12 corn starch).

13 (III) Ethanol derived from waste material, including  
14 crop residue, other vegetative waste material, animal  
15 waste, food waste, and yard waste.

16 (IV) Biomass-based diesel.

17 (V) Biogas (including landfill gas and sewage waste  
18 treatment gas) produced through the conversion of or-  
19 ganic matter from renewable biomass.

20 (VI) Butanol or other alcohols produced through the  
21 conversion of organic matter from renewable biomass.

22 (VII) Other fuel derived from cellulosic biomass.

23 (C) BASELINE LIFECYCLE GREENHOUSE GAS EMISSIONS.—The  
24 term “baseline lifecycle greenhouse gas emissions” means the aver-  
25 age lifecycle greenhouse gas emissions, as determined by the Ad-  
26 ministrator, after notice and opportunity for comment, for gasoline  
27 or diesel (whichever is being replaced by the renewable fuel) sold  
28 or distributed as transportation fuel in 2005.

29 (D) BIOMASS-BASED DIESEL.—

30 (i) IN GENERAL.—The term “biomass-based diesel” means  
31 renewable fuel that is biodiesel as defined in section 312(f)  
32 of the Energy Policy Act of 1992 (42 U.S.C. 13220(f)) and  
33 that has lifecycle greenhouse gas emissions, as determined by  
34 the Administrator, after notice and opportunity for comment,  
35 that are at least 50 percent less than the baseline lifecycle  
36 greenhouse gas emissions.

37 (ii) RENEWABLE FUEL DERIVED FROM COPROCESSING BIO-  
38 MASS WITH A PETROLEUM FEEDSTOCK.—Notwithstanding  
39 clause (i), renewable fuel derived from coprocessing biomass  
40 with a petroleum feedstock shall be advanced biofuel if it

1                   meets the requirements of subparagraph (B) but is not bio-  
2                   mass-based diesel.

3                   (E) CELLULOSIC BIOFUEL.—The term “cellulosic biofuel”  
4                   means renewable fuel derived from any cellulose, hemicellulose, or  
5                   lignin that is derived from renewable biomass and that has  
6                   lifecycle greenhouse gas emissions, as determined by the Adminis-  
7                   trator, that are at least 60 percent less than the baseline lifecycle  
8                   greenhouse gas emissions.

9                   (F) CONVENTIONAL BIOFUEL.—The term “conventional  
10                   biofuel” means renewable fuel that is ethanol derived from corn  
11                   starch.

12                   (G) GREENHOUSE GAS.—

13                   (i) IN GENERAL.—The term “greenhouse gas” means car-  
14                   bon dioxide, hydrofluorocarbons, methane, nitrous oxide,  
15                   perfluorocarbons, and sulfur hexafluoride.

16                   (ii) INCLUSION OF OTHER ANTHROPOGENICALLY-EMITTED  
17                   GASES.—The term “greenhouse gas” includes any other  
18                   anthropogenically-emitted gas that is determined by the Ad-  
19                   ministrator, after notice and comment, to contribute to global  
20                   warming.

21                   (H) LIFECYCLE GREENHOUSE GAS EMISSIONS.—The term  
22                   “lifecycle greenhouse gas emissions” means the aggregate quantity  
23                   of greenhouse gas emissions (including direct emissions and sig-  
24                   nificant indirect emissions such as significant emissions from land  
25                   use changes), as determined by the Administrator, related to the  
26                   full fuel lifecycle, including all stages of fuel and feedstock produc-  
27                   tion and distribution, from feedstock generation or extraction  
28                   through the distribution and delivery and use of the finished fuel  
29                   to the ultimate consumer, where the mass values for all green-  
30                   house gases are adjusted to account for their relative global warm-  
31                   ing potential.

32                   (I) RENEWABLE BIOMASS.—The term “renewable biomass”  
33                   means—

34                   (i) planted crops and crop residue harvested from agricul-  
35                   tural land cleared or cultivated at any time before December  
36                   19, 2007, that is—

37                   (I) actively managed or fallow; and

38                   (II) nonforested;

39                   (ii) planted trees and tree residue from actively managed  
40                   tree plantations on non-Federal land cleared at any time be-  
41                   fore December 19, 2007, including land belonging to an In-

1           dian tribe or an Indian individual, that is held in trust by the  
2           United States or subject to a restriction against alienation  
3           imposed by the United States;

4           (iii) animal waste material and animal byproducts;

5           (iv) slash and precommercial thinnings that are from non-  
6           Federal forestland, including forestland belonging to an In-  
7           dian tribe or an Indian individual that is held in trust by the  
8           United States or is subject to a restriction against alienation  
9           imposed by the United States, but not including—

10           (I) a forest or forestland that is an ecological commu-  
11           nity with a global or State ranking of critically imperiled,  
12           imperiled, or rare pursuant to a State natural heritage  
13           program;

14           (II) an old growth forest; or

15           (III) a late successional forest;

16           (v) biomass obtained from the immediate vicinity of build-  
17           ings and other areas regularly occupied by people, or of public  
18           infrastructure, at risk from wildfire;

19           (vi) algae; and

20           (vii) separated yard waste or food waste, including recycled  
21           cooking grease and trap grease.

22           (J) RENEWABLE FUEL.—The term “renewable fuel” means fuel  
23           that is produced from renewable biomass and that is used to re-  
24           place or reduce the quantity of fossil fuel in a transportation fuel.

25           (K) SMALL REFINERY.—The term “small refinery” means a re-  
26           finery for which the average aggregate daily crude oil throughput  
27           for a calendar year (as determined by dividing the aggregate  
28           throughput for the calendar year by the number of days in the cal-  
29           endar year) does not exceed 75,000 barrels.

30           (L) TRANSPORTATION FUEL.—The term “transportation fuel”  
31           means fuel for use in motor vehicles, motor vehicle engines,  
32           nonroad vehicles, or nonroad engines (except for oceangoing ves-  
33           sels).

34           (2) RENEWABLE FUEL PROGRAM.—

35           (A) REGULATIONS.—

36           (i) IN GENERAL.—

37           (I) GASOLINE.—The Administrator shall promulgate  
38           regulations to ensure that gasoline sold or introduced  
39           into commerce in the contiguous States, on an annual  
40           average basis, contains the applicable volume of renew-

1           able fuel determined in accordance with subparagraph  
2           (B).

3           (II) TRANSPORTATION FUEL.—The regulations shall  
4           ensure that transportation fuel sold or introduced into  
5           commerce in the contiguous States, on an annual aver-  
6           age basis—

7                 (aa) contains at least the applicable volume of re-  
8                 newable fuel, advanced biofuel, cellulosic biofuel,  
9                 and biomass-based diesel, determined in accordance  
10                with subparagraph (B); and

11               (bb) in the case of any such renewable fuel pro-  
12               duced from new facilities that commence construc-  
13               tion after December 19, 2007, achieves at least a 20  
14               percent reduction in lifecycle greenhouse gas emis-  
15               sions compared with baseline lifecycle greenhouse  
16               gas emissions.

17           (ii) NONCONTIGUOUS STATE OPT-IN.—

18               (I) IN GENERAL.—On the petition of a noncontiguous  
19               State or territory, the Administrator may allow the re-  
20               newable fuel program established under this subsection  
21               to apply in the noncontiguous State or territory at the  
22               same time or any time after the Administrator promul-  
23               gates regulations under clause (i).

24               (II) OTHER ACTIONS.—In carrying out this clause, the  
25               Administrator may—

26                   (aa) promulgate or revise regulations under this  
27                   paragraph;

28                   (bb) establish applicable percentages under para-  
29                   graph (3);

30                   (cc) provide for the generation of credits under  
31                   paragraph (5); and

32                   (dd) take such other actions as are necessary to  
33                   allow for the application of the renewable fuels pro-  
34                   gram in a noncontiguous State or territory.

35           (iii) PROVISIONS OF REGULATIONS.—Regardless of the  
36           date of promulgation, the regulations promulgated under  
37           clause (i)—

38               (I) shall contain compliance provisions applicable to  
39               refineries, blenders, distributors, and importers, as ap-  
40               propriate, to ensure that the requirements of this para-  
41               graph are met; but



1 (II) shall not—  
 2 (aa) restrict geographic areas in which renewable  
 3 fuel may be used; or  
 4 (bb) impose any per-gallon obligation for the use  
 5 of renewable fuel.

6 (B) APPLICABLE VOLUME.—

7 (i) SPECIFIED CALENDAR YEARS.—

8 (I) RENEWABLE FUEL.—For the purpose of subpara-  
 9 graph (A), the applicable volume of renewable fuel for  
 10 calendar years 2009 to 2022 specified in the following  
 11 table shall be determined in accordance with the follow-  
 12 ing table:

<b>Calendar year:</b>	<b>Applicable volume of renewable fuel (in billions of gallons):</b>
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.

13 (II) ADVANCED BIOFUEL.—For the purpose of sub-  
 14 paragraph (A), of the volume of renewable fuel required  
 15 under subclause (I), the applicable volume of advanced  
 16 biofuel for calendar years 2009 to 2022 shall be deter-  
 17 mined in accordance with the following table:

<b>Calendar year:</b>	<b>Applicable volume of advanced biofuel (in billions of gallons):</b>
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.

18 (III) CELLULOSIC BIOFUEL.—For the purpose of sub-  
 19 paragraph (A), of the volume of advanced biofuel re-  
 20 quired under subclause (II), the applicable volume of cel-

1 lulosic biofuel for calendar years 2010 to 2022 shall be  
2 determined in accordance with the following table:

<b>Calendar year:</b>	<b>Applicable volume of cellulosic biofuel (in billions of gallons):</b>
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.

3 (IV) BIOMASS-BASED DIESEL.—For the purpose of  
4 subparagraph (A), of the volume of advanced biofuel re-  
5 quired under subclause (II), the applicable volume of bio-  
6 mass-based diesel for calendar years 2009 to 2012 shall  
7 be determined in accordance with the following table:

<b>Calendar year:</b>	<b>Applicable volume of biomass- based diesel (in billions of gallons):</b>
2009 .....	0.50
2010 .....	0.65
2011 .....	0.80
2012 .....	1.00.

8 (ii) OTHER CALENDAR YEARS.—  
9 (I) IN GENERAL.—For the purposes of subparagraph  
10 (A), the applicable volumes of each fuel specified in the  
11 tables in clause (i) for calendar years after the calendar  
12 years specified in the tables shall be determined by the  
13 Administrator, in coordination with the Secretary of En-  
14 ergy and the Secretary of Agriculture, based on a review  
15 of the implementation of the program during calendar  
16 years specified in the tables, and an analysis of—

- 17 (aa) the impact of the production and use of re-  
18 newable fuels on the environment, including on air  
19 quality, climate change, conversion of wetland, eco-  
20 systems, wildlife habitat, water quality, and water  
21 supply;
- 22 (bb) the impact of renewable fuels on the energy  
23 security of the United States;
- 24 (cc) the expected annual rate of future commer-  
25 cial production of renewable fuels, including ad-

1 vanced biofuels in each category (cellulosic biofuel  
2 and biomass-based diesel);

3 (dd) the impact of renewable fuels on the infra-  
4 structure of the United States, including deliver-  
5 ability of materials, goods, and products other than  
6 renewable fuel, and the sufficiency of infrastructure  
7 to deliver and use renewable fuel;

8 (ee) the impact of the use of renewable fuels on  
9 the cost to consumers of transportation fuel and on  
10 the cost to transport goods; and

11 (ff) the impact of the use of renewable fuels on  
12 other factors, including job creation, the price and  
13 supply of agricultural commodities, rural economic  
14 development, and food prices.

15 (II) REGULATIONS.—The Administrator shall promul-  
16 gate regulations establishing the applicable volumes  
17 under subclause (I) not later than 14 months before the  
18 1st year for which the applicable volume applies.

19 (iii) APPLICABLE VOLUME OF ADVANCED BIOFUEL.—For  
20 the purpose of making the determinations under clause (ii),  
21 for each calendar year, the applicable volume of advanced  
22 biofuel shall be at least the same percentage of the applicable  
23 volume of renewable fuel as for calendar year 2022.

24 (iv) APPLICABLE VOLUME OF CELLULOSIC BIOFUEL.—For  
25 the purpose of making the determinations under clause (ii),  
26 for each calendar year, the applicable volume of cellulosic  
27 biofuel established by the Administrator shall be based on the  
28 assumption that the Administrator will not need to issue a  
29 waiver for those years under paragraph (7)(D).

30 (v) MINIMUM APPLICABLE VOLUME OF BIOMASS-BASED  
31 DIESEL.—For the purpose of making the determinations  
32 under clause (ii), the applicable volume of biomass-based die-  
33 sel shall be not less than the applicable volume listed in  
34 clause (i)(IV) for calendar year 2012.

35 (3) APPLICABLE PERCENTAGES.—

36 (A) PROVISION OF ESTIMATE OF VOLUMES OF GASOLINE  
37 SALES.—Not later than October 31 of each of calendar years 2009  
38 to 2021, the Administrator of the Energy Information Administra-  
39 tion shall provide to the Administrator an estimate, with respect  
40 to the following calendar year, of the volumes of transportation

1 fuel, biomass-based diesel, and cellulosic biofuel projected to be  
2 sold or introduced into commerce.

3 (B) DETERMINATION OF APPLICABLE PERCENTAGES.—

4 (i) IN GENERAL.—Not later than November 30 of each of  
5 calendar years 2009 to 2021, based on the estimate provided  
6 under subparagraph (A), the Administrator shall determine  
7 and publish in the Federal Register, with respect to the fol-  
8 lowing calendar year, the renewable fuel obligation that en-  
9 sures that the requirements of paragraph (2) are met.

10 (ii) REQUIRED ELEMENTS.—The renewable fuel obligation  
11 determined for a calendar year under clause (i) shall—

12 (I) be applicable to refineries, blenders, and importers,  
13 as appropriate;

14 (II) be expressed in terms of a volume percentage of  
15 transportation fuel sold or introduced into commerce;  
16 and

17 (III) subject to subparagraph (C)(i), consist of a sin-  
18 gle applicable percentage that applies to all categories of  
19 persons specified in subclause (I).

20 (C) ADJUSTMENTS.—In determining the applicable percentage  
21 for a calendar year, the Administrator shall make adjustments—

22 (i) to prevent the imposition of redundant obligations on  
23 any person specified in subparagraph (B)(ii)(I); and

24 (ii) to account for the use of renewable fuel during the pre-  
25 vious calendar year by small refineries that are exempt under  
26 paragraph (8).

27 (4) MODIFICATION OF GREENHOUSE GAS REDUCTION PERCENT-  
28 AGES.—

29 (A) IN GENERAL.—The Administrator may, in the regulations  
30 under paragraph (2)(A)(i)(II), adjust the 20 percent, 50 percent,  
31 and 60 percent reductions in lifecycle greenhouse gas emissions  
32 specified in paragraphs (2)(A)(i) (relating to renewable fuel),  
33 (1)(D) (relating to biomass-based diesel), (1)(B)(i) (relating to ad-  
34 vanced biofuel), and (1)(E) (relating to cellulosic biofuel) to a  
35 lower percentage. For the 50 and 60 percent reductions, the Ad-  
36 ministrator may make such an adjustment only if the Adminis-  
37 trator determines that generally such a reduction is not commer-  
38 cially feasible for fuels made using a variety of feedstocks, tech-  
39 nologies, and processes to meet the applicable reduction.

40 (B) AMOUNT OF ADJUSTMENT.—In promulgating regulations  
41 under this paragraph, the Administrator shall not—

1 (i) reduce to below 40 percent the specified 50 percent re-  
2 duction in greenhouse gas emissions from advanced biofuel  
3 and in biomass-based diesel;

4 (ii) reduce to below 10 percent the specified 20 percent re-  
5 duction in greenhouse gas emissions from renewable fuel; or

6 (iii) reduce to below 50 percent the specified 60 percent re-  
7 duction in greenhouse gas emissions from cellulosic biofuel.

8 (C) ADJUSTED REDUCTION LEVELS.—An adjustment under this  
9 paragraph to a percentage less than the specified 20 percent  
10 greenhouse gas reduction for renewable fuel shall be the minimum  
11 possible adjustment, and the adjusted greenhouse gas reduction  
12 shall be established by the Administrator at the maximum achiev-  
13 able level, taking cost into consideration, for natural gas fired  
14 corn-based ethanol plants, allowing for the use of a variety of tech-  
15 nologies and processes. An adjustment in the 50 or 60 percent  
16 greenhouse gas levels shall be the minimum possible adjustment  
17 for the fuel or fuels concerned, and the adjusted greenhouse gas  
18 reduction shall be established at the maximum achievable level,  
19 taking cost into consideration, allowing for the use of a variety of  
20 feedstocks, technologies, and processes.

21 (D) 5-YEAR REVIEW.—When the Administrator makes any ad-  
22 justment under this paragraph, not later than 5 years thereafter  
23 the Administrator shall review and revise (based on the same cri-  
24 teria and standards as are required for the initial adjustment) the  
25 regulations establishing the adjusted level.

26 (E) SUBSEQUENT ADJUSTMENTS.—After the Administrator pro-  
27 mulgates a regulation under paragraph (2)(A)(i)(II) with respect  
28 to the method of determining lifecycle greenhouse gas emissions,  
29 except as provided in subparagraph (D), the Administrator shall  
30 not adjust the percentage greenhouse gas reduction levels unless  
31 the Administrator determines that there has been a significant  
32 change in the analytical methodology used for determining the  
33 lifecycle greenhouse gas emissions. If the Administrator makes  
34 such a determination, the Administrator may adjust the 20, 50,  
35 or 60 percent reduction levels through rulemaking using the cri-  
36 teria and standards set forth in this paragraph.

37 (F) LIMIT ON UPWARD ADJUSTMENTS.—If, under subparagraph  
38 (D) or (E), the Administrator revises a percentage level adjusted  
39 as provided in subparagraphs (A), (B), and (C) to a higher per-  
40 centage, the higher percentage shall not exceed the applicable per-  
41 cent specified in paragraph (2)(A)(i), (1)(D), (1)(B)(i), or (1)(E).

1 (G) APPLICABILITY OF ADJUSTMENTS.—If the Administrator  
2 adjusts or revises a percentage level described in this paragraph  
3 or makes a change in the analytical methodology used for deter-  
4 mining the lifecycle greenhouse gas emissions, the adjustment, re-  
5 vision, or change (or any combination thereof) shall apply only to  
6 renewable fuel from new facilities that commence construction  
7 after the effective date of the adjustment, revision, or change.

8 (5) CREDIT PROGRAM.—

9 (A) IN GENERAL.—The regulations promulgated under para-  
10 graph (2)(A) shall provide—

11 (i) for the generation of an appropriate amount of credits  
12 by any person that refines, blends, or imports gasoline that  
13 contains a quantity of renewable fuel that is greater than the  
14 quantity required under paragraph (2);

15 (ii) for the generation of an appropriate amount of credits  
16 for biodiesel; and

17 (iii) for the generation of credits by small refineries in ac-  
18 cordance with paragraph (8)(C).

19 (B) USE OF CREDITS.—A person that generates credits under  
20 subparagraph (A) may use the credits, or transfer all or a portion  
21 of the credits to another person, for the purpose of complying with  
22 paragraph (2).

23 (C) DURATION OF CREDITS.—A credit generated under this  
24 paragraph shall be valid to show compliance for the 12 months as  
25 of the date of generation.

26 (D) INABILITY TO GENERATE OR PURCHASE SUFFICIENT CRED-  
27 ITS.—The regulations promulgated under paragraph (2)(A) shall  
28 include provisions allowing any person that is unable to generate  
29 or purchase sufficient credits to meet the requirements of para-  
30 graph (2) to carry forward a renewable fuel deficit on condition  
31 that the person, in the calendar year following the year in which  
32 the renewable fuel deficit is created—

33 (i) achieves compliance with the renewable fuel requirement  
34 under paragraph (2); and

35 (ii) generates or purchases additional renewable fuel credits  
36 to offset the renewable fuel deficit of the previous year.

37 (E) CREDITS FOR ADDITIONAL RENEWABLE FUEL.—The Ad-  
38 ministrator may issue regulations providing for—

39 (i) the generation of an appropriate amount of credits by  
40 any person that refines, blends, or imports additional renew-  
41 able fuels specified by the Administrator; and

1 (ii) the use of such credits by the generator, or the transfer  
2 of all or a portion of the credits to another person, for the  
3 purpose of complying with paragraph (2).

4 (6) SEASONAL VARIATIONS IN RENEWABLE FUEL USE.—

5 (A) STUDY.—For each of calendar years 2006 to 2012, the Ad-  
6 ministrator of the Energy Information Administration shall con-  
7 duct a study of renewable fuel blending to determine whether  
8 there are excessive seasonal variations in the use of renewable fuel.

9 (B) REGULATION OF EXCESSIVE SEASONAL VARIATIONS.—If,  
10 for any calendar year, the Administrator of the Energy Informa-  
11 tion Administration, based on the study under subparagraph (A),  
12 makes the determinations specified in subparagraph (C), the Ad-  
13 ministrator of EPA shall promulgate regulations to ensure that 25  
14 percent or more of the quantity of renewable fuel necessary to  
15 meet the requirements of paragraph (2) is used during each of the  
16 2 periods specified in subparagraph (D) of each subsequent cal-  
17 endar year.

18 (C) DETERMINATIONS.—The determinations referred to in sub-  
19 paragraph (B) are that—

20 (i) less than 25 percent of the quantity of renewable fuel  
21 necessary to meet the requirements of paragraph (2) has been  
22 used during 1 of the 2 periods specified in subparagraph (D)  
23 of the calendar year;

24 (ii) a pattern of excessive seasonal variation described in  
25 clause (i) will continue in subsequent calendar years; and

26 (iii) promulgating regulations or other requirements to im-  
27 pose a 25 percent or more seasonal use of renewable fuels will  
28 not prevent or interfere with the attainment of NAAQSEs or  
29 significantly increase the price of motor fuels to the con-  
30 sumer.

31 (D) PERIODS.—The 2 periods referred to in this paragraph  
32 are—

33 (i) April to September; and

34 (ii) January to March and October to December.

35 (E) EXCLUSION.—Renewable fuel blended or consumed in cal-  
36 endar year 2006 in a State that has received a waiver under sec-  
37 tion 221109(b) of this title shall not be included in the study  
38 under subparagraph (A).

39 (F) STATE EXEMPTION FROM SEASONALITY REQUIREMENTS.—  
40 Notwithstanding any other provision of law, the seasonality re-  
41 quirement relating to renewable fuel use established by this para-

1 graph shall not apply to any State that has received a waiver  
2 under section 221109(b) of this title or any State dependent on  
3 refineries in that State for gasoline supplies.

4 (7) WAIVERS.—

5 (A) IN GENERAL.—On petition by 1 or more States, by any per-  
6 son subject to the requirements of this subsection, or by the Ad-  
7 ministrator on the Administrator's own motion, the Administrator,  
8 in consultation with the Secretary of Agriculture and the Sec-  
9 retary of Energy, may waive the requirements of paragraph (2) in  
10 whole or in part by reducing the national quantity of renewable  
11 fuel required under paragraph (2) based on a determination by the  
12 Administrator, after public notice and opportunity for comment,  
13 that—

14 (i) implementation of the requirement would severely harm  
15 the economy or environment of a State, a region, or the  
16 United States; or

17 (ii) there is an inadequate domestic supply.

18 (B) PETITIONS FOR WAIVERS.—The Administrator, in consulta-  
19 tion with the Secretary of Agriculture and the Secretary of En-  
20 ergy, shall approve or disapprove a petition for a waiver of the re-  
21 quirements of paragraph (2) within 90 days after the date on  
22 which the petition is received by the Administrator.

23 (C) TERMINATION OF WAIVERS.—A waiver granted under sub-  
24 paragraph (A) shall terminate after 1 year, but may be renewed  
25 by the Administrator after consultation with the Secretary of Agri-  
26 culture and the Secretary of Energy.

27 (D) CELLULOSIC BIOFUEL.—

28 (i) PROJECTED VOLUME LESS THAN THE MINIMUM APPLI-  
29 CABLE VOLUME.—

30 (I) REDUCTION OF APPLICABLE VOLUME.—For any  
31 calendar year for which the projected volume of cellulosic  
32 biofuel production is less than the minimum applicable  
33 volume established under paragraph (2)(B), as deter-  
34 mined by the Administrator based on the estimate pro-  
35 vided under paragraph (3)(A), not later than November  
36 30 of the preceding calendar year, the Administrator  
37 shall reduce the applicable volume of cellulosic biofuel re-  
38 quired under paragraph (2)(B) to the projected volume  
39 available during that calendar year.

40 (II) RENEWABLE FUEL AND ADVANCED BIOFUELS.—  
41 For any calendar year for which the Administrator



1 makes a reduction under subclause (I), the Adminis-  
2 trator may also reduce the applicable volume of renew-  
3 able fuel and advanced biofuels requirement established  
4 under paragraph (2)(B) by the same or a lesser volume.

5 (ii) CREDITS.—

6 (I) IN GENERAL.— When the Administrator reduces  
7 the minimum cellulosic biofuel volume under this sub-  
8 paragraph, the Administrator shall make available for  
9 sale cellulosic biofuel credits at the higher of \$0.25 per  
10 gallon or the amount by which \$3.00 per gallon exceeds  
11 the average wholesale price of a gallon of gasoline in the  
12 United States.

13 (II) ADJUSTMENT FOR INFLATION.—The Adminis-  
14 trator shall adjust the amounts in subclause (I) for infla-  
15 tion for years after 2008.

16 (iii) REGULATIONS.—

17 (I) IN GENERAL.—The Administrator shall promulgate  
18 regulations to govern the issuance of credits under this  
19 subparagraph.

20 (II) PRICE OF CREDITS.—The regulations shall set  
21 forth the method for determining the exact price of cred-  
22 its in the event of a waiver. The price of such credits  
23 shall not be changed more frequently than once each  
24 quarter.

25 (III) MARKET LIQUIDITY AND TRANSPARENCY; CER-  
26 TAINTY; LIMITATION OF MISUSE; OTHER PURPOSES.—  
27 The regulations shall include—

28 (aa) such provisions, including limiting the uses  
29 and useful life of credits, as the Administrator con-  
30 siders appropriate to—

31 (AA) assist market liquidity and trans-  
32 parency;

33 (BB) provide appropriate certainty for regu-  
34 lated entities and renewable fuel producers;  
35 and

36 (CC) limit any potential misuse of cellulosic  
37 biofuel credits to reduce the use of other re-  
38 newable fuels; and

39 (bb) provisions for such other purposes as the  
40 Administrator determines will help achieve the goals  
41 of this subsection.

1 (IV) NUMBER OF CREDITS.—The regulations shall  
2 limit the number of cellulosic biofuel credits for any cal-  
3 endar year to the minimum applicable volume (as re-  
4 duced under this subparagraph) of cellulosic biofuel for  
5 that year.

6 (E) BIOMASS-BASED DIESEL.—

7 (i) MARKET EVALUATION.—The Administrator, in con-  
8 sultation with the Secretary of Energy and the Secretary of  
9 Agriculture, shall periodically evaluate the impact of the bio-  
10 mass-based diesel requirements established under this para-  
11 graph on the price of diesel fuel.

12 (ii) WAIVER.—

13 (I) REDUCTION OF REQUIRED QUANTITY.—If the Ad-  
14 ministrator determines that there is a significant renew-  
15 able feedstock disruption or other market circumstances  
16 that would make the price of biomass-based diesel fuel  
17 increase significantly, the Administrator, in consultation  
18 with the Secretary of Energy and the Secretary of Agri-  
19 culture, shall issue an order to reduce, for up to a 60-  
20 day period, the quantity of biomass-based diesel required  
21 under subparagraph (A) by an appropriate quantity that  
22 does not exceed 15 percent of the applicable annual re-  
23 quirement for biomass-based diesel.

24 (II) RENEWABLE FUEL AND ADVANCED BIOFUELS.—  
25 For any calendar year for which the Administrator  
26 makes a reduction under subclause (I), the Adminis-  
27 trator may also reduce the applicable volume of renew-  
28 able fuel and advanced biofuels requirement established  
29 under paragraph (2)(B) by the same or a lesser volume.

30 (iii) EXTENSIONS.—If the Administrator determines that  
31 the feedstock disruption or circumstances described in clause  
32 (ii) is continuing beyond the 60-day period described in clause  
33 (ii) or this clause, the Administrator, in consultation with the  
34 Secretary of Energy and the Secretary of Agriculture, may  
35 issue an order to reduce, for up to an additional 60-day pe-  
36 riod, the quantity of biomass-based diesel required under sub-  
37 paragraph (A) by an appropriate quantity that does not ex-  
38 ceed an additional 15 percent of the applicable annual re-  
39 quirement for biomass-based diesel.

40 (F) MODIFICATION OF APPLICABLE VOLUMES.—

1 (i) IN GENERAL.—For any of the tables in paragraph  
2 (2)(B), if the Administrator waives—

3 (I) at least 20 percent of the applicable volume re-  
4 quirement set forth in any such table for 2 consecutive  
5 years; or

6 (II) at least 50 percent of such volume requirement  
7 for a single year;

8 the Administrator shall promulgate a regulation (within 1  
9 year after issuing the waiver) that modifies the applicable vol-  
10 umes set forth in the table for all years following the final  
11 year to which the waiver applies, except that no such modi-  
12 fication in applicable volumes shall be made for any year be-  
13 fore 2016.

14 (ii) PROCESSES, CRITERIA, AND STANDARDS.—In promul-  
15 gating a regulation under clause (i), the Administrator shall  
16 comply with the processes, criteria, and standards set forth  
17 in paragraph (2)(B)(ii).

18 (8) SMALL REFINERIES.—

19 (A) TEMPORARY EXEMPTION.—

20 (i) IN GENERAL.—The requirements of paragraph (2) shall  
21 not apply to small refineries until calendar year 2011.

22 (ii) EXTENSION OF EXEMPTION.—

23 (I) STUDY BY SECRETARY OF ENERGY.—Not later  
24 than December 31, 2008, the Secretary of Energy shall  
25 conduct for the Administrator a study to determine  
26 whether compliance with the requirements of paragraph  
27 (2) would impose a disproportionate economic hardship  
28 on small refineries.

29 (II) EXTENSION OF EXEMPTION.—In the case of a  
30 small refinery that the Secretary of Energy determines  
31 under subclause (I) would be subject to a disproportion-  
32 ate economic hardship if required to comply with para-  
33 graph (2), the Administrator shall extend the exemption  
34 under clause (i) for the small refinery for a period of not  
35 less than 2 additional years.

36 (B) PETITIONS BASED ON DISPROPORTIONATE ECONOMIC  
37 HARDSHIP.—

38 (i) EXTENSION OF EXEMPTION.—A small refinery may at  
39 any time petition the Administrator for an extension of the  
40 exemption under subparagraph (A) for the reason of dis-  
41 proportionate economic hardship.

1 (ii) EVALUATION OF PETITIONS.—In evaluating a petition  
2 under clause (i), the Administrator, in consultation with the  
3 Secretary of Energy, shall consider the findings of the study  
4 under subparagraph (A)(ii) and other economic factors.

5 (iii) DEADLINE FOR ACTION ON PETITIONS.—The Adminis-  
6 trator shall act on any petition submitted by a small refinery  
7 for a hardship exemption not later than 90 days after the  
8 date of receipt of the petition.

9 (C) CREDIT PROGRAM.—If a small refinery notifies the Admin-  
10 istrator that the small refinery waives the exemption under sub-  
11 paragraph (A), the regulations promulgated under paragraph  
12 (2)(A) shall provide for the generation of credits by the small re-  
13 finery under paragraph (5) beginning in the calendar year follow-  
14 ing the date of notification.

15 (D) OPT-IN FOR SMALL REFINERIES.—A small refinery shall be  
16 subject to the requirements of paragraph (2) if the small refinery  
17 notifies the Administrator that the small refinery waives the ex-  
18 emption under subparagraph (A).

19 (9) ETHANOL MARKET CONCENTRATION ANALYSIS.—

20 (A) ANALYSIS.—

21 (i) IN GENERAL.—The Federal Trade Commission shall an-  
22 nually perform a market concentration analysis of the ethanol  
23 production industry using the Herfindahl-Hirschman Index to  
24 determine whether there is sufficient competition among in-  
25 dustry participants to avoid price-setting and other anti-  
26 competitive behavior.

27 (ii) SCORING.—For the purpose of scoring under clause (i)  
28 using the Herfindahl-Hirschman Index, all marketing ar-  
29 rangements among industry participants shall be considered.

30 (B) REPORT.—The Federal Trade Commission shall annually  
31 submit to Congress and the Administrator a report on the results  
32 of the market concentration analysis performed under subpara-  
33 graph (A)(i).

34 (10) PERIODIC REVIEWS.—To allow for the appropriate adjustment  
35 of the requirements described in subparagraph (B) of paragraph (2),  
36 the Administrator shall conduct periodic reviews of—

37 (A) existing technologies;

38 (B) the feasibility of achieving compliance with the require-  
39 ments; and

40 (C) the impacts of the requirements described in subsection  
41 (a)(2) on each individual and entity described in paragraph (2).

- 1 (11) EFFECT ON OTHER PROVISIONS.—  
2 (A) IN GENERAL.—Nothing in this subsection (including regula-  
3 tions under this subsection) shall affect or be construed to—  
4 (i) affect the regulatory status of carbon dioxide or any  
5 other greenhouse gas; or  
6 (ii) expand or limit regulatory authority regarding carbon  
7 dioxide or any other greenhouse gas for purposes of other  
8 provisions of this chapter.  
9 (B) NO EFFECT ON IMPLEMENTATION OR ENFORCEMENT.—  
10 Subparagraph (A) shall not affect implementation and enforce-  
11 ment of this subsection.
- 12 (12) ENVIRONMENTAL AND RESOURCE CONSERVATION IMPACTS.—  
13 (A) IN GENERAL.—Every 3 years the Administrator, in con-  
14 sultation with the Secretary of Agriculture and the Secretary of  
15 Energy, shall assess and submit to Congress a report on the im-  
16 pacts to date and likely future impacts of the requirements of this  
17 subsection on—  
18 (i) environmental issues, including air quality, effects on  
19 hypoxia, pesticides, sediment, nutrient and pathogen levels in  
20 bodies of water, acreage and function of bodies of water, and  
21 soil environmental quality;  
22 (ii) resource conservation issues, including soil conserva-  
23 tion, water availability, and ecosystem health and biodiversity,  
24 including impacts on forests, grassland, and wetland; and  
25 (iii) the growth and use of cultivated invasive or noxious  
26 plants and their impacts on the environment and agriculture.  
27 (B) VIEWS OF OTHERS.—Before preparing a report under sub-  
28 paragraph (A), the Administrator may seek the views of the Na-  
29 tional Academy of Sciences or another appropriate independent re-  
30 search institute.  
31 (C) CONTENTS.—A report under subparagraph (A) shall—  
32 (i) disclose the annual volume of imported renewable fuels  
33 and feedstocks for renewable fuels;  
34 (ii) describe the environmental impacts outside the United  
35 States of producing renewable fuels and feedstocks for renew-  
36 able fuels; and  
37 (iii) include recommendations for actions to address any  
38 adverse impacts found.
- 39 (p) ANALYSES OF MOTOR VEHICLE FUEL CHANGES AND EMISSIONS  
40 MODEL.—  
41 (1) ANTIBACKSLIDING ANALYSIS.—

1 (A) DRAFT ANALYSIS.—Not later than 4 years after August 8,  
2 2005, the Administrator shall publish for public comment a draft  
3 analysis of the changes in emissions of air pollutants and air qual-  
4 ity due to the use of motor vehicle fuel and fuel additives resulting  
5 from implementation of the amendments made by the Energy Pol-  
6 icy Act of 2005 (119 Stat. 594).

7 (B) FINAL ANALYSIS.—After providing a reasonable opportunity  
8 for comment but not later than 5 years after August 8, 2005, the  
9 Administrator shall publish the analysis in final form.

10 (2) EMISSIONS MODEL.—For the purposes of this section, not later  
11 than 4 years after August 8, 2005, the Administrator shall develop and  
12 finalize an emissions model that reflects, to the maximum extent prac-  
13 ticable, the effects of gasoline characteristics or components on emis-  
14 sions from vehicles in the motor vehicle fleet during calendar year  
15 2007.

16 (q) CONVERSION ASSISTANCE FOR CELLULOSIC BIOMASS, WASTE-DE-  
17 RIVED ETHANOL, AND APPROVED RENEWABLE FUELS.—

18 (1) DEFINITIONS.—In this subsection:

19 (A) APPROVED RENEWABLE FUEL.—The term “approved re-  
20 newable fuel” means a fuel or component of fuel that has been ap-  
21 proved by the Secretary of Energy and is made from renewable  
22 biomass.

23 (B) OLD GROWTH TIMBER.—The term “old-growth timber”  
24 means timber of a forest from the late successional stage of forest  
25 development.

26 (C) RENEWABLE BIOMASS.—The term “renewable biomass”  
27 means any organic matter that is available on a renewable or re-  
28 curring basis (excluding old-growth timber), including dedicated  
29 energy crops and trees, agricultural food and feed crop residues,  
30 aquatic plants, animal wastes, wood and wood residues, paper and  
31 paper residues, and other vegetative waste materials.

32 (2) IN GENERAL.—The Secretary of Energy may provide grants to  
33 merchant producers of cellulosic biomass ethanol, waste-derived etha-  
34 nol, and approved renewable fuels in the United States to assist the  
35 producers in building eligible production facilities described in para-  
36 graph (3) for the production of ethanol or approved renewable fuels.

37 (3) ELIGIBLE PRODUCTION FACILITIES.—A production facility shall  
38 be eligible to receive a grant under this subsection if the production  
39 facility—

40 (A) is located in the United States; and

1 (B) uses cellulosic or renewable biomass or waste-derived feed-  
2 stocks derived from agricultural residues, wood residues, municipal  
3 solid waste, or agricultural byproducts.

4 (4) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to  
5 be appropriated to carry out this subsection—

6 (A) \$100,000,000 for fiscal year 2006;

7 (B) \$250,000,000 for fiscal year 2007; and

8 (C) \$400,000,000 for fiscal year 2008.

9 (r) BLENDING OF COMPLIANT REFORMULATED GASOLINES.—

10 (1) IN GENERAL.—Notwithstanding subsections (h) and (k) and sub-  
11 ject to the limitations in paragraph (2), it shall not be a violation of  
12 this chapter for a gasoline retailer, during any month of the year, to  
13 blend at a retail location batches of ethanol-blended and non-ethanol-  
14 blended reformulated gasoline if—

15 (A) each batch of gasoline to be blended has been individually  
16 certified as in compliance with subsections (h) and (k) prior to  
17 being blended;

18 (B) the retailer notifies the Administrator prior to the blending,  
19 and identifies the exact location of the retail station and the spe-  
20 cific tank in which the blending will take place;

21 (C) the retailer retains and, as requested by the Administrator  
22 or the Administrator's designee, makes available for inspection the  
23 certifications accounting for all gasoline at the retail outlet; and

24 (D) the retailer does not, between June 1 and September 15 of  
25 any year, blend a batch of volatile organic compound-controlled  
26 gasoline (summer gasoline) with a batch of non-volatile organic  
27 compound-controlled gasoline (winter gasoline) (as those terms are  
28 defined under subsections (h) and (k)).

29 (2) LIMITATIONS.—

30 (A) FREQUENCY LIMITATION.—A retailer shall be permitted to  
31 blend batches of compliant reformulated gasoline under this sub-  
32 section during a maximum of 2 blending periods between May 1  
33 and September 15 of any year.

34 (B) DURATION OF BLENDING PERIOD.—Each blending period  
35 authorized under subparagraph (A) shall extend for a period of  
36 not more than 10 consecutive calendar days.

37 (3) SURVEYS.—A sample of gasoline taken from a retail location  
38 that has blended gasoline within the past 30 days and is in compliance  
39 with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not  
40 be used in a volatile organic compound survey mandated by part 80  
41 of title 40, Code of Federal Regulations.

1 (4) STATE IMPLEMENTATION PLANS.—A State shall be held harm-  
2 less and shall not be required to revise its State implementation plan  
3 under section 211110 of this title to account for the emissions from  
4 blended gasoline authorized under paragraph (1).

5 (5) PRESERVATION OF STATE LAW.—Nothing in this subsection  
6 shall—

7 (A) preempt existing State laws (including regulations) regulat-  
8 ing the blending of compliant gasolines; or

9 (B) preclude a State from adopting such restrictions in the fu-  
10 ture.

11 (6) REGULATIONS.—The Administrator shall promulgate, after no-  
12 tice and comment, regulations implementing this subsection.

13 (7) APPLICABILITY.—This subsection shall apply to blended batches  
14 of reformulated gasoline regardless of whether the implementing regu-  
15 lations required by paragraph (6) have been promulgated by the Ad-  
16 ministrator.

17 (8) LIABILITY.—No person other than the person responsible for  
18 blending under this subsection shall be subject to an enforcement ac-  
19 tion or penalties under subsection (s) solely arising from the blending  
20 of compliant reformulated gasolines by the retailers.

21 (9) FORMULATION OF GASOLINE.—This subsection does not grant  
22 authority to the Administrator or any State (or any subdivision there-  
23 of) to require reformulation of gasoline at the refinery to adjust for po-  
24 tential or actual emissions increases due to the blending authorized by  
25 this subsection.

26 (s) STANDARD SPECIFICATIONS FOR BIODIESEL.—

27 (1) DEFINITION OF BIODIESEL.—In this subsection, the term “bio-  
28 diesel” has the meaning given the term in section 312(f) of Energy  
29 Policy Act of 1992 (42 U.S.C. 13220(f)).

30 (2) ANNUAL INSPECTION AND ENFORCEMENT PROGRAM.—

31 (A) IN GENERAL.—The Administrator shall establish an annual  
32 inspection and enforcement program to ensure that diesel fuel con-  
33 taining biodiesel sold or distributed in commerce meets the stand-  
34 ards established under regulations under this section, including  
35 testing and certification for compliance with applicable standards  
36 of the American Society for Testing and Materials.

37 (B) AUTHORIZATION OF APPROPRIATIONS.—There are author-  
38 ized to be appropriated to carry out the inspection and enforce-  
39 ment program under this paragraph \$3,000,000 for each of fiscal  
40 years 2008 to 2010.

41 (t) PREVENTION OF AIR QUALITY DETERIORATION.—



1 (1) STUDY.—

2 (A) IN GENERAL.—The Administrator shall complete a study to  
3 determine whether the renewable fuel volumes required by this sec-  
4 tion will adversely affect air quality as a result of changes in  
5 motor vehicle and motor vehicle engine emissions of air pollutants  
6 regulated under this division.

7 (B) CONSIDERATIONS.—The study shall include consideration  
8 of—

9 (i) various blend levels, types of renewable fuels, and avail-  
10 able vehicle technologies; and

11 (ii) appropriate national, regional, and local air quality con-  
12 trol measures.

13 (2) REGULATIONS.—Not later than 3 years after December 18,  
14 2007, the Administrator shall—

15 (A) promulgate regulations to implement appropriate measures  
16 to mitigate, to the greatest extent achievable, considering the re-  
17 sults of the study under paragraph (1), any adverse impacts on  
18 air quality as the result of the renewable volumes required by this  
19 section; or

20 (B) make a determination that no such measures are necessary.

21 (u) PENALTIES AND INJUNCTIONS.—

22 (1) CIVIL PENALTIES.—Any person that violates subsection (b), (f),  
23 (g), (k), (l), (m), or (n) or the regulations prescribed under subsection  
24 (d), (h), (i), (k), (l), (m), (n), or (o) or that fails to furnish any infor-  
25 mation or conduct any tests required by the Administrator under sub-  
26 section (c) shall be liable to the United States for a civil penalty of  
27 not more than \$25,000 for each day of the violation or failure and the  
28 amount of economic benefit or savings resulting from the violation or  
29 failure. Any violation with respect to a regulation prescribed under sub-  
30 section (d), (k), (l), (m), or (o) that establishes a regulatory standard  
31 based on a multiday averaging period shall constitute a separate day  
32 of violation for each day in the averaging period. Civil penalties shall  
33 be assessed in accordance with subsections (b) and (c) of section  
34 221105 of this title.

35 (2) INJUNCTIVE AUTHORITY.—

36 (A) JURISDICTION.—The district courts of the United States  
37 shall have jurisdiction to restrain violations of subsection (b), (f),  
38 (g), (k), (l), (m), (n) or (o) and of regulations prescribed under  
39 subsections (d), (h), (i), (k), (l), (m), (n), or (o), to award other  
40 appropriate relief, and to compel the furnishing of information and

1 the conduct of tests required by the Administrator under sub-  
2 section (c).

3 (B) ACTIONS BROUGHT BY AND IN NAME OF UNITED STATES.—  
4 An action to restrain a violation or compel action described in sub-  
5 paragraph (A) shall be brought by and in the name of the United  
6 States.

7 (C) SUBPOENAS.—In any such action, a subpoena for a wit-  
8 nesses who is required to attend a district court in any judicial  
9 district may run into any other judicial district.

10 **§ 221112. Renewable fuel**

11 (a) DEFINITIONS.—In this section:

12 (1) MUNICIPAL SOLID WASTE.—The term “municipal solid waste”  
13 has the meaning given the term “solid waste” in section 1004 of the  
14 Solid Waste Disposal Act (42 U.S.C. 6903).

15 (2) RFG STATE.—The term “RFG State” means a State in which  
16 is located 1 or more covered areas (as defined in section 221111(k)(1)  
17 of this title).

18 (3) SECRETARY.—The term “Secretary” means the Secretary of En-  
19 ergy.

20 (b) CELLULOSIC BIOMASS ETHANOL AND MUNICIPAL SOLID WASTE  
21 LOAN GUARANTEE PROGRAM.—

22 (1) IN GENERAL.—Funds may be provided for the cost (as defined  
23 in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of  
24 loan guarantees issued under section 1516 of the Energy Policy Act  
25 of 2005 (42 U.S.C. 16503) to carry out commercial demonstration  
26 projects for cellulosic biomass and sucrose-derived ethanol.

27 (2) DEMONSTRATION PROJECTS.—

28 (A) IN GENERAL.—The Secretary shall issue loan guarantees  
29 under this section to carry out not more than 4 projects to com-  
30 mercially demonstrate the feasibility and viability of producing cel-  
31 lulosic biomass ethanol or sucrose-derived ethanol, including at  
32 least 1 project that uses cereal straw as a feedstock and 1 project  
33 that uses municipal solid waste as a feedstock.

34 (B) DESIGN CAPACITY.—Each project shall have a design ca-  
35 pacity to produce at least 30,000,000 gallons of cellulosic biomass  
36 ethanol each year.

37 (3) APPLICANT ASSURANCES.—An applicant for a loan guarantee  
38 under this section shall provide assurances, satisfactory to the Sec-  
39 retary, that—

1 (A) the project design has been validated through the operation  
2 of a continuous process facility with a cumulative output of at  
3 least 50,000 gallons of ethanol;

4 (B) the project has been subject to a full technical review;

5 (C) the project is covered by adequate project performance  
6 guarantees;

7 (D) the project, with the loan guarantee, is economically viable;  
8 and

9 (E) there is a reasonable assurance of repayment of the guaran-  
10 teed loan.

11 (4) LIMITATIONS.—

12 (A) MAXIMUM GUARANTEE.—Except as provided in subpara-  
13 graph (B), a loan guarantee under this section may be issued for  
14 up to 80 percent of the estimated cost of a project, but may not  
15 exceed \$250,000,000 for a project.

16 (B) ADDITIONAL GUARANTEES.—

17 (i) IN GENERAL.—The Secretary may issue additional loan  
18 guarantees for a project to cover up to 80 percent of the ex-  
19 cess of actual project cost over estimated project cost but not  
20 to exceed 15 percent of the amount of the original guarantee.

21 (ii) PRINCIPAL AND INTEREST.—Subject to subparagraph  
22 (A), the Secretary shall guarantee 100 percent of the prin-  
23 cipal and interest of a loan made under subparagraph (A).

24 (5) EQUITY CONTRIBUTIONS.—To be eligible for a loan guarantee  
25 under this section, an applicant for the loan guarantee shall have bind-  
26 ing commitments from equity investors to provide an initial equity con-  
27 tribution of at least 20 percent of the total project cost.

28 (6) INSUFFICIENT AMOUNTS.—If the amount made available to carry  
29 out this section is insufficient to allow the Secretary to make loan  
30 guarantees for 3 projects described in this subsection, the Secretary  
31 shall issue loan guarantees for 1 or more qualifying projects under this  
32 section in the order in which the applications for the projects are re-  
33 ceived by the Secretary.

34 (7) APPROVAL.—An application for a loan guarantee under this sec-  
35 tion shall be approved or disapproved by the Secretary not later than  
36 90 days after the application is received by the Secretary.

37 (e) RENEWABLE FUEL PRODUCTION RESEARCH AND DEVELOPMENT  
38 GRANTS.—

39 (1) IN GENERAL.—The Administrator shall provide grants for the re-  
40 search into, and development and implementation of, renewable fuel

1 production technologies in RFG States with low rates of ethanol pro-  
2 duction, including low rates of production of cellulosic biomass ethanol.

3 (2) ELIGIBILITY.—

4 (A) IN GENERAL.—The entities eligible to receive a grant under  
5 this subsection are academic institutions in RFG States, and con-  
6 sortia made up of combinations of academic institutions, industry,  
7 State government agencies, or local government agencies in RFG  
8 States, that have proven experience and capabilities with relevant  
9 technologies.

10 (B) APPLICATION.—To be eligible to receive a grant under this  
11 subsection, an eligible entity shall submit to the Administrator an  
12 application in such manner and form, and accompanied by such  
13 information, as the Administrator may specify.

14 (3) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to  
15 be appropriated to carry out this subsection \$25,000,000 for each of  
16 fiscal years 2006 to 2010.

17 **§ 221113. Nonroad engines and nonroad vehicles**

18 (a) EMISSION STANDARDS.—

19 (1) STUDY.—The Administrator shall conduct a study of emissions  
20 from nonroad engines and nonroad vehicles (other than locomotives or  
21 engines used in locomotives) to determine if such emissions cause, or  
22 significantly contribute to, air pollution that may reasonably be antici-  
23 pated to endanger public health or welfare.

24 (2) DETERMINATION.—After notice and opportunity for public hear-  
25 ing, the Administrator shall determine within 12 months after comple-  
26 tion of the study under paragraph (1), based on the results of the  
27 study, whether emissions of carbon monoxide, nitrogen oxides, and  
28 volatile organic compounds from new and existing nonroad engines or  
29 nonroad vehicles (other than locomotives or engines used in loco-  
30 motives) are significant contributors to ozone or carbon monoxide con-  
31 centrations in more than 1 area that has failed to attain the NAAQSeS  
32 for ozone or carbon monoxide. That determination shall be included in  
33 the regulations under paragraph (3).

34 (3) REGULATIONS.—

35 (A) IN GENERAL.—If the Administrator makes an affirmative  
36 determination under paragraph (2), the Administrator shall, with-  
37 in 12 months after completion of the study under paragraph (1),  
38 promulgate (and from time to time revise) regulations containing  
39 standards applicable to emissions from the classes or categories of  
40 new nonroad engines and new nonroad vehicles (other than loco-  
41 motives or engines used in locomotives) that in the Administrator's

1 judgment, cause or contribute to air pollution that may reasonably  
2 be anticipated to endanger public health or welfare.

3 (B) GREATEST DEGREE OF EMISSION REDUCTION ACHIEV-  
4 ABLE.—The standards shall achieve the greatest degree of emis-  
5 sion reduction achievable through the application of technology  
6 that the Administrator determines will be available for the engines  
7 or vehicles to which the standards apply, giving appropriate con-  
8 sideration to—

9 (i) the cost of applying the technology within the period of  
10 time available to manufacturers; and

11 (ii) noise, energy, and safety factors associated with the ap-  
12 plication of the technology.

13 (C) CONSIDERATIONS.—Before determining what degree of re-  
14 duction will be available, the Administrator shall consider stand-  
15 ards equivalent in stringency to standards for comparable motor  
16 vehicles or engines (if any) regulated under section 221102 of this  
17 title, taking into account the technological feasibility, costs, safety,  
18 noise, and energy factors associated with achieving, as appro-  
19 priate, standards of such stringency and lead time.

20 (D) USEFUL LIFE.—The regulations shall apply to the useful  
21 life of the engines or vehicles (as determined by the Adminis-  
22 trator).

23 (4) OTHER AIR POLLUTANTS.—

24 (A) IN GENERAL.—If the Administrator determines that any  
25 emissions not described in paragraph (2) from new nonroad en-  
26 gines or vehicles significantly contribute to air pollution that may  
27 reasonably be anticipated to endanger public health or welfare, the  
28 Administrator may promulgate such regulations as the Adminis-  
29 trator considers appropriate containing standards applicable to  
30 emissions from the classes or categories of new nonroad engines  
31 and new nonroad vehicles (other than locomotives or engines used  
32 in locomotives) that, in the Administrator's judgment, cause or  
33 contribute to air pollution that may reasonably be anticipated to  
34 endanger public health or welfare, taking into account costs, noise,  
35 safety, and energy factors associated with the application of tech-  
36 nology that the Administrator determines will be available for the  
37 engines and vehicles to which the standards apply.

38 (B) USEFUL LIFE.—The regulations shall apply to the useful  
39 life of the engines or vehicles (as determined by the Adminis-  
40 trator).

1 (5) NEW LOCOMOTIVES AND NEW ENGINES USED IN LOCO-  
2 MOTIVES.—

3 (A) IN GENERAL.—The Administrator shall promulgate regula-  
4 tions containing standards applicable to emissions from new loco-  
5 motives and new engines used in locomotives.

6 (B) GREATEST DEGREE OF EMISSION REDUCTION ACHIEV-  
7 ABLE.—The standards shall achieve the greatest degree of emis-  
8 sion reduction achievable through the application of technology  
9 that the Administrator determines will be available for the loco-  
10 motives or engines to which the standards apply, giving appro-  
11 priate consideration to—

12 (i) the cost of applying the technology within the period of  
13 time available to manufacturers; and

14 (ii) noise, energy, and safety factors associated with the ap-  
15 plication of the technology.

16 (b) EFFECTIVE DATE.—Standards under this section shall take effect at  
17 the earliest possible date considering the lead time necessary to permit the  
18 development and application of the requisite technology, giving appropriate  
19 consideration to the cost of compliance within that period and energy and  
20 safety.

21 (c) SAFE CONTROLS.—

22 (1) IN GENERAL.—Effective with respect to new engines or vehicles  
23 to which standards under this section apply, no emission control device,  
24 system, or element of design shall be used in a new nonroad engine  
25 or new nonroad vehicle described in this section for purposes of comply-  
26 ing with the standards if the device, system, or element of design will  
27 cause or contribute to an unreasonable risk to public health, welfare,  
28 or safety in its operation or function.

29 (2) CONSIDERATIONS.—In determining whether an unreasonable risk  
30 exists, the Administrator shall consider factors including those de-  
31 scribed in section 221102(a)(4)(B) of this title.

32 (d) STATIONARY INTERNAL COMBUSTION ENGINES.—Nothing in this  
33 subdivision relating to nonroad engines shall be construed to apply to sta-  
34 tionary internal combustion engines.

35 (e) ENFORCEMENT.—The standards under this section—

36 (1) shall be subject to sections 221106, 221107, 221108, and  
37 221109 of this title with such modifications of the applicable regula-  
38 tions implementing those sections as the Administrator considers ap-  
39 propriate; and

40 (2) shall be enforced in the same manner as standards prescribed  
41 under section 221102 of this title.

1 (f) REVISION OR PROMULGATION OF REGULATIONS.—The Administrator  
2 shall revise or promulgate regulations as may be necessary to determine  
3 compliance with, and enforce, standards in effect under this section.

4 **§ 221114. High altitude performance adjustments**

5 (a) INSTRUCTION OF THE MANUFACTURER.—

6 (1) TREATMENT AS NOT IN VIOLATION.—Any action taken with re-  
7 spect to any element of design installed on or in a motor vehicle or  
8 motor vehicle engine in compliance with regulations under this subdivi-  
9 sion (including any alteration or adjustment of such an element) shall  
10 be treated as not in violation of section 221103(a) of this title if the  
11 action is performed in accordance with high altitude adjustment in-  
12 structions provided by the manufacturer under subsection (b) and ap-  
13 proved by the Administrator.

14 (2) DISAPPROVAL OF INSTRUCTIONS.—If the Administrator finds  
15 that adjustments or modifications made pursuant to instructions of the  
16 manufacturer under paragraph (1) will not ensure emission control per-  
17 formance with respect to each standard under section 221102 of this  
18 title at least equivalent to that which would result if no such adjust-  
19 ments or modifications were made, the Administrator shall disapprove  
20 the instructions. Such a finding shall be based on minimum engineering  
21 evaluations consistent with good engineering practice.

22 (b) REGULATIONS.—

23 (1) SUBMISSION OF INSTRUCTIONS TO THE ADMINISTRATOR.—In-  
24 structions respecting each class or category of vehicles or engines to  
25 which this subdivision applies providing for such vehicle and engine ad-  
26 justments and modifications as may be necessary to ensure emission  
27 control performance at different altitudes shall be submitted by the  
28 manufacturer to the Administrator pursuant to regulations promul-  
29 gated by the Administrator.

30 (2) VIOLATION.—Any knowing violation by a manufacturer of re-  
31 quirements of the Administrator under paragraph (1) shall be treated  
32 as a violation by the manufacturer of section 221103(a)(1)(C) of this  
33 title for purposes of the penalties under section 221105 of this title.

34 (3) ADJUSTMENTS.—The instructions shall provide, in addition to  
35 other adjustments, for adjustments for vehicles moving from high alti-  
36 tude areas to low altitude areas after the initial registration of the vehi-  
37 cles.

38 (c) MANUFACTURER PARTS.—No instructions under this section respect-  
39 ing adjustments or modifications may require the use of any manufacturer  
40 parts (as defined in section 221103(a)(2) of this title) unless the manufac-

1 turer demonstrates to the satisfaction of the Administrator that the use of  
2 manufacturer parts is necessary to ensure emission control performance.

3 (d) STATE INSPECTION AND MAINTENANCE PROGRAMS.—The authority  
4 provided by this section shall be available in any high altitude State (as de-  
5 termined under regulations of the Administrator promulgated before August  
6 7, 1977) in which an inspection and maintenance program for the testing  
7 of motor vehicle emissions has been instituted for the portions of the State  
8 where any NAAQS for auto-related pollutants has not been attained.

9 (e) HIGH ALTITUDE TESTING.—

10 (1) DEFINITION OF HIGH ALTITUDE CONDITIONS.—In this sub-  
11 section, the term “high altitude conditions” has the meaning given the  
12 term “high altitude” in regulations of the Administrator in effect as  
13 of November 15, 1990.

14 (2) TESTING CENTER.—The Administrator shall establish at least 1  
15 testing center (in addition to the testing centers existing on November  
16 15, 1990) located at a site that represents high altitude conditions, to  
17 ascertain in a reasonable manner whether, when in actual use through-  
18 out their useful life (as determined under section 221102(a)(1)(C) of  
19 this title), each class or category of vehicle and engines to which regu-  
20 lations under section 221102 of this title apply conforms to the emis-  
21 sion standards established by those regulations.

22 (3) RESEARCH AND TECHNOLOGY ASSESSMENT CENTER.—

23 (A) IN GENERAL.—The Administrator, in cooperation with the  
24 Secretary of Energy, the Administrator of the Federal Transit Ad-  
25 ministration, and such other agencies as the Administrator consid-  
26 ers appropriate, shall establish a research and technology assess-  
27 ment center to provide for the development and evaluation of less-  
28 polluting heavy-duty engines and fuels for use in buses, heavy-duty  
29 trucks, nonroad engines, and nonroad vehicles

30 (B) LOCATION.—The research and technology assessment cen-  
31 ter shall be located at a high altitude site that represents high alti-  
32 tude conditions.

33 (C) PREFERENCE.—In establishing and funding the research  
34 and technology assessment center, the Administrator shall give  
35 preference to proposals that provide for local cost-sharing of facili-  
36 ties and recovery of costs of operation through utilization of the  
37 center for the purposes of this section.

38 (4) RESEARCH SUBJECTS.—

39 (A) DESIGNATION.—The Administrator shall designate at least  
40 1 center at high altitude conditions to provide research on—

41 (i) after-market emission components;



- 1 (ii) dual-fueled vehicles and conversion kits;  
2 (iii) the effects of tampering on emissions equipment;  
3 (iv) testing of alternate fuels and conversion kits; and  
4 (v) the development of curricula, training courses, and ma-  
5 terials to maximize the effectiveness of inspection and mainte-  
6 nance programs as they relate to promoting effective control  
7 of vehicle emissions at high altitude elevations.

8 (B) PREFERENCE.—Preference shall be given to existing vehicle  
9 emission testing and research centers that—

- 10 (i) have established reputations for vehicle emission re-  
11 search and development and training; and  
12 (ii) possess in-house Federal test procedure capacity.

13 **§ 221115. Motor vehicle compliance program fees**

14 (a) FEE COLLECTION.—Consistent with section 9701 of title 31, the Ad-  
15 ministrator may promulgate (and from time to time revise) regulations es-  
16 tablishing fees to recover all reasonable costs to the Administrator associ-  
17 ated with—

- 18 (1) new vehicle or engine certification under section 221106(a) of  
19 this title or chapter 225;  
20 (2) new vehicle or engine compliance monitoring and testing under  
21 section 221106(b) of this title or chapter 225; and  
22 (3) in-use vehicle or engine compliance monitoring and testing under  
23 section 221107(d) of this title or chapter 225.

24 (b) FEE SCHEDULE.—The Administrator may establish for all foreign  
25 and domestic manufacturers a fee schedule based on such factors as the Ad-  
26 ministrator finds appropriate, equitable, and nondiscriminatory, including  
27 the number of vehicles or engines produced under a certificate of conform-  
28 ity. In the case of heavy-duty engine and vehicle manufacturers, the fees  
29 shall not exceed a reasonable amount to recover an appropriate portion of  
30 the reasonable costs.

31 (c) SPECIAL TREASURY FUND.—Any fees collected under this section  
32 shall be deposited in the Treasury in a special fund for licensing and other  
33 services which thereafter shall be available for appropriation, to remain  
34 available until expended, to carry out EPA's activities for which the fees  
35 were collected.

36 (d) LIMITATION ON FUND USE.—Amounts in the special fund described  
37 in subsection (c) shall not be used until after the 1st fiscal year commencing  
38 after the 1st July 1 when fees are paid into the fund.

39 (e) TESTING AUTHORITY.—Nothing in this section shall be construed to  
40 limit the Administrator's authority to require manufacturer or confirmatory  
41 testing as provided in this chapter.

1    **§ 221116. Prohibition of production of engines requiring**  
2                    **leaded gasoline**

3            The Administrator shall promulgate regulations applicable to motor vehi-  
4    cle engines and nonroad engines manufactured after model year 1992 that  
5    prohibit the manufacture, sale, or introduction into commerce of any engine  
6    that requires leaded gasoline.

7    **§ 221117. Urban bus standards**

8            (a) DEFINITIONS.—In this section:

9                (1) LOW-POLLUTING FUEL.—

10                   (A) IN GENERAL.—The term “low-polluting fuel” means meth-  
11                   anol, ethanol, propane, or natural gas, or any comparably low-pol-  
12                   luting fuel.

13                   (B) DETERMINATION.—In determining whether a fuel is com-  
14                   parably low-polluting, the Administrator shall consider—

15                       (i) the level of emissions of air pollutants from vehicles  
16                       using the fuel; and

17                       (ii) the contribution of such emissions to ambient levels of  
18                       air pollutants.

19                (2) METHANOL.—The term “methanol” includes any fuel that con-  
20                   tains at least 85 percent methanol unless the Administrator increases  
21                   that percentage as the Administrator considers appropriate to protect  
22                   public health and welfare.

23                (3) URBAN BUS.—The term “urban bus” has the meaning given the  
24                   term under regulations of the Administrator promulgated under section  
25                   221102(a) of this title.

26            (b) STANDARDS.—The Administrator shall promulgate regulations under  
27    section 221102(a) of this title applicable to urban buses. The standards  
28    shall be based on the best technology that can reasonably be anticipated to  
29    be available at the time at which the measures are to be implemented, tak-  
30    ing costs, safety, energy, lead time, and other relevant factors into account.  
31    The regulations shall require that urban buses comply with subsection (c)  
32    (and subsection (d), if applicable) and the standards applicable under sec-  
33    tion 221102(a) of this title for heavy-duty vehicles of the same type and  
34    model year.

35            (c) PM STANDARD.—

36                    (1) 50 PERCENT REDUCTION.—The standards under section  
37                    221102(a) of this title applicable to urban buses shall require that  
38                    emissions of particulate matter from urban buses shall not exceed 50  
39                    percent of the emissions of particulate matter allowed under the emis-  
40                    sion standard applicable under section 202(a) of the Clean Air Act (42  
41                    U.S.C. 7521(a)) as of November 15, 1990, for particulate matter in

1 the case of heavy-duty diesel vehicles and engines manufactured in  
2 model year 1994.

3 (2) REVISED REDUCTION.—The Administrator shall increase the  
4 level of emissions of particulate matter allowed under the standard de-  
5 scribed in paragraph (1) if the Administrator determines that the 50  
6 percent reduction described in paragraph (1) is not technologically  
7 achievable, taking into account durability, costs, lead time, safety, and  
8 other relevant factors. The Administrator may not increase the level of  
9 emissions above 70 percent of the emissions of particulate matter al-  
10 lowed under the emission standard applicable under section 202(a) of  
11 the Clean Air Act (42 U.S.C. 7521(a)) as of November 15, 1990, for  
12 particulate matter in the case of heavy-duty diesel vehicles and engines  
13 manufactured in model year 1994.

14 (3) DETERMINATION AS PART OF RULEMAKING.—As part of the  
15 rulemaking under subsection (b), the Administrator shall make a deter-  
16 mination whether the 50 percent reduction described in paragraph (1)  
17 is technologically achievable, taking into account durability, costs, lead  
18 time, safety, and other relevant factors.

19 (d) LOW-POLLUTING FUEL REQUIREMENT.—

20 (1) ANNUAL TESTING.—The Administrator shall conduct annual  
21 tests of a representative sample of operating urban buses subject to the  
22 particulate matter standard applicable pursuant to subsection (c) to de-  
23 termine whether urban buses comply with the standard in use over  
24 their full useful life.

25 (2) PROMULGATION OF ADDITIONAL LOW-POLLUTING FUEL RE-  
26 QUIREMENT.—

27 (A) IN GENERAL.—If the Administrator determines, based on  
28 the testing under paragraph (1), that urban buses subject to the  
29 particulate matter standard applicable pursuant to subsection (c)  
30 do not comply with the standard in use over their full useful life,  
31 the Administrator shall revise the standards applicable to urban  
32 buses to require (in addition to compliance with the particulate  
33 matter standard applicable pursuant to subsection (c)) that all  
34 new urban buses purchased or placed into service by owners or op-  
35 erators of urban buses in all metropolitan statistical areas or con-  
36 solidated metropolitan statistical areas with a 1980 population of  
37 750,000 or more shall be capable of operating, and shall be exclu-  
38 sively operated, on low-polluting fuels. The Administrator shall es-  
39 tablish the pass-fail rate for purposes of testing under this sub-  
40 paragraph.

1 (B) PHASE-IN SCHEDULE.—The Administrator shall promulgate  
2 a schedule phasing in any low-polluting fuel requirement estab-  
3 lished pursuant to this paragraph to an increasing percentage of  
4 new urban buses purchased or placed into service in each of the  
5 1st 5 model years commencing 3 years after the determination  
6 under subparagraph (A). Under the schedule 100 percent of new  
7 urban buses placed into service in the 5th model year commencing  
8 3 years after the determination under subparagraph (A) shall  
9 comply with the low-polluting fuel requirement established pursu-  
10 ant to this paragraph.

11 (C) AREAS WITH A 1980 POPULATION OF LESS THAN 750,000.—  
12 The Administrator may extend the requirements of this paragraph  
13 to metropolitan statistical areas or consolidated metropolitan sta-  
14 tistical areas with a 1980 population of less than 750,000 if the  
15 Administrator determines that a significant benefit to public  
16 health could be expected to result from such an extension.

17 (e) RETROFIT REQUIREMENTS.—

18 (1) IN GENERAL.—The Administrator shall promulgate regulations  
19 under section 221102(a) of this title requiring that buses described in  
20 paragraph (2) comply with an emission standard or emission control  
21 technology requirement established by the Administrator in the regula-  
22 tions.

23 (2) BUSES.—Buses referred to in paragraph (1) are urban buses  
24 that—

25 (A) are operating in areas described in subparagraph (A) of  
26 subsection (d)(2) (or subparagraph (C) of subsection (d)(2) if the  
27 Administrator has taken action under that subparagraph);

28 (B) were not subject to standards in effect under the regula-  
29 tions under subsection (b); and

30 (C) have their engines replaced or rebuilt after January 1,  
31 1995;

32 (3) BEST TECHNOLOGY AND PRACTICES.—The emission standard or  
33 emission control technology requirement shall reflect the best retrofit  
34 technology and maintenance practices reasonably achievable.

35 (f) PROCEDURES FOR ADMINISTRATION AND ENFORCEMENT.—The Ad-  
36 ministrator shall establish, in accordance with section 221106(h) of this  
37 title, procedures for the administration and enforcement of standards for  
38 urban buses subject to standards under this section, testing procedures,  
39 sampling protocols, in-use compliance requirements, and criteria governing  
40 evaluation of buses. Procedures for testing (including certification testing)  
41 shall reflect actual operating conditions.

## 1 **Chapter 223—Aircraft Emission Standards**

Sec.

223101. Definitions.

223102. Establishment of standards.

223103. Enforcement of standards.

223104. State standards and controls.

### 2 **§ 223101. Definitions**

3 Terms used in this chapter (other than the term Administrator) have the  
4 meanings given the terms in section 40102(a) of title 49.

### 5 **§ 223102. Establishment of standards**

6 (a) STUDY; PROPOSED STANDARDS; HEARINGS; ISSUANCE OF REGULA-  
7 TIONS.—The Administrator shall conduct a study and investigation of emis-  
8 sions of air pollutants from aircraft to determine—

9 (1) the extent to which such emissions affect air quality in air qual-  
10 ity control regions throughout the United States; and

11 (2) the technological feasibility of controlling such emissions.

12 (b) EMISSION STANDARDS.—The Administrator shall from time to time  
13 issue proposed emission standards applicable to the emission of any air pol-  
14 lutant from any class of aircraft engines that, in the Administrator's judg-  
15 ment, causes or contributes to air pollution that may reasonably be antici-  
16 pated to endanger public health or welfare.

17 (c) CONSULTATION.—The Administrator shall consult with the Adminis-  
18 trator of the Federal Aviation Administration on aircraft engine emission  
19 standards.

20 (d) LIMITATION.—The Administrator shall not change the aircraft engine  
21 emission standards if the change would significantly increase noise and ad-  
22 versely affect safety.

23 (e) HEARINGS.—The Administrator shall hold public hearings with re-  
24 spect to standards proposed under subsection (b). The hearings shall, to the  
25 extent practicable, be held in air quality control regions that are most seri-  
26 ously affected by aircraft emissions.

27 (f) FINAL REGULATIONS.—Within 90 days after the issuance of stand-  
28 ards proposed under subsection (b), the Administrator shall issue regula-  
29 tions with such modifications as the Administrator considers appropriate.  
30 The regulations may be revised from time to time.

31 (g) EFFECTIVE DATE OF REGULATIONS.—Any regulation prescribed  
32 under this section (and any revision thereof) shall take effect after such pe-  
33 riod as the Administrator finds necessary (after consultation with the Sec-  
34 retary of Transportation) to permit the development and application of the  
35 requisite technology, giving appropriate consideration to the cost of compli-  
36 ance within that period.

37 (h) REGULATIONS THAT CREATE HAZARDS TO AIRCRAFT SAFETY.—  
38 Any regulation in effect under this section with respect to aircraft shall not

1 apply if disapproved by the President, after notice and opportunity for pub-  
2 lic hearing, on the basis of a finding by the Secretary of Transportation  
3 that the regulation would create a hazard to aircraft safety. Any such find-  
4 ing shall include a reasonably specific statement of the basis on which the  
5 finding is made.

6 **§ 223103. Enforcement of standards**

7 (a) REGULATIONS TO ENSURE COMPLIANCE WITH STANDARDS.—The  
8 Secretary of Transportation, after consultation with the Administrator, shall  
9 prescribe regulations to ensure compliance with all standards prescribed  
10 under section 223102 of this title by the Administrator. The regulations of  
11 the Secretary of Transportation shall include provisions making those stand-  
12 ards applicable in the issuance, amendment, modification, suspension, or  
13 revocation of any certificate authorized by chapter 447 of title 49.

14 (b) EXECUTION OF POWERS AND DUTIES.—In the execution of all powers  
15 and duties vested in the Secretary under this section, the Secretary of  
16 Transportation—

- 17 (1) shall ensure that all necessary inspections are accomplished; and  
18 (2) may execute any power or duty vested in the Secretary by any  
19 other provision of law.

20 (c) NOTICE AND APPEAL RIGHTS.—In any action to amend, modify, sus-  
21 pend, or revoke a certificate in which violation of an emission standard pre-  
22 scribed under section 223102 of this title or of a regulation prescribed  
23 under subsection (a) is at issue, the certificate holder shall have the same  
24 notice and appeal rights as are prescribed for such holders in chapter 461  
25 of title 49, except that in any appeal to the National Transportation Safety  
26 Board, the Board may amend, modify, or revoke the order of the Secretary  
27 of Transportation only if the Board finds no violation of the standard or  
28 regulation and that the amendment, modification, or revocation is consistent  
29 with safety in air transportation.

30 **§ 223104. State standards and controls**

31 No State or political subdivision thereof may adopt or attempt to enforce  
32 any standard respecting emissions of any air pollutant from any aircraft or  
33 engine thereof unless the standard is identical to a standard applicable to  
34 such aircraft under this chapter.

35 **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.

1     **§ 225101. Definitions**

2           (a) IN GENERAL.—In this chapter:

3                   (1) BASE GASOLINE.—The term “base gasoline” means gasoline that  
4                   meets the following specifications:

Specifications of Base Gasoline Used as Basis for Reactivity Re-  
adjustment:

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 °F	
IBP .....	92
10% .....	126
50% .....	219
90% .....	327
EP .....	414
Hydrocarbon Type, Vol. % FIA:	
Aromatics .....	30.9
Olefins .....	8.2
Saturates .....	60.9

5                   (2) CLEAN ALTERNATIVE FUEL.—

6                           (A) IN GENERAL.—The term “clean alternative fuel” means any  
7                           fuel (including methanol, ethanol, or other alcohols (including any  
8                           mixture thereof containing 85 percent or more by volume of such  
9                           alcohol with gasoline or other fuels), reformulated gasoline, diesel,  
10                           natural gas, liquefied petroleum gas, and hydrogen) or power  
11                           source (including electricity) used in a clean-fuel vehicle that com-  
12                           plies with the standards and requirements applicable to the vehicle  
13                           under this subdivision when using that fuel or power source.

14                           (B) FLEXIBLE FUEL VEHICLES AND DUAL FUEL VEHICLES.—  
15                           In the case of any flexible fuel vehicle or dual fuel vehicle, the  
16                           term “clean alternative fuel” means a fuel with respect to which  
17                           the vehicle was certified as a clean-fuel vehicle meeting the stand-  
18                           ards applicable to clean-fuel vehicles under section 225103(d)(2)  
19                           of this title when operating on clean alternative fuel (or any Cali-  
20                           fornia Air Resources Board standards that replace those standards  
21                           pursuant to section 225103(e) of this title).

22                           (3) CLEAN-FUEL VEHICLE.—The term “clean-fuel vehicle” means a  
23                           vehicle in a class or category of vehicles that has been certified to meet  
24                           for any model year the clean-fuel vehicle standards applicable under  
25                           this chapter for that model year to clean-fuel vehicles in that class or  
26                           category.

27                           (4) COVERED FLEET.—

28                                   (A) IN GENERAL.—The term “covered fleet” means 10 or more  
29                                   motor vehicles that are owned or operated by a single person.

1 (B) DETERMINATION.—In determining the number of vehicles  
2 owned or operated by a single person for purposes of this para-  
3 graph, all motor vehicles owned or operated, leased or otherwise  
4 controlled by the person, by any person that controls the person,  
5 by any person controlled by the person, and by any person under  
6 common control with the person shall be treated as owned by the  
7 person.

8 (C) EXCLUSIONS.—The term “covered fleet” does not include—

9 (i) motor vehicles held for lease or rental to the general  
10 public;

11 (ii) motor vehicles held for sale by motor vehicle dealers  
12 (including demonstration vehicles);

13 (iii) motor vehicles used for motor vehicle manufacturer  
14 product evaluations or tests;

15 (iv) law enforcement and other emergency vehicles; or

16 (v) nonroad vehicles (including farm and construction vehi-  
17 cles).

18 (5) COVERED FLEET VEHICLE.—

19 (A) IN GENERAL.—The term “covered fleet vehicle” means a  
20 motor vehicle that is—

21 (i) in a vehicle class for which standards are applicable  
22 under this chapter; and

23 (ii) in a covered fleet that is centrally fueled (or capable  
24 of being centrally fueled).

25 (B) CAPABILITY OF BEING CENTRALLY FUELED.—No vehicle  
26 that under normal operations is garaged at a personal residence  
27 at night shall be considered to be a vehicle that is capable of being  
28 centrally fueled within the meaning of subparagraph (A)(ii).

29 (6) NONMETHANE ORGANIC GAS.—

30 (A) IN GENERAL.—The term “nonmethane organic gas” means  
31 the sum of nonoxygenated and oxygenated hydrocarbons contained  
32 in a gas sample.

33 (B) INCLUSIONS.—The term “nonmethane organic gas” in-  
34 cludes, at a minimum—

35 (i) all oxygenated organic gases containing 5 or fewer car-  
36 bon atoms (including aldehydes, ketones, alcohols, ethers, and  
37 others); and

38 (ii) all alkanes, alkenes, alkynes, and aromatics containing  
39 12 or fewer carbon atoms.

40 (C) DEMONSTRATION OF COMPLIANCE WITH NONMETHANE OR-  
41 GANIC GAS STANDARD.—To demonstrate compliance with a stand-



1           ard, nonmethane organic gas emissions shall be measured in ac-  
2           cordance with the procedures entitled “California Non-Methane  
3           Organic Gas Test Procedures”.

4           (D) ADJUSTMENT.—In the case of vehicles using fuels other  
5           than base gasoline, the level of nonmethane organic gas emissions  
6           shall be adjusted based on the reactivity of the emissions relative  
7           to vehicles using base gasoline.

8           (b) TERMS DEFINED IN CHAPTER 221.—The definitions applicable to  
9           chapter 221 under section 221101 of this title shall apply for purposes of  
10          this chapter.

11          (c) MODIFICATION OF DEFINITIONS AND METHODS FOR MAKING REAC-  
12          TIVITY ADJUSTMENTS.—The Administrator shall modify the definitions of  
13          nonmethane organic gas and base gasoline and the methods for making re-  
14          activity adjustments to conform to the definitions and method used in Cali-  
15          fornia under the Low-Emission Vehicle and Clean Fuel Regulations of the  
16          California Air Resources Board, so long as the California definitions are,  
17          in the aggregate, at least as protective of public health and welfare as the  
18          definitions in this section.

19          **§ 225102. Requirements applicable to clean-fuel vehicles**

20          (a) PROMULGATION OF STANDARDS.—The Administrator shall promul-  
21          gate regulations under this chapter containing clean-fuel vehicle standards  
22          for the clean-fuel vehicles specified in this chapter.

23          (b) OTHER REQUIREMENTS.—

24                (1) CLEAN-FUEL VEHICLES OF UP TO 8,500 POUNDS.—Clean-fuel ve-  
25                hicles of up to 8,500 pounds gross vehicle weight rating subject to  
26                standards set forth in this chapter shall comply with all motor vehicle  
27                requirements of this subdivision (such as requirements relating to on-  
28                board diagnostics, evaporative emissions, and others) that are applica-  
29                ble to conventional gasoline-fueled vehicles of the same category and  
30                model year, except as provided in section 225104 of this title with re-  
31                spect to administration and enforcement, and except to the extent that  
32                any such requirement is in conflict with this chapter.

33                (2) CLEAN-FUEL VEHICLES OF MORE THAN 8,500 POUNDS.—Clean-  
34                fuel vehicles of more than 8,500 pounds gross vehicle weight rating  
35                subject to standards set forth in this chapter shall comply with all re-  
36                quirements of this subdivision that apply to conventional gasoline-  
37                fueled or diesel-fueled vehicles of the same category and model year,  
38                except as provided in section 225104 of this title with respect to ad-  
39                ministration and enforcement, and except to the extent that any such  
40                requirement is in conflict with this chapter.

41          (c) IN-USE USEFUL LIFE AND TESTING.—

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1 (1) LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS UP TO 6,000  
2 POUNDS.—In the case of light-duty vehicles and light-duty trucks up  
3 to 6,000 pounds gross vehicle weight rating, the useful life for purposes  
4 of determining in-use compliance with the standards under section  
5 225103 of this title shall be—

6 (A) a period of 5 years or 50,000 miles (or the equivalent),  
7 whichever first occurs, in the case of standards applicable for pur-  
8 poses of certification at 50,000 miles; and

9 (B) a period of 10 years or 100,000 miles (or the equivalent),  
10 whichever first occurs, in the case of standards applicable for pur-  
11 poses of certification at 100,000 miles, except that in-use testing  
12 shall not be done for a period beyond 7 years or 75,000 miles (or  
13 the equivalent), whichever first occurs.

14 (2) LIGHT-DUTY TRUCKS OF MORE THAN 6,000 POUNDS.—In the case  
15 of light-duty trucks of more than 6,000 pounds gross vehicle weight  
16 rating, the useful life for purposes of determining in-use compliance  
17 with the standards under section 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 11 years or 120,000 miles (or the equivalent),  
22 whichever first occurs, in the case of standards applicable for pur-  
23 poses of certification at 120,000 miles, except that in-use testing  
24 shall not be done for a period beyond 7 years or 90,000 miles (or  
25 the equivalent), whichever first occurs.

26 **§ 225103. Standards for light-duty clean-fuel vehicles**

27 (a) EXHAUST STANDARDS FOR LIGHT-DUTY VEHICLES AND CERTAIN  
28 LIGHT-DUTY TRUCKS.—

29 (1) APPLICABILITY.—The standards set forth in this subsection shall  
30 apply in the case of clean-fuel vehicles that are—

31 (A) light-duty trucks of up to 6,000 pounds gross vehicle weight  
32 rating (but not including light-duty trucks of more than 3,750  
33 pounds loaded vehicle weight); or

34 (B) light-duty vehicles.

35 (2) STANDARDS.—For air pollutants specified in the following table,  
36 the clean-fuel vehicle standards under this section shall provide that ve-  
37 hicle exhaust emissions shall not exceed the levels specified in the fol-  
38 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 <sub>x</sub>	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.

1 (b) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN  
 2 3,750 POUNDS LOADED VEHICLE WEIGHT BUT NOT MORE THAN 5,750  
 3 POUNDS LOADED VEHICLE WEIGHT AND NOT MORE THAN 6,000 POUNDS  
 4 GROSS VEHICLE WEIGHT RATING.—

5 (1) APPLICABILITY.—The standards set forth in this subsection shall  
 6 apply in the case of clean-fuel vehicles that are light-duty trucks of  
 7 more than 3,750 pounds loaded vehicle weight but not more than 5,750  
 8 pounds loaded vehicle weight and not more than 6,000 pounds gross  
 9 vehicle weight rating.

10 (2) STANDARDS.—For the air pollutants specified in the following  
 11 table, the clean-fuel vehicle standards under this section shall provide  
 12 that vehicle exhaust emissions shall not exceed the levels specified in  
 13 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 <sub>x</sub>	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.

14 (c) EXHAUST STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN  
 15 6,000 POUNDS.—The standards set forth in this subsection shall apply in  
 16 the case of clean-fuel vehicles that are light-duty trucks of more than 6,000  
 17 pounds gross weight rating and less than or equal to 8,500 pounds gross  
 18 weight rating, beginning with model year 1998. For the air pollutants speci-  
 19 fied in the following table, the clean-fuel vehicle standards under this section  
 20 shall provide that vehicle exhaust emissions of vehicles within the test  
 21 weight categories specified in the following table shall not exceed the levels  
 22 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 <sub>x</sub>	PM*	HCHO (formaldehyde)
50,000 mile standard .....	0.125	3.4	0.4**	.....	0.015
120,000 mile standard .....	0.180	5.0	0.6	0.08	0.022

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

Pollutant	NMOG	CO	NO <sub>x</sub>	PM*	HCHO (formaldehyde)
50,000 mile standard .....	0.160	4.4	0.7**	.....	0.018
120,000 mile standard .....	0.230	6.4	1.0	0.10	0.027

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gwvr

Pollutant	NMOG	CO	NO <sub>x</sub>	PM*	HCHO (formaldehyde)
50,000 mile standard .....	0.195	5.0	1.1**	.....	0.022
120,000 mile standard .....	0.280	7.3	1.5	0.12	0.032

Standards are expressed in grams per mile (gpm).

\*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

\*\*Standard not applicable to diesel-fueled vehicles.

For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

1 (d) FLEXIBLE AND DUAL-FUEL VEHICLES.—

2 (1) IN GENERAL.—The Administrator shall establish standards and  
 3 requirements under this section for vehicles weighing not more than  
 4 8,500 pounds gross vehicle weight rating that are capable of operating  
 5 on more than 1 fuel. The standards shall require that such vehicles  
 6 meet the exhaust standards applicable under subsections (a), (b), and  
 7 (c) for carbon monoxide, nitrogen oxides, formaldehyde, and, if appro-  
 8 priate, particulate matter for single-fuel vehicles of the same vehicle  
 9 category and model year.

10 (2) EXHAUST NMOG STANDARD FOR OPERATION ON CLEAN ALTER-  
 11 NATIVE FUEL.—In addition to standards for the pollutants described  
 12 in paragraph (1), the standards established under paragraph (1) shall  
 13 require that vehicle exhaust emissions of nonmethane organic gas not  
 14 exceed the levels (expressed in grams per mile) specified in the tables  
 15 below when the vehicle is operated on the clean alternative fuel for  
 16 which the vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON  
 CLEAN ALTERNATIVE FUEL  
 Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty Vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles .....	0.125	0.156
LDT's (3,751–5,750 lbs. LVW) .....	0.160	0.20
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles .....	0.075	0.090

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL—Continued  
Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty Vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
LDT's (3,751–5,750 lbs. LVW) .....	0.100	0.130

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.  
For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More Than 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (120,000 mi.) Standard (gpm)
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW) .....	0.125	0.180
LDT's (3,751–5,750 lbs. TW) .....	0.160	0.230
LDT's (above 5,750 lbs. TW) .....	0.195	0.280

For standards under column A, for purposes of certification under section 221106 of this title, the applicable useful life shall be 50,000 miles.  
For standards under column B, for purposes of certification under section 221106 of this title, the applicable useful life shall be 120,000 miles.

- 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.

- 6 (e) REPLACEMENT BY CARB STANDARDS.—
- 7 (1) SINGLE SET OF CARB STANDARDS.—If California promulgates
- 8 regulations establishing and implementing a single set of standards ap-

1 plicable in California pursuant to a waiver approved under section  
2 221109 of this title to any category of vehicles described in subsection  
3 (a), (b), (c), or (d) and that set of standards is, in the aggregate, at  
4 least as protective of public health and welfare as the otherwise applica-  
5 ble standards set forth in section 225102 of this title and subsection  
6 (a), (b), (c), or (d), the California set of standards shall apply to clean-  
7 fuel vehicles in that category in lieu of the standards otherwise applica-  
8 ble under section 225102 of this title and subsection (a), (b), (c), or  
9 (d), as the case may be.

10 (2) MULTIPLE SETS OF CARB STANDARDS.—If California promul-  
11 gates regulations establishing and implementing several different sets  
12 of standards applicable in California pursuant to a waiver approved  
13 under section 221109 of this title to any category of vehicles described  
14 in subsection (a), (b), (c), or (d) and each of the California sets of  
15 standards is, in the aggregate, at least as protective of public health  
16 and welfare as the otherwise applicable standards set forth in section  
17 225102 of this title and subsection (a), (b), (c), or (d), those standards  
18 shall be treated as qualifying California standards for purposes of this  
19 paragraph. Where more than 1 set of qualifying standards are estab-  
20 lished and administered by California, the least stringent set of qualify-  
21 ing California standards shall apply to the clean-fuel vehicles concerned  
22 in lieu of the standards otherwise applicable to those vehicles under  
23 section 225102 of this title and this section.

24 (f) LESS STRINGENT CARB STANDARDS.—If the Low-Emission Vehicle  
25 and Clean Fuels Regulations of the California Air Resources Board applica-  
26 ble to any category of vehicles described in subsection (a), (b), (c), or (d)  
27 are modified after November 15, 1990, to provide an emission standard that  
28 is less stringent than the otherwise applicable standard set forth in sub-  
29 section (a), (b), (c), or (d), or if any effective date contained in the regula-  
30 tions is delayed, the modified standards or the delay (or both, as the case  
31 may be) shall apply, for an interim period, in lieu of the standard or effec-  
32 tive date otherwise applicable under subsection (a), (b), (c), or (d) to any  
33 vehicles covered by the modified standard or delayed effective date. The in-  
34 terim period shall be a period of not more than 2 model years after the ef-  
35 fective date otherwise applicable under subsection (a), (b), (c), or (d). After  
36 the interim period, the otherwise applicable standard set forth in subsection  
37 (a), (b), (c), or (d) shall take effect with respect to those vehicles (unless  
38 subsequently replaced under subsection (e)).

39 (g) NONAPPLICABILITY TO HEAVY-DUTY VEHICLES.—Notwithstanding  
40 any provision of the Low-Emission Vehicle and Clean Fuels Regulations of  
41 the California Air Resources Board, nothing in this section shall apply to

1 heavy-duty engines in vehicles of more than 8,500 pounds gross vehicle  
2 weight rating.

3 **§ 225104. Administration and enforcement as per California**  
4 **standards**

5 (a) IN GENERAL.—Where the numerical clean-fuel vehicle standards ap-  
6 plicable under this chapter to vehicles of not more than 8,500 pounds gross  
7 vehicle weight rating are the same as numerical emission standards applica-  
8 ble in California under the Low-Emission Vehicle and Clean Fuels Regula-  
9 tions of the California Air Resources Board, those standards shall be admin-  
10 istered and enforced by the Administrator—

11 (1) in the same manner and with the same flexibility as California  
12 administers and enforces corresponding standards applicable under the  
13 Low-Emission Vehicle and Clean Fuels Regulations of the California  
14 Air Resources Board; and

15 (2) subject to the same requirements, and utilizing the same inter-  
16 pretations and policy judgments, as are applicable in the case of the  
17 California standards, including requirements regarding certification,  
18 production-line testing, and in-use compliance;

19 unless the Administrator determines (in promulgating the regulations estab-  
20 lishing the clean-fuel vehicle program under this section) that any such ad-  
21 ministration and enforcement would not meet the criteria for a waiver under  
22 section 221109 of this title.

23 (b) HEAVY-DUTY VEHICLES.—Nothing in this section shall apply in the  
24 case of standards under section 225105 of this title for heavy-duty vehicles.

25 **§ 225105. Standards for heavy-duty clean-fuel vehicles of**  
26 **more than 8,500 up to 26,000 pounds gross vehicle**  
27 **weight rating**

28 (a) COMBINED NITROGEN OXIDE AND NONMETHANE HYDROCARBON  
29 STANDARD.—For classes or categories of heavy-duty vehicles or engines  
30 having a gross vehicle weight rating greater than 8,500 pounds and up to  
31 26,000 pounds gross vehicle weight rating, the standards under this chapter  
32 for clean-fuel vehicles shall require that combined emissions of nitrogen ox-  
33 ides and nonmethane hydrocarbons shall not exceed 3.15 grams per brake  
34 horsepower hour. No standard shall be promulgated under this section for  
35 any heavy-duty vehicle of more than 26,000 pounds gross vehicle weight rat-  
36 ing.

37 (b) REVISED STANDARDS THAT ARE LESS STRINGENT.—

38 (1) IN GENERAL.—The Administrator may promulgate a revised less  
39 stringent standard for the vehicles or engines described in subsection

40 (a) if the Administrator determines that the 50 percent reduction re-  
41 quired under subsection (a) is not technologically feasible for clean die-

1 sel-fueled vehicles and engines, taking into account durability, costs,  
2 lead time, safety, and other relevant factors.

3 (2) PETITION.—Any person may at any time petition the Adminis-  
4 trator to make a determination under paragraph (1). The Adminis-  
5 trator shall act on such a petition within 6 months after the petition  
6 is filed.

7 (3) PERCENTAGE REDUCTION.—Any revised less stringent standards  
8 promulgated under this subsection shall require at least a 30 percent  
9 reduction in lieu of the 50 percent reduction described in paragraph  
10 (1).

11 **§ 225106. Centrally fueled fleets**

12 (a) DEFINITION OF COVERED AREA.—In this section:

13 (1) IN GENERAL.—The term “covered area” means—

14 (A) an ozone nonattainment area with a 1980 population of  
15 250,000 or more classified under subchapter II of chapter 215 as  
16 a serious area, severe area, or extreme area based on data for cal-  
17 endar years 1987, 1988, and 1989; and

18 (B) a carbon monoxide nonattainment area with a 1980 popu-  
19 lation of 250,000 or more and a carbon monoxide design value at  
20 or above 16.0 parts per million based on data for calendar years  
21 1988 and 1989.

22 (2) EXCLUSION.—The term “covered area” does not include a car-  
23 bon monoxide nonattainment area in which mobile sources do not con-  
24 tribute significantly to carbon monoxide exceedances.

25 (3) INTERPRETATION METHODOLOGY.—In determining the areas to  
26 be treated as covered areas under paragraph (1), the Administrator  
27 shall use the most recent interpretation methodology issued by the Ad-  
28 ministrator prior to November 15, 1990.

29 (b) FLEET PROGRAM REQUIRED FOR COVERED AREAS.—

30 (1) STATE IMPLEMENTATION PLAN PROVISION.—The implementation  
31 plan of each State in which there is located all or part of a covered  
32 area shall contain a provision establishing a clean-fuel vehicle program  
33 for fleets under this section.

34 (2) PLAN PROVISIONS FOR RECLASSIFIED AREAS.—In the case of an  
35 ozone nonattainment areas reclassified as a serious area, severe area,  
36 or extreme area under chapter 215 with a 1980 population of 250,000  
37 or more, the State shall submit a plan provision meeting the require-  
38 ments of this subsection within 1 year after reclassification. The plan  
39 provision shall implement the requirements applicable under this sub-  
40 section at the time of reclassification and thereafter, except that the



1 Administrator may adjust for a limited period the deadlines for compli-  
2 ance where compliance with those deadlines would be infeasible.

3 (3) CONSULTATION; CONSIDERATION OF FACTORS.—Each State re-  
4 quired to have an implementation plan provision under this subsection  
5 shall develop the provision in consultation with fleet operators, vehicle  
6 manufacturers, vehicle fuel producers and distributors, and other inter-  
7 ested persons, taking into consideration operational range, specialty  
8 uses, vehicle and fuel availability, costs, safety, resale values of vehicles  
9 and equipment, and other relevant factors.

10 (c) REQUIREMENTS.—

11 (1) IN GENERAL.—The plan provision required under this section  
12 shall require that at least a specified percentage of all new covered fleet  
13 vehicles in model year 1998 and thereafter purchased by each covered  
14 fleet operator in each covered area shall be clean-fuel vehicles and shall  
15 use clean alternative fuels when operating in the covered area.

16 (2) SPECIFIED PERCENTAGE.—For each model year, the specified  
17 percentage shall be as follows:

18 (A) Light-duty trucks up to 6,000 pounds gross vehicle weight  
19 rating and light-duty vehicles: 70%.

20 (B) Heavy-duty trucks above 8,500 pounds gross vehicle weight  
21 rating: 50%.

22 (d) CHOICE OF VEHICLES AND FUEL.—The plan provision shall provide  
23 that the choice of clean-fuel vehicles and clean alternative fuels shall be  
24 made by the covered fleet operator subject to the requirements of subsection  
25 (c).

26 (e) AVAILABILITY OF CLEAN ALTERNATIVE FUEL.—The plan provision  
27 shall require fuel providers to make clean alternative fuel available to cov-  
28 ered fleet operators at locations at which covered fleet vehicles are centrally  
29 fueled.

30 (f) CREDITS.—

31 (1) ISSUANCE OF CREDITS.—The plan provision shall provide for the  
32 issuance by the State of appropriate credits to a fleet operator for any  
33 of the following (or any combination thereof):

34 (A) The purchase of more clean-fuel vehicles than required  
35 under this section.

36 (B) The purchase of clean-fuel vehicles that meet more strin-  
37 gent standards established by the Administrator pursuant to para-  
38 graph (4).

39 (C) The purchase of vehicles in categories that are not covered  
40 by this section but that meet standards established for such vehi-  
41 cles under paragraph (4).

1 (2) USE OF CREDITS; LIMITATIONS BASED ON WEIGHT CLASSES.—

2 (A) USE OF CREDITS.—Credits under this subsection may be  
3 used by the person holding the credits to demonstrate compliance  
4 with this section or may be traded or sold for use by any other  
5 person to demonstrate compliance with other requirements appli-  
6 cable under this section in the same nonattainment area. Credits  
7 obtained at any time may be held or banked for use at any later  
8 time, and when so used, the credits shall maintain the same value  
9 as if used at an earlier date.

10 (B) LIMITATIONS BASED ON WEIGHT CLASSES.—Credits issued  
11 with respect to the purchase of vehicles of up to 8,500 pounds  
12 gross vehicle weight rating may not be used to demonstrate com-  
13 pliance by any person with the requirements applicable under this  
14 subsection to vehicles of more than 8,500 pounds gross vehicle  
15 weight rating. Credits issued with respect to the purchase of vehi-  
16 cles of more than 8,500 pounds gross vehicle weight rating may  
17 not be used to demonstrate compliance by any person with the re-  
18 quirements applicable under this subsection to vehicles weighing  
19 up to 8,500 pounds gross vehicle weight rating.

20 (C) WEIGHTING.—Credits issued for purchase of a clean-fuel  
21 vehicle under this subsection shall be adjusted with appropriate  
22 weighting to reflect the level of emission reduction achieved by the  
23 vehicle.

24 (3) REGULATIONS; ADMINISTRATION.—The Administrator shall pro-  
25 mulgate regulations for a credit program under this subsection. The  
26 State shall administer the credit program under this subsection.

27 (4) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—

28 (A) IN GENERAL.—Solely for purposes of issuing credits under  
29 paragraph (1)(B), the Administrator shall establish under this  
30 paragraph standards for ultra-low emission vehicles and zero emis-  
31 sion vehicles that are more stringent than the standard otherwise  
32 applicable to clean-fuel vehicles under this chapter.

33 (B) CERTIFICATION; ADMINISTRATION; ENFORCEMENT.—The  
34 Administrator shall certify clean-fuel vehicles as complying with  
35 the more stringent standards, and administer and enforce the  
36 more stringent standards, in the same manner as in the case of  
37 the otherwise applicable clean-fuel vehicle standards established  
38 under this section.

39 (C) CALIFORNIA STANDARDS.—The standards established by  
40 the Administrator under this paragraph for vehicles under 8,500  
41 pounds gross vehicle weight rating shall conform as closely as pos-

1           sible to standards established by California for ultra-low emission  
2           vehicles and zero emission vehicles in the same class. For vehicles  
3           of 8,500 pounds gross vehicle weight rating or greater, the Admin-  
4           istrator shall promulgate comparable standards for purposes of  
5           this subsection.

6           (5) EARLY FLEET CREDITS.—The plan provision shall provide cred-  
7           its under this subsection to fleet operators that purchase vehicles cer-  
8           tified to meet clean-fuel vehicle standards under this chapter during  
9           any period after approval of the plan provision and prior to the effec-  
10          tive date of the fleet program under this section.

11          (g) AVAILABILITY TO PUBLIC.—At any facility owned or operated by a  
12          department, agency, or instrumentality of the United States where vehicles  
13          subject to this subsection are supplied with clean alternative fuel, the fuel  
14          shall be offered for sale to the public for use in other vehicles during reason-  
15          able business times and subject to national security concerns, unless such  
16          fuel is commercially available for vehicles in the vicinity of the Federal facil-  
17          ity.

18          (h) TRANSPORTATION CONTROL MEASURES.—The Administrator shall by  
19          regulation ensure that certain transportation control measures including  
20          time-of-day or day-of-week restrictions, and other similar measures that re-  
21          strict vehicle usage, do not apply to any clean-fuel vehicle that meets the  
22          requirements of this section. This subsection shall apply notwithstanding  
23          subdivision 2.

24          **§ 225107. Vehicle conversions**

25          (a) CONVERSION OF EXISTING AND NEW CONVENTIONAL VEHICLES TO  
26          CLEAN-FUEL VEHICLES.—

27               (1) IN GENERAL.—The requirements of section 225106 of this title  
28               may be met through the conversion of existing or new gasoline or die-  
29               sel-powered vehicles to clean-fuel vehicles that comply with the applica-  
30               ble requirements of that section.

31               (2) TREATMENT AS PURCHASE.—For purposes of those requirements  
32               the conversion of a vehicle to a clean-fuel vehicle shall be treated as  
33               the purchase of a clean-fuel vehicle.

34               (3) EFFECT OF CHAPTER.—Nothing in this chapter shall be con-  
35               strued to provide that any covered fleet operator subject to fleet vehicle  
36               purchase requirements under section 225106 of this title shall be re-  
37               quired to convert existing or new gasoline or diesel-powered vehicles to  
38               clean-fuel vehicles or to purchase converted vehicles.

39          (b) REGULATIONS.—

40               (1) IN GENERAL.—The Administrator shall, consistent with the re-  
41               quirements of this subdivision applicable to new vehicles, promulgate

1 regulations governing conversions of conventional vehicles to clean-fuel  
2 vehicles.

3 (2) CONTENTS.—The regulations shall—

4 (A) establish criteria for such conversions that will ensure that  
5 a converted vehicle will comply with the standards applicable  
6 under this chapter to clean-fuel vehicles; and

7 (B) provide for the application to such conversions of the same  
8 provisions of this subdivision (including provisions relating to ad-  
9 ministration and enforcement) as are applicable to standards  
10 under sections 225102, 225103, 225104, and 225105 of this title,  
11 except that in the case of conversions the Administrator may mod-  
12 ify the applicable regulations implementing those provisions as the  
13 Administrator considers necessary to implement this chapter.

14 (c) ENFORCEMENT.—

15 (1) IN GENERAL.—A person that converts conventional vehicles to  
16 clean-fuel vehicles pursuant to subsection (b) shall be considered to be  
17 a manufacturer for purposes of sections 221106 and 221107 of this  
18 title and related enforcement provisions.

19 (2) EFFECT OF PARAGRAPH.—Nothing in paragraph (1) shall re-  
20 quire a person that performs such conversions to warrant any part or  
21 operation of a vehicle other than as required under this chapter. Noth-  
22 ing in this paragraph shall limit the applicability of any other warranty  
23 to unrelated parts or operations.

24 (d) TAMPERING.—The conversion from a vehicle capable of operating on  
25 gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered  
26 a violation of section 221103(a)(1)(C) of this title if the conversion complies  
27 with the regulations promulgated under subsection (b).

28 (e) SAFETY.—The Secretary of Transportation shall, if necessary, pro-  
29 mulgate regulations under applicable motor vehicle laws regarding the safety  
30 of vehicles converted from existing and new vehicles to clean-fuel vehicles.

31 **§ 225108. Federal agency fleets**

32 (a) ADDITIONAL PROVISIONS APPLICABLE.—This section shall apply, in  
33 addition to the other provisions of this chapter, in the case of covered fleet  
34 vehicles owned or operated by an agency, department, or instrumentality of  
35 the United States, except as otherwise provided in subsection (e).

36 (b) COST OF VEHICLES TO FEDERAL AGENCY.—Notwithstanding section  
37 604 of title 40, the Administrator of General Services shall not include the  
38 incremental costs of clean-fuel vehicles in the amount to be reimbursed to  
39 Federal agencies if the Administrator of General Services determines that  
40 amounts appropriated under subsection (g) are sufficient to provide for the

1 incremental cost of such vehicles over the cost of comparable conventional  
2 vehicles.

3 (c) LIMITATIONS ON APPROPRIATIONS.—Amounts appropriated under  
4 subsection (g) shall be applicable only to—

5 (1) the portion of the costs of acquisition, maintenance, and oper-  
6 ation of clean-fuel vehicles that exceeds the cost of acquisition, mainte-  
7 nance, and operation of comparable conventional vehicles;

8 (2) the portion of the costs of fuel storage and dispensing equipment  
9 attributable to clean-fuel vehicles that exceeds the costs for those pur-  
10 poses required for conventional vehicles; and

11 (3) the portion of the costs of acquisition of clean-fuel vehicles that  
12 represents a reduction in revenue from the disposal of clean-fuel vehi-  
13 cles as compared with revenue resulting from the disposal of com-  
14 parable conventional vehicles.

15 (d) VEHICLE COSTS.—The incremental cost of clean-fuel vehicles over the  
16 cost of comparable conventional vehicles shall not be applied to any calcula-  
17 tion with respect to a limitation under law on the maximum cost of individ-  
18 ual vehicles that may be required by the United States.

19 (e) EXEMPTIONS.—The requirements of this chapter shall not apply to  
20 vehicles with respect to which the Secretary of Defense certifies to the Ad-  
21 ministrator that an exemption is needed based on national security consider-  
22 ations.

23 (f) ACQUISITION REQUIREMENT.—Federal agencies, to the extent prac-  
24 ticable, shall obtain clean-fuel vehicles from original equipment manufactur-  
25 ers.

26 (g) AUTHORIZATION OF APPROPRIATIONS.—

27 (1) IN GENERAL.—There are authorized to be appropriated such  
28 sums as are required to carry out this section.

29 (2) ADDITION TO ACQUISITION SERVICES FUND.—Such sums as are  
30 appropriated for the Administrator of General Services to carry out  
31 this section shall be added to the Acquisition Services Fund established  
32 by section 321 of title 40.

33 **§ 225109. California pilot test program**

34 (a) ESTABLISHMENT.—The Administrator shall establish a pilot program  
35 in California to demonstrate the effectiveness of clean-fuel vehicles in con-  
36 trolling air pollution in ozone nonattainment areas.

37 (b) APPLICABILITY.—This section shall apply—

38 (1) only to light-duty trucks and light-duty vehicles; and

39 (2) only in California, except as provided in subsection (f).

40 (c) PROGRAM REQUIREMENTS.—

1 (1) IN GENERAL.—The Administrator shall promulgate regulations  
2 establishing requirements under this section applicable in California.

3 (2) CLEAN-FUEL VEHICLES.—The regulations shall provide that  
4 clean-fuel vehicles shall be produced, sold, and distributed (in accord-  
5 ance with normal business practices and applicable franchise agree-  
6 ments) to ultimate purchasers in California (including owners of cov-  
7 ered fleets under section 225106 of this title) in numbers that meet  
8 or exceed 300,000 in each model year.

9 (3) CLEAN ALTERNATIVE FUELS.—

10 (A) SIP.—The California implementation plan shall include a  
11 clean fuel plan that requires that clean alternative fuels on which  
12 the clean-fuel vehicles required under this section can operate shall  
13 be produced and distributed by fuel suppliers and made available  
14 in California.

15 (B) SUFFICIENCY.—At a minimum, sufficient clean alternative  
16 fuels shall be produced, distributed, and made available to ensure  
17 that all clean-fuel vehicles required under this section can operate,  
18 to the maximum extent practicable, exclusively on such fuels in  
19 California. The State shall require that clean alternative fuels be  
20 made available and offered for sale at an adequate number of loca-  
21 tions with sufficient geographic distribution to ensure convenient  
22 refueling with clean alternative fuels, considering the number of,  
23 and type of, such vehicles sold and the geographic distribution of  
24 such vehicles within the State.

25 (C) DETERMINATION.—The State shall determine the clean al-  
26 ternative fuels to be produced, distributed, and made available  
27 based on motor vehicle manufacturers' projections of future sales  
28 of such vehicles and consultations with the affected local govern-  
29 ments and fuel suppliers.

30 (D) CREDITS.—The State may by regulation grant persons sub-  
31 ject to the requirements prescribed under this paragraph an ap-  
32 propriate amount of credits for exceeding the requirements, and  
33 any person granted credits may transfer some or all of the credits  
34 for use by 1 or more persons in demonstrating compliance with  
35 the requirements. The State may make the credits available for  
36 use after consideration of enforceability, environmental, and eco-  
37 nomic factors and on such terms and conditions as the State finds  
38 appropriate.

39 (E) SPECIFICATIONS.—The State may by regulation establish  
40 specifications for any clean alternative fuel produced and made  
41 available under this paragraph as the State finds necessary to re-

1           duce or eliminate an unreasonable risk to public health, welfare,  
2           or safety associated with its use or to ensure acceptable vehicle  
3           maintenance and performance characteristics.

4           (F) UNDERGROUND STORAGE TANKS.—If a retail gasoline dis-  
5           pensing facility would have to remove or replace 1 or more motor  
6           vehicle fuel underground storage tanks and accompanying piping  
7           to comply with this section, and it had removed and replaced the  
8           tank or tanks and accompanying piping to comply with subtitle I  
9           of the Solid Waste Disposal Act (42 U.S.C. 6991 et seq.) before  
10          November 15, 1990, it shall not be required to comply with this  
11          subsection until a period of 7 years has passed from the date of  
12          the removal and replacement of the tank or tanks.

13          (G) EFFECT OF SECTION.—Nothing in this section authorizes  
14          any State other than California to adopt provisions regarding  
15          clean alternative fuels.

16          (H) FAILURE OF STATE TO MAINTAIN CLEAN AIR PROGRAM.—  
17          If California fails to adopt a clean fuel program that meets the  
18          requirements of this paragraph, the Administrator shall establish  
19          a clean fuel program for California under this paragraph and sec-  
20          tion 211110(c) of this title that meets the requirements of this  
21          paragraph.

22          (d) CREDITS FOR MOTOR VEHICLE MANUFACTURERS.—

23           (1) IN GENERAL.—

24           (A) GRANT OF CREDITS.—The Administrator may by regulation  
25           grant a motor vehicle manufacturer an appropriate amount of  
26           credits toward fulfillment of the manufacturer's share of the re-  
27           quirements of subsection (c)(2) for either of the following (or any  
28           combination thereof):

29           (i) The sale of more clean-fuel vehicles than is required  
30           under subsection (c)(2).

31           (ii) The sale of clean-fuel vehicles that meet standards es-  
32           tablished by the Administrator as provided in paragraph (3)  
33           that are more stringent than the clean-fuel vehicle standards  
34           otherwise applicable to clean-fuel vehicles.

35           (B) USE OF CREDITS.—A manufacturer granted credits under  
36           subparagraph (A) may transfer some or all of the credits for use  
37           by 1 or more other manufacturers in demonstrating compliance  
38           with the requirements prescribed under this section.

39           (C) CONSIDERATIONS.—The Administrator may make the cred-  
40           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—

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.—

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.—

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.

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.

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	
		3	
		3	
Georgia	Crist	6	
		7	
	Bowen	1	
		2	
		3	
		4	
		4	
Hammond	Hammond	1	
		2	
		3	
		4	
		1	
		2	
		3	
		4	
		1	
		2	
J. McDonough	J. McDonough	1	
		2	
		1	
		2	
		1	
		2	
		1	
		2	
		1	
		2	
Wansley	Wansley	1	
		2	
		1	
		2	
		1	
		2	
		1	
		2	
		1	
		2	
Yates	Yates	1	
		2	
		3	
		4	
		5	
		6	
		7	
		1	
		2	
		Illinois	Baldwin
2			
3			
Coffeen	Coffeen		1
			2
Grand Tower	Grand Tower		4
			2
Hennepin	Hennepin		2
			2
Kincaid	Kincaid		1
		2	
Meredosia	Meredosia	3	
		2	
Vermilion	Vermilion	2	
		2	
Indiana	Baily	7	
		8	
		8	
Breed.	Breed.	1	
		2	
Cayuga	Cayuga	1	
		2	

TABLE A.—UNITS—Continued

State	Plant Name	Genera- tor
	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	
	Avon Lake	9	
		1	
		2	
	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 ministrators 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

<b>Unit</b>	<b>Allowances</b>
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

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-

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.

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.—

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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 subchapter; 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 NAAQSeS  
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).

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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;

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.

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237110. Nonessential products containing chlorofluorocarbons.  
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237112. Safe alternatives policy.  
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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-  
18 trial 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.—

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 ministrators, 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.

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 to 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

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<sub>2.5</sub> monitoring network necessary to implement the

1 NAAQSeS for PM<sub>2.5</sub> 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<sub>2.5</sub>  
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 ministrators 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 **SEC. 4. CONFORMING AMENDMENTS.**

22 (a) TITLE 16.—The 1st section of the Act of August 1, 1958 (16 U.S.C.  
23 742d-1), is amended by striking “Secretary of the Interior” and inserting  
24 “Administrator of the Environmental Protection Agency”.

25 (b) TITLE 21.—

26 (1) Section 406 of the Federal Food, Drug, and Cosmetic Act (21  
27 U.S.C. 346) is amended—

28 (A) by striking “Any poisonous” and inserting “(a) IN GEN-  
29 ERAL.—Any poisonous”; and

30 (B) by adding at the end the following:

31 “(b) TOLERANCES FOR PESTICIDE CHEMICALS.—

32 “(1) IN GENERAL.—The function of establishing tolerances for pes-  
33 ticide chemicals for purposes of subsection (a) shall be carried out by  
34 the Administrator.

35 “(2) AUTHORITY OF THE ADMINISTRATOR.—In carrying out the  
36 function of the Administrator under paragraph (1), the Administrator  
37 has authority to—

38 “(A) monitor compliance with the tolerances and the effective-  
39 ness of surveillance and enforcement; and

1           “(B) provide technical assistance to the States and conduct re-  
2           search under this Act and the Public Health Service Act (42  
3           U.S.C. 201 et seq.).

4           “(3) INCIDENTAL FUNCTIONS.—The function of the Administrator  
5           under paragraph (1) includes such functions as are incidental to or  
6           necessary for the performance by or under the Administrator of the  
7           function described in paragraph (1), including authority provided by  
8           law to prescribe regulations relating primarily to the function.”.

9           (2) Section 408 of the Federal Food, Drug, and Cosmetic Act (21  
10          U.S.C. 346a) is amended—

11           (A) in subsection (p)(2), by striking “section 8 of the Environ-  
12           mental Research, Development, and Demonstration Act of 1978  
13           (42 U.S.C. 4365),” and inserting “section 109102 of title 55,  
14           United States Code,”;

15           (B) by redesignating subsection (s) as subsection (t); and

16           (C) by inserting after subsection (r) the following:

17          “(s) AUTHORITY OF THE ADMINISTRATOR.—

18           “(1) IN GENERAL.—In carrying out the function of establishing tol-  
19           erances for pesticide chemicals for purposes of this section, the Admin-  
20           istrator has authority to—

21           “(A) monitor compliance with the tolerances and the effective-  
22           ness of surveillance and enforcement; and

23           “(B) provide technical assistance to the States and conduct re-  
24           search under this Act and the Public Health Service Act (42  
25           U.S.C. 201 et seq.).

26           “(2) INCIDENTAL FUNCTIONS.—The function of the Administrator  
27           described in paragraph (1) includes such functions as are incidental to  
28           or necessary for the performance by or under the Administrator of the  
29           function, including authority provided by law to prescribe regulations  
30           relating primarily to the function.”.

31          (e) TITLE 26.—Section 169(d) of the Internal Revenue Code of 1986 (26  
32          U.S.C. 169(d)) is amended—

33           (1) in paragraph (1)(B), by striking “the Clean Air Act, as amended  
34           (42 U.S.C. 1857 et seq.);” and inserting “division A of subtitle II of  
35           title 55, United States Code;”;

36           (2) in paragraph (2), by striking “section 302(b) of the Clean Air  
37           Act.” and inserting “section 201101 of title 55, United States Code.”;  
38           and

39           (3) in paragraph (3), by striking “means, in the case of water pollu-  
40           tion, the Secretary of the Interior and, in the case of air pollution, the

1 Secretary of Health and Human Services” and inserting “means the  
2 Administrator of the Environmental Protection Agency”.

3 (d) TITLE 42.—Section 274h of the Atomic Energy Act of 1954 (42  
4 U.S.C. 2021(h)) is amended—

5 (1) by striking the 1st and 4th sentences;

6 (2) in the 2d sentence, by striking “Council” and inserting “Admin-  
7 istrator of the Environmental Protection Agency (referred to in this  
8 subsection as the ‘Administrator’)”; and

9 (3) by striking “Council” each place it appears and inserting “Ad-  
10 ministrator”.

#### 11 **SEC. 5. TRANSITIONAL AND SAVINGS PROVISIONS.**

12 (a) DEFINITIONS.—In this section:

13 (1) SOURCE PROVISION.—The term “source provision” means a pro-  
14 vision of law that is replaced by a title 55 provision.

15 (2) TITLE 55 PROVISION.—The term “title 55 provision” means a  
16 provision of title 55, United States Code, that is enacted by section 3.

17 (b) CUTOFF DATE.—The title 55 provisions replace certain provisions of  
18 law enacted on or before January 2, 2013. If a law enacted after that date  
19 amends or repeals a source provision, that law is deemed to amend or re-  
20 peal, as the case may be, the corresponding title 55 provision. If a law en-  
21 acted after that date is otherwise inconsistent with a title 55 provision or  
22 a provision of this Act, that law supersedes the title 55 provision or provi-  
23 sion of this Act to the extent of the inconsistency.

24 (c) ORIGINAL DATE OF ENACTMENT UNCHANGED.—A title 55 provision  
25 is deemed to have been enacted on the date of enactment of the source pro-  
26 vision that the corresponding title 55 provision.

27 (d) REFERENCES TO TITLE 55 PROVISIONS.—A reference to a title 55  
28 provision is deemed to refer to the corresponding source provision.

29 (e) REFERENCES TO SOURCE PROVISIONS.—A reference to a source pro-  
30 vision, including a reference in a regulation, order, or other law, is deemed  
31 to refer to the corresponding title 55 provision.

32 (f) REGULATIONS, ORDERS, AND OTHER ADMINISTRATIVE ACTIONS.—A  
33 regulation, order, or other administrative action in effect under a source  
34 provision continues in effect under the corresponding title 55 provision.

35 (g) ACTIONS TAKEN AND OFFENSES COMMITTED.—An action taken or  
36 an offense committed under a source provision is deemed to have been taken  
37 or committed under the corresponding title 55 provision.

#### 38 **SEC. 6. REPEALS.**

39 The following provisions of law are repealed, except with respect to rights  
40 and duties that matured, penalties that were incurred, or proceedings that  
41 were begun before the date of enactment of this Act:



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## 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.
	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.

## Schedule of Laws Repealed—Continued

Act	Section	United States Code Former Classification
	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.
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