EPA-450/3-91-019

General Provisions for 40 CFR Part 63 :

National Emission Standards for Hazardous Air Pollutants for Source Categories

Background Information for Proposed Regulation

Emission Standards Division

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air and Radiation
Office of Air Quality Planning and Standards
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June 1993

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ENVIRONMENTAL PROTECTION AGENCY

Background Information
for General Provisions for 40 CFR Part 63

Prepared by:

6/15/93

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Date

1. The proposed General Provisions would eliminate the repetition of general information and requirements within national emission standards for hazardous air pollutants (NESHAP) to be established subsequent to the Clean Air Act Amendments of 1990. Under section 112 of the Clean Air Act as amended, the EPA is authorized to promulgate national standards to control emissions of hazardous air pollutants from categories of stationary sources of these pollutants. The proposed General Provisions, to be located in subpart A of part 63 of title 40 of the Code of Federal Regulations, would codify procedures and criteria to implement NESHAP for source categories.

2. Copies of this document have been sent to the following Federal Departments: Labor, Health and Human Services, Defense, Transportation, Agriculture, Commerce, Interior, and Energy; the National Science Foundation; the Council on Environmental Quality; members of the State and Territorial Air Pollution Program Administrators; the Association of Local Air Pollution Control Officials; EPA Regional Administrators; and other interested parties.

3. The comment period for review of this document is 60 days from the date of publication of the proposed rule in the Federal Register. Mr. Fred Dimmick or Ms. Michele Dubow may be contacted at (919) 541-5625 or (919) 541-3803 regarding the date of the comment period.

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LIST OF ABBREVIATIONS AND ACRONYMS

Act	Clean Air Act, amended 1977
BDT	Best Demonstrated Technology
BID	Background Information Document
CAAA	Clean Air Act Amendments of 1990
CFR	Code of Federal Regulations
EPA	Environmental Protection Agency
HAP	Hazardous Air Pollutant(s)
MACT	Maximum Achievable Control Technology
NESHAP	National Emission Standard(s) for Hazardous Air Pollutant(s)
NSPS	New Source Performance Standard(s)
O/O	Owner or Operator(s)

I. INTRODUCTION

PURPOSE OF GENERAL PROVISIONS

The existing General Provisions (subpart A of parts 60 and 61 of title 40 of the Code of Federal Regulations (CFR)) codify procedures and criteria used to implement new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAP). They eliminate the repetition of general information in these standards, promulgated under sections 111 and 112 of the Clean Air Act (the Act) and codified in subsequent subparts of parts 60 and 61. The General Provisions concern compliance with standards, emission testing and monitoring, construction, reconstruction and modification, waivers of compliance, and requests to use an alternative design, piece of equipment, work practice, or operation in place of one specified by a standard. The existing General Provisions also include definitions of terms, units and abbreviations, lists of pollutants and source categories to which the General Provisions (and subsequent regulations) apply, addresses of State air pollution control agencies and Environmental Protection Agency (EPA) Regional Offices to which implementation and enforcement authority has been delegated, incorporations by reference of technical materials, prohibited activities, and requirements for reporting, notifications, and recordkeeping. The complete contents of the existing General Provisions are listed in Tables 1 and 2.

General Provisions are being proposed for 40 CFR part 63, a new part, that would include technology-based standards for source categories emitting one or more of the 189 chemicals or chemical classes to be regulated as hazardous air pollutants (HAP) under new section 112 (title III) of the Clean Air Act Amendments of 1990 (CAAA). Failure to propose and promulgate new General Provisions would seriously impair implementation of the "maximum achievable control technology" (MACT) and other standards required under new section 112.

A new part in the CFR is needed for NESHAP and their General Provisions that will be established pursuant to the CAAA in order to distinguish them from existing NESHAP that are in part 61. Section 112(q) of the CAAA adds a "savings provision" that preserves the legality of existing NESHAP until they are amended. It says that "any standard under [section 112] promulgated before the date of enactment of

the [CAAA] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments." The existing standards must be reviewed and, if appropriate, revised to comply with MACT requirements within 10 years of the date of enactment, but if an existing standard is remanded to the Administrator under judicial review, the Administrator has the discretion to apply either the requirements of amended section 112 or former section 112, as they are spelled out in the Act and part 61. A compelling case is made, therefore, to create a new part, part 63, to house the new air toxics regulations.

Because the General Provisions have the legal force and effect of standards themselves, the existing General Provisions would still be relevant, even though some enabling portions of the Act have been revoked or amended by the CAAA of 1990. The existing General Provisions are valid in the future for sources that are affected by existing NESHAP. The General Provisions in part 61 must be retained for current or future enforcement cases that deal with violations that occurred prior to November 15, 1990.

The new General Provisions for part 63 would embody the statutory changes and directives of the CAAA. Formerly, section 112 required the Administrator of the EPA to determine which hazardous air pollutants ought to be regulated and then prescribe health-based emission standards for those substances at a level to protect the public with an "ample margin of safety," notwithstanding technological or economic considerations. Regulations were developed for the specific HAP under consideration. New and existing sources typically were subject to the same emission standards.

In contrast, section 111 requires the Administrator to determine which stationary source categories ought to be regulated based on whether they "[cause] or [contribute] significantly to air pollution which may reasonably be anticipated to endanger public health or welfare." Then under section 111 the Administrator has to establish technology-based performance standards for such sources. These standards must reflect the "best demonstrated technology," taking into consideration the cost of achieving emission reductions and any non-air quality health, environmental, and energy impacts. Generally, new sources (and "modified" or "reconstructed" existing sources) are subject to regulation. The pollutants regulated under

section 111 are either criteria pollutants or non-criteria, non-HAP.

New section 112, however, requires the Administrator to promulgate technology-based emission standards for source categories that emit hazardous air pollutants that are listed in section 112(b) of the CAAA. The basis for the standards is a new definition of "achievable" technology, developed for the purposes of section 112, that combines elements from the standard-setting criteria from both section 111 and the previous section 112. These include a health-based HAP list (as in former section 112), consideration of cost and other non-health impacts (as in section 111), and permission to specify a design, equipment, work practice, or operational standard instead of an emission standard (as in both sections). Furthermore, emission standards (or approved alternatives) promulgated for hazardous air pollutants under new section 112 may be different for new and existing sources.

To reflect the nature of new section 112 standards, the proposed General Provisions combine elements from both previous sets of General Provisions. The General Provisions being proposed are similar to those already promulgated for parts 60 and 61 with some notable differences:

* The proposed General Provisions are organized to group all related provisions under the same section, e.g., provisions concerning procedures to approve source construction and reconstruction are now in one section with appropriately labeled subsections.

* The proposed General Provisions have been adapted to meet the technical and legal requirements of the CAAA; provisions are included to address new compliance requirements under title III, permit program requirements under title V, and other statutory requirements.

* While the proposed compliance, monitoring and enforcement requirements are similar to those currently used under section 111 and section 112 standards, consideration has been given to correcting past problems encountered in implementing part 60 and part 61 standards. For example, to address the problem of owners or operators (O/O) failing to plan adequately for compliance tests, the General Provisions for part 63 would require O/O to prepare a site-specific

test plan and have it approved by the enforcement agency before a required performance test.

* The proposed General Provisions distinguish between major and area sources where it is necessary to do so to implement statutory requirements that apply only to major sources.

PURPOSE OF BACKGROUND INFORMATION DOCUMENT

This Background Information Document (BID) was created for two major reasons: (1) to assist the process of developing new General Provisions for part 63, and (2) to reduce the amount of documentation that must appear in the preamble to this regulation. This document does not contain descriptions of the contents of the new General Provisions for part 63, but, rather, it provides an historical sense of perspective on precedents set by the EPA in implementing the General Provisions under the old Act.

In addition to discussions about the purpose of General Provisions and the purpose of this document, part I of the BID also contains outlines of the existing General Provisions for parts 60 and 61 (Tables 1 and 2) and an outline for the proposed General Provisions for part 63 (Table 3). Subsequent to this introduction (part I), this document contains two other parts.

Part II contains 15 chapters that each discuss one component of General Provisions language in parts 60 and 61 (except for Chapter 9 that deals with permit program requirements). The titles and ordering of these chapters closely mimic that of the General Provisions themselves. Each chapter in part II contains three sections: "Why needed," "Relevant Requirements and History of Parts 60 and 61," and "Statutory Requirements of CAAA." The first section in part II states why such language should be included in a general provisions section of a regulation. The second section in part II provides the requirements and history of the existing General Provisions in parts 60 and 61, and the third section summarizes the statutory requirements of the CAAA of 1990 that affect the proposed General Provisions.

The requirements and history of the existing General Provisions were gleaned from a thorough examination of these provisions and all the Federal Register notices that pertain

to them. (Relevant Federal Register notices may be found in the Docket for this rulemaking.)

Part III of the BID contains the statutory requirements of the CAAA that are relevant to the General Provisions for 40 CFR part 63. Sections featured are comprised primarily of those in new section 112 and sections 501-504 of title V. These requirements are reproduced from the new amendments.

GENERAL PROVISIONS - 40 CFR PART 63

TABLE 1

OUTLINE OF EXISTING GENERAL PROVISIONS - 40 CFR PART 60, SUBPART A

Section	
60.1	Applicability.
60.2	Definitions.
60.3	Units and abbreviations.
60.4	Address.
60.5	Determination of construction or modification.
60.6	Review of plans.
60.7	Notification and record keeping.
60.8	Performance tests.
60.9	Availability of information.
60.10	State authority.
60.11	Compliance with standards and maintenance requirements.
60.12	Circumvention.
60.13	Monitoring requirements.
60.14	Modification.
60.15	Reconstruction.
60.16	Priority list.
60.17	Incorporation by reference.
60.18	General control device requirements.

TABLE 2

OUTLINE OF EXISTING GENERAL PROVISIONS - 40 CFR PART 61, SUBPART A

Section	
61.01	Lists of pollutants and applicability of part 61.
61.02	Definitions.
61.03	Units and abbreviations.
61.04	Address.
61.05	Prohibited activities.
61.06	Determination of construction or modification.
61.07	Application for approval of construction or modification.
61.08	Approval of construction or modification.
61.09	Notification of startup.
61.10	Source reporting and request for waiver of compliance.
61.11	Waiver of compliance.
61.12	Compliance with standards and maintenance requirements.
61.13	Emission tests and waiver of emission tests.
61.14	Monitoring requirements.
61.15	Modification.
61.16	Availability of information.
61.17	State authority.
61.18	Incorporations by reference.
61.19	Circumvention.

TABLE 3

OUTLINE OF PROPOSED GENERAL PROVISIONS - 40 CFR PART 63, SUBPART A

Section	
63.1	Applicability.
63.2	Definitions.
63.3	Units and abbreviations.
63.4	Prohibited activities and circumvention.
63.5	Construction and reconstruction.
63.6	Compliance with standards and maintenance requirements.
63.7	Performance testing requirements.
63.8	Monitoring requirements.
63.9	Notification requirements.
63.10	Recordkeeping and reporting requirements.
63.11	Control device requirements.
63.12	State authority and delegations.
63.13	Addresses of State air pollution control agencies and the EPA Regional offices.
63.14	Incorporations by reference.
63.15	Availability of information and confidentiality.

II. WHY PROVISIONS ARE NEEDED / REVIEW OF CONTENT AND HISTORY OF EXISTING GENERAL PROVISIONS / REQUIREMENTS OF CLEAN AIR ACT AMENDMENTS OF 1990

CHAPTER 1 - APPLICABILITY

(1) WHY NEEDED:

A section on applicability is needed in order to implement and enforce the standards because it is necessary to specify to whom or to what the standards apply. The section on applicability also highlights when compliance with requirements established under other titles may be required. In addition, for the purposes of 40 CFR part 63, existing and future NESHAP need to be distinguished.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

For part 61 NESHAP, the General Provisions were/are applicable to an O/O of any stationary source that emitted/emits a HAP for which a standard was prescribed under this part.

Except as provided in the subparts specified in §60.1, the General Provisions for part 60 NSPS apply to stationary sources containing an "affected facility" which commences construction, reconstruction, or modification after the date of the proposed or published standard (whichever is earlier) applicable to that facility. (Under part 60, the term "affected facility" is used to designate the unit subject to a standard.)

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

Standards established under new section 112 are applicable to source categories that emit one or more of the HAP that are listed in the CAAA, are added by petition to the list of pollutants to be regulated, or are added by the Administrator to the list of pollutants, and that are not deleted from the list. The "Initial List of Categories of Sources Under Section 112(c)(1) of the Clean Air Act

Amendments of 1990" was published on July 16, 1992 (57 FR 31576). The General Provisions would apply to all source categories for which standards are promulgated under sections 112(d), 112(h), and 112(f) of the Act, for which alternative emissions limitations are granted under section 112(i)(5), and for which case-by-case emissions limitations are established under sections 112(g) and 112(j) (except as otherwise specified in the regulations established to implement these subsections).

Standards promulgated under section 112 before the CAAA were enacted remain in effect after the date of enactment unless they are modified before the date of enactment or under the Amendments. Categories of sources previously regulated under section 112 may be listed by the Administrator for regulation under new section 112 (57 FR 31576, July 16, 1992).

Special rules for radionuclides emitted from a variety of sources are included in new section 112(q)(2)-(4).

CHAPTER 2 - DEFINITIONS

(1) WHY NEEDED:

A section with definitions is needed to define the terms that will be used in the General Provisions and subsequent subparts that establish NESHAP regulations. The definitions in the General Provisions for parts 60 and 61 need to be updated to reflect the needs of current or future regulations in parts 63, 70, and 71.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

In 44 FR 55173, September 25, 1979, the list of definitions in part 60 is rearranged alphabetically to facilitate its use and to make additions easier. New additions are to be added alphabetically. In 44 FR 55174, September 25, 1979, the list of definitions in §61.02 is rearranged alphabetically.

Specifically, in §60.2 (NSPS), definitions are included for STANDARD, AFFECTED FACILITY, EXISTING FACILITY, MODIFICATION, STATIONARY SOURCE, NEW SOURCE, CAPITAL EXPENDITURE, ALTERNATIVE METHOD, ACT, ADMINISTRATOR, CONSTRUCTION, CONTINUOUS MONITORING SYSTEM, EQUIVALENT METHOD, ISOKINETIC SAMPLING, MALFUNCTION, MONITORING DEVICE, NITROGEN OXIDES, ONE-HOUR PERIOD, OPACITY, OWNER OR OPERATOR, PARTICULATE MATTER, PROPORTIONAL SAMPLING, REFERENCE METHOD, RUN, SHUTDOWN, SIX-MINUTE PERIOD, STANDARD CONDITIONS, STARTUP, VOLATILE ORGANIC COMPOUND.

In §61.02 (NESHAP), definitions are included for ACT, ADMINISTRATOR, ALTERNATIVE METHOD, CAPITAL EXPENDITURE, COMMENCED, COMPLIANCE SCHEDULE, CONSTRUCTION, EFFECTIVE DATE, EXISTING SOURCE [section 111(a)], MONITORING SYSTEM, NEW SOURCE [section 112(a)(2)], OWNER OR OPERATOR [section 111(a)], REFERENCE METHOD, RUN, STANDARD [section 112(b)(1)(B) and (e)(1)], STARTUP, STATIONARY SOURCE [section 111(a)].

Some of these definitions in §61.02 have a statutory basis; some have proven controversial and have had to be changed in the Federal Register in the past. For example, "affected facility" and "existing facility," regulatory counterparts of the statutory definitions for new source and existing source in section 111, were amended; also, "alternative method" was amended by removing the reference

to "equivalent method" so that all methods that are not reference methods but that may be used to determine compliance are defined as alternative methods. These changes were discussed and promulgated in 49 FR 23520 (June 6, 1984).

In formulating a definition for standard in part 63, the EPA examined the statutory history of the definition of "standard" in parts 60 and 61. The definition of "standard" in §61.02 is "a national emission standard including a design, equipment, work practice or operational standard for a HAP proposed or promulgated under this part" *[emphasis added]*. The wording of "standard" for part 61 was derived from former section 112(e)(5). The definition is consistent with that of the Act. (See 50 FR 46286, November 7, 1985.) In the past, the EPA has confirmed that, by promulgating a definition of standard consistent with section 112, the EPA was not attempting to address any questions regarding the work practice requirements of any particular standard (the case in question was vinyl chloride; 50 FR 46290, November 7, 1985).

The definition of "standard" for part 60 is "a standard of performance proposed or promulgated under this part" *[emphasis added]*. Depending on the source being regulated, a standard of performance means emission limitations and percent reductions in emissions, emission limitations, or any applicable standard that meets specified conditions [section 111(a)(1)(A)-(C)]. A standard of performance "shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated" [section 111(a)(1)(C)]. For convenience, this is referred to as "best demonstrated technology" or "BDT" (51 FR 42796, November 25, 1986).

In former section 112, "hazardous air pollutant" meant "an air pollutant to which no ambient air quality standard is applicable and which...causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" [section 112(a)(1)]. This definition is changed in the new section 112 (now section 112(a)(6)).

In former section 112, "new source" meant a stationary source the construction or modification of which is commenced after an applicable emission standard is proposed [section 112(a)(2)]. In section 111, "new source" means "any stationary source the construction or modification of which is commenced after publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source" *[emphasis added]* [section 111(a)(2); also, see §60.14 for the definition of "modification" in the context of section 111].

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

For the purposes of air toxics regulations to be established under new section 112, sources are divided into two categories: "major sources" and "area sources." The difference between them has to do with the quantity of HAP they emit, or have the potential to emit, considering controls, per year. Generally, major sources emit 10 tons per year or more of any HAP or 25 tons per year of any combination of HAP; by definition, area sources are those that emit less than these quantities. The Administrator may establish lesser quantity cutoff criteria for major sources based on health considerations.

The term "stationary source" means any facility or installation which emits or has the potential to emit any HAP. A major source (or an area source) is defined as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit the quantities of HAP already mentioned.

Of particular importance to the General Provisions is that the meaning of "modification" of a source has changed under the new Act. While under former section 112, modification meant a physical or operational change in a stationary source that resulted in an increase in the rate of emission of a HAP to which a standard applied, for NESHAP promulgated under new section 112, modification will mean any physical or operational change in a major source that increases the actual emissions of any HAP by more than a *de minimis* amount or that results in the emission of any HAP not previously emitted in more than a *de minimis* amount.

Moreover, an increase in the amount of any HAP emitted will not be considered a modification if such an increase is offset by an equal or greater decrease in the amount of another HAP or HAPs, provided the other pollutant(s) is(are) considered more hazardous, or the quantity of emissions is considered more hazardous, depending on how this issue is resolved after public comment. (The EPA plans to take comments on both approaches when guidance implementing the modification provisions of amended section 112 is published.) Also, unlike section 111, a modification under new section 112 does not mean a source is "new," and, therefore, it does not mean that modified sources must comply with standards for new sources.

CHAPTER 3 - UNITS AND ABBREVIATIONS

(1) WHY NEEDED:

This section is needed to standardize abbreviations and units of measure that will be used in standards.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

Sections 60.3 and 61.3 are subdivided into four categories: (a) SI units of measure, (b) other, (c) chemical nomenclature, and (d) miscellaneous.

The International System of Units (SI) is used in all EPA regulations issued under parts 60 and 61 with common equivalents provided in parentheses where desirable. The Metric Conversion Act of 1975 established U.S. policy regarding use of the metric system.

Authority comes from section 111, former section 112, and section 301(a) of the Act.

(3) STATUTORY REQUIREMENTS OF CAAA:

None.

GENERAL PROVISIONS - 40 CFR PART 63

CHAPTER 4 - PROHIBITED ACTIVITIES AND CIRCUMVENTION

(1) WHY NEEDED:

Provisions on prohibited activities and circumvention establish the legal (regulatory) basis for a determination of a violation of the Act under section 111 and 112. They also clearly prohibit an O/O from using devices or techniques that conceal, rather than control, emissions to comply with standards of performance for new sources (39 FR 9308, March 8, 1974), and by analogy, they prohibit the concealment of emissions to comply with emission standards (or their approved alternatives) for new and existing sources subject to regulation under section 112.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

Compliance requirements exist for: (a) approval of construction or modification, (b) operating new sources, (c) operating existing sources, (d) reporting source tests, (e) dates by which compliance is required.

The EPA considered it preferable to state clearly what is prohibited and to use the Administrator's authority to specify the conditions for compliance testing in each case to ensure that prohibited concealment is not used (39 FR 9308, March 8, 1974). For both parts 60 and 61, no O/O shall conceal an emission that would otherwise constitute a violation of an applicable standard. What constitutes concealment is listed for each part. This provision appears in §60.12, Compliance with Standards and Maintenance Requirements, and §61.19, Circumvention.

For part 61 NESHAP, after a standard becomes effective, approval from the Administrator is required to construct or modify a stationary source subject to that standard (this includes sources that begin construction or modification after the publication date of the <u>proposed</u> standard) [section 112(c)(2)]. Exceptions are allowed by Presidential exemption. After the effective date, no person may operate a new stationary source subject to that standard in violation of the standard except under a Presidential exemption. An existing source must be in compliance 90 days after the effective date except under a Presidential exemption or waiver by the Administrator.

Compliance with reporting requirements is also required.

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

Sources must be in compliance with the applicable standards (or alternative emission limitations) and permit program requirements by the dates specified in the CAAA. Emitting HAP in violation of such a standard or without a permit, if one is required, is a violation of the Act.

Specific provisions concerning circumvention or the prevention of prohibited activities are not included in the CAAA, but General Provisions like those in parts 60 and 61 are included in the proposed General Provisions for part 63 to address these issues.

CHAPTER 5 - CONSTRUCTION, RECONSTRUCTION, AND MODIFICATION

(1) WHY NEEDED:

In parts 60 and 61, the General Provisions governing construction, reconstruction, and modification determine when a NSPS or NESHAP becomes applicable. Standards apply to newly constructed sources, according to the definition of "new source" in the Act, and to existing sources that undergo modification or reconstruction. The provisions define modification and reconstruction for regulatory purposes and specify how emissions will be determined (measured or estimated) for the purposes of section 111 and former section 112. The provisions allow the Administrator to implement and enforce NSPS and existing NESHAP by keeping track of new source construction and existing source modification/reconstruction.

Similar provisions are needed in part 63 for the reasons given above; however, because modification is defined in the 1990 Amendments differently from how it was defined in former section 112, the content of the part 63 rules must be different in order to implement new section 112(g), "Modifications." One difference between the old and the new Act is that emission offsets are now allowed when a determination of modification is made. Another difference is that all major sources that are newly constructed, reconstructed, or modified must have a permit to operate, whether or not they are subject to a standard or other requirement under new section 112 (provided a permit program is effective in that State). If a source is not subject to a standard, the Administrator (or the State with an approved permit program) must include in the source's permit an emission limitation that is equivalent to what the standard would have been for an existing source in the case of a modification and for a new source in the case of new or reconstructed sources. If an applicable standard is subsequently promulgated, the source's permit must be revised upon renewal to reflect the level of control in the promulgated standard.

Previously, upon modification, an existing source became a new source for each HAP for which the emission rate increased and to which a standard applied. Under the new Act, a modified source for which a standard is set on a case-by-case basis must meet the standard for existing sources.

Also, under new section 112(i)(1), an O/O must obtain approval from the Administrator to construct a new major source or reconstruct an existing major source after a relevant standard in part 63 is promulgated. This requirement applies whether or not an approved permit program is effective in the State in which the affected source is located.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

New Construction and Modification

The construction of a new source or modification of an existing source covered by the standards in parts 60 and 61 cannot begin without approval of the Administrator (38 FR 8826, April 6, 1973). In order to grant approval for a (re)construction or modification, the Administrator must determine that the (re)constructed or modified source will not cause emissions in violation of a standard if the source is properly operated. Reconstructed sources become affected facilities that are subject to applicable NSPS.

For Part 61 NESHAP:

Under former section 112(a)(3), the definition of modification was the same as under section 111(a)(4). Section 111(a)(4) defines modification as "any physical change in, or change in a method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted."

Because in practice this definition proved to be vague, revisions were proposed to the General Provisions to clarify both the definition and the degree of its impact on sources in order to clear up confusion outside the EPA (39 FR 36946, October 15, 1974) [section 111(a)(4); §60.2(h)]. Also, there was a need to define an increase in emissions because this was not done in the Act. For part 61, any physical or operational change resulting in an increase in the rate of emission to the atmosphere of a HAP to which a standard applies has been considered a modification. Upon modification, an existing source became a new source for each HAP for which the emission rate increased and to which a standard applied. This is different now for part 63.

As stated in the preamble to one of the revisions (49 FR 23520, June 6, 1984), "In both sections, modification has the same definition and the same basic intent - to require a stationary source which has increased the amount of its emissions as a result of a physical or operational change to meet the emission standards for new sources. Therefore, the Administrator would generally use the same criteria for determining modification for sources subject to part 61 as were proposed and promulgated for part 60".

Emission rates currently are expressed as kilograms per hour (kg/hr) of HAP. Emission rates are determined by (1) emission factors, or (2) material balances, monitoring data, or manual emission tests, depending on whether emission factors do or do not demonstrate clearly that an emission rate will or will not increase. "Only where the resulting change in emission rate is ambiguous, or where a dispute arises as to the result obtained by the use of emission factors, will other methods be used" (40 FR 58416, December 16, 1975). The General Provisions for part 61 say emission tests from §61.13(a) (emission testing required by an applicable subpart) may be used, if approved by the Administrator; if manual tests are used, the Student's t test procedure requires 3 runs before and 3 runs after the change (to test statistically significant increases as opposed to routine fluctuations (39 FR 36946, October 15, 1974)); operating parameters must be held constant.

Regulatory exceptions to modification for NESHAP included: routine maintenance/repair; an increase in the production rate with no capital expenditure; an increase in hours of operation; conversion to coal (section 111(a)(8)); relocation or change in ownership of the source (but these must be reported according to §61.15(d)(5) as described under §61.10(c)). (Relocation of a source by itself does not constitute a modification since this change does not increase emissions (50 FR 46290, November 7, 1985)).

New and existing sources of HAP generally were subject to the same emission limits under former section 112. However, consideration was given to setting separate standards for new and existing sources during the standard-setting process (40 FR 23571, June 6, 1984). Generally, the only difference in the standards for new and existing sources was the time by which a source had to comply with the standard. Also, an existing source could request a waiver of compliance for up to 2 years after the effective date of the standard if it was unable to comply within 90 days after the effective date. New sources were not

eligible for waivers. Thus, modification mainly affected existing sources operating under a waiver of compliance. Modified sources had to comply upon startup.

For part 61 NESHAP, capital expenditure rather than operating design capacity (40 FR 58416, December 16, 1975) was used as a criterion for exemption for production rate increases in determining modification. The idea here was to be less vague since "operating design capacity" is difficult to define and for some industries the design capacity bears little relationship to the actual operating capacity of the source. An increase in production rate without a capital expenditure was not considered a modification. This is consistent with the revision to the same exemption in part 60 (40 FR 58416, December 16, 1975).

Specific components of the part 61 modification provisions are noted below:

* An O/O may submit to the Administrator a written application for a determination of whether actions intended to be taken constitute construction or modification. The Administrator has 30 days after receiving sufficient information to notify the O/O.

* The O/O shall submit to the Administrator an application for approval of the construction of any new source or the modification of any existing source within the time period specified in the General Provisions. A separate application is required for each stationary source. The required application contents are listed in the General Provisions in §61.7.

* The Administrator will notify the O/O of the approval or intention to deny approval within 60 days after receipt of sufficient information. (Note: "Will" is preferred by the EPA to "shall" to describe actions the Administrator will take through the General Provisions.) Grounds for approval and denial are specified in the General Provisions. The criterion for approval is that the new source will be able to meet the applicable standard. Before denying an application, the Administrator will notify the applicant of an intention to deny. The applicant has an opportunity to present additional information before the final determination. The final determination is to be made in writing 60 days

after the additional information is presented or would have been presented.

* Neither submission of an application for approval nor approval of construction or modification relieves an O/O of responsibility for compliance with all Federal, State, and local requirements, or prevents the Administrator from implementing or enforcing the provisions of part 61 or any other action covered under the Act.

For Part 60 NSPS:

The definition of modification in section 111(a)(4) is "any physical change in, or change in a method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted." The legislative history for section 111 allows considerable latitude in interpreting phrases such as "increases the amount of any air pollutant emitted" (39 FR 36946, October 15, 1974).

For part 60 NSPS, modification is the same as in part 61, except that it applies to any pollutant to which a standard applies. In 45 FR 5616, January 23, 1980, modification is defined as "any physical change in the method of operation of an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted." Upon modification, an "existing facility" becomes an "affected facility."

As mentioned in the part 61 section earlier, revisions were proposed to section 111(a)(4) to clear up its intent. As stated in the preamble to one of the revisions (49 FR 23520, June 6, 1984), "In both sections, modification has the same definition and the same basic intent - to require a stationary source which has increased the amount of its emissions as a result of a physical or operational change to meet the emission standards for new sources. Therefore, the Administrator would generally use the same criteria for determining modification for sources subject to part 61 as were proposed and promulgated for part 60."

Emission rates are expressed and determined the same ways as above. By defining "increase in emissions" in terms of kg/hr, the regulations could not be interpreted as considering an increase in opacity of emissions as a modification unless there is a corresponding increase in mass rate of pollutant emissions (30 FR 36946, October 15, 1974).

The addition of an affected facility to a stationary source as an expansion or replacement "[does] not by itself bring within the applicability of this part any other facility within that source" [§60.14(c)].

In addition to those listed above for part 61, exceptions to modification in part 60 include: (1) the use of an alternative fuel or raw material if the facility was designed to accommodate the alternative; (2) the addition or use of air pollution control equipment, except when it is removed or an inferior one replaced; (3) special provisions in subparts that supersede conflicting provisions in this section of the General Provisions. (The EPA stated its belief that the exemption to modification for the addition of air pollution control equipment is inappropriate for part 61 General Provisions because of the hazardous nature of the subject pollutants (i.e., for public health reasons)).

For NSPS (as well as for NESHAP), capital expenditure rather than operating design capacity (40 FR 58416, December 16, 1975) is to be used as a criterion for exemption for production rate increases in determining a modification (39 FR 36946, October 15, 1974).

Specific components of the part 60 provisions for construction and modification are noted below:

* Compliance must be achieved within 180 days of completion of the modification.

* Construction includes reconstruction.

* If an O/O requests, the Administrator <u>will</u> review plans for construction or modification for the purpose of providing technical advice. This provision applies to NSPS only. Requirements for the request are specified.

* Neither the request for review nor advice furnished by the Administrator relieves the O/O of responsibility for compliance or prevents the

Administrator from implementing or enforcing any provision or action authorized by the Act.

Reconstruction

For the purposes of section 111 and part 60, an existing facility becomes an affected facility upon reconstruction, regardless of any change in emission rate. Reconstruction means the replacement of components of an existing facility such that the fixed capital cost equals at least 50 percent of what it would cost to build a comparable new facility (the definition of fixed capital cost is given (40 FR 58416, December 16, 1975)), and it is technologically and economically feasible to meet the applicable standards set forth in part 60. Essentially, reconstruction meeting these specifications constitutes new construction rather than modification and is subject to NSPS.

The purpose of this provision is to discourage the perpetuation of a facility instead of its replacement at the end of its useful life with a newly constructed affected facility. As NSPS are proposed for additional source categories, replacements that will be considered reconstruction will be identified in the subparts (39 FR 36946, October 15, 1974). It was the EPA's intent in this provision to prevent circumvention of the law (40 FR 58416, December 16, 1975).

Specific components of the part 60 reconstruction provisions are noted below:

* If the fixed capital cost is greater than or equal to 50 percent of the cost of a new facility, the O/O shall notify the Administrator of the proposed replacements 60 days (or as soon as practicable) prior to construction, including the information requested in §60.15(d)(1)-(7).

* The Administrator has 30 days after receipt of adequate information to respond with a determination of reconstruction. The determination shall be on a case-by-case basis, based on the criteria in §60.15(f)(1)-(4). The 50 percent replacement criterion is designed merely to key the notification to the Administrator; it is not an independent basis for the Administrator's determination (40 FR 58416, December 16, 1975). The final determination as to when it is

technologically and economically feasible to comply with the applicable standards of performance is left with the Administrator because the spectrum of possibilities is too broad to be specific.

* Section 60.15(g) says that "Individual subparts of this part may include specific provisions which refine and delimit the concept of reconstruction set forth in this section."

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

While modification under section 112 previously meant a physical or operational change in a stationary source that resulted in an increase in the rate of emission of a HAP to which a standard applied, under new section 112, modification will mean any physical or operational change in a major source that increases the actual emissions of any HAP by more than a *de minimis* amount or that results in the emission of any HAP not previously emitted in more than a *de minimis* amount.

A new exception to a determination of modification is made in new section 112(g)(1)(A). An increase in the amount of any HAP emitted will not be considered a modification if such an increase is offset by an equal or greater decrease in the amount of another HAP or HAPs that is/are considered more hazardous, or the quantity of emissions is considered more hazardous, depending on how this issue is resolved after public comment. An increase that is appropriately offset is not a modification that would subject the source to a MACT standard applicable to existing sources. The Administrator must publish guidance to facilitate the implementation of HAP offsets.

After the effective date of a title V permit program in a State, a major source of HAP in the jurisdiction of that program may not be constructed, reconstructed, or modified unless the source is in compliance with a "MACT determination." This applies whether or not the source is subject to a promulgated MACT standard or other requirements under section 111 or new section 112. If the source is not subject to an emission standard under part 63, the O/O must apply for and obtain a "MACT determination" prior to the construction, reconstruction, or modification. The

determination must include an emission limitation that the Administrator, or the State with an approved title V permit program, determines on a case-by-case basis is equivalent to the MACT standard (had it been issued) for new sources of a similar type in the case of construction or reconstruction, or for existing sources of a similar type in the case of modification.

Furthermore, after the effective date of any applicable section 112 standard promulgated in part 63, a major source of HAP may not be constructed or reconstructed unless the Administrator determines that the source will comply with the applicable standard if it is properly constructed, or reconstructed, and operated. This requirement is specified in new section 112(i)(1), and it applies whether or not a title V permit program is approved in the State in which the major source is located.

GENERAL PROVISIONS - 40 CFR PART 63

CHAPTER 6 - COMPLIANCE WITH STANDARDS AND MAINTENANCE REQUIREMENTS

(1) WHY NEEDED:

For NESHAP, §61.12 was added to the General Provisions to clarify the basis for determining compliance with a standard and the responsibilities of an O/O to maintain and operate the source using good air pollution control practices. Also, it allows the O/O to obtain permission to use alternative equipment or procedures to comply with a design, equipment, work practice, or operational standard. Section 60.11 serves a similar function.

For NSPS, §60.18 of the General Provisions contains requirements for control devices used to comply with applicable subparts of part 60. The requirements apply only to facilities covered by subparts referring to this section. This provision originally was placed at the end of the General Provisions for part 60 for administrative convenience.

Former section 112(c)(1)(B) of the Act clearly stated that an existing source shall comply with the standard within 90 days of the effective date unless the source is operating under a waiver of compliance. (A new or modified source must comply upon beginning operation.) In part 61, General Provisions are included (§61.10 and §61.11) to address procedures for requesting and approving waivers of compliance.

The General Provisions for part 63 have been updated to meet the compliance requirements of the CAAA. Alternative standards (design, equipment, or work practice) are still allowed, but new and modified sources no longer have to comply upon startup under certain conditions. A variety of exemptions, extensions, and waivers from the compliance schedules are allowed under the CAAA.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

Various amendments have been made to the General Provisions to give the Administrator needed flexibility for making judgments for determining compliance with standards, e.g., the authority was given to permit the use of minor changes to reference test methods and to approve the use of two runs instead of three in special cases.

For both NSPS and NESHAP, good air pollution control practices "for minimizing emissions" must be used at all times. The EPA stated its belief that the words "for minimizing emissions" serve to clarify the phrase "good air pollution control practices" and therefore should be included (50 FR 46290, November 7, 1985). (See also 42 FR 57125, November 1, 1977).

For NSPS and NESHAP, individual subparts take precedence over the General Provisions when they are in conflict.

Compliance with Standards and Maintenance Requirements

For Part 61 NESHAP:

For NESHAP, compliance with emission standards was determined by emission tests (§61.13). (Emission standards became effective upon promulgation [section 112(b)(1)(C)].) However, former section 112(e)(3) allowed an alternative means of compliance if it was equally effective. An emission standard could be replaced by a design, equipment, work practice, or operational standard, or a combination thereof [section 112(e)(1)], until it became possible to implement an emission standard [section 112(e)(4)], provided the Administrator approved [section 112(e)(3)]. For standards other than emission standards, the conditions for compliance were specified in the applicable subpart.

The Act said that the Administrator will publish in the Federal Register a notice permitting the use of an alternative means of compliance. ("Will" is preferred by the EPA to "shall" to describe actions the Administrator will take through the General Provisions.) To seek permission to use an alternative means of compliance, an O/O had to submit a test plan or results of testing. A written application requesting such permission was required, including the information above and descriptions of procedures followed and pertinent conditions during testing or monitoring. If permission was granted it was published in the Federal Register after notice and opportunity for public hearing (49 FR 23520, June 6, 1984). An alternative method could be approved either for a specific site or for all facilities, in which case it would be added to Appendix B for part 61 and referenced in the appropriate standard. The Administrator had authority to withdraw approval of the

alternative and require the use of a reference method (49 FR 23520, June 6, 1984).

The granting of approval to use an alternative means of compliance could be conditioned on operation and maintenance requirements. The basis for the operation and maintenance requirements in §61.12(c) was section 302(k) and former section 112(e)(1) of the Act (49 FR 23520, June 6, 1984). The intent of the operation and maintenance provisions was to ensure that the alternative means achieved at least as much emission reduction as the emission standard, instead of necessarily achieving more emission reduction than the standard. The EPA stated its belief that, in most cases, however, it is infeasible to quantify the effect of the operation and maintenance requirements on the amount of emission reduction. The selection of operation and maintenance requirements would be the EPA's best judgment of what is necessary to ensure that the alternative method would achieve a reduction in emissions at least equivalent to the standard.

For Part 60 NSPS:

For NSPS, compliance with standards (other than opacity standards) is determined only by performance tests (§60.8) conducted under representative operating conditions, unless otherwise specified. For NSPS, compliance with performance tests and opacity standards is exempted during periods of startup, shutdown, or unavoidable malfunction. (This provision is discussed at length in 38 FR 10820, May 2, 1973.) Also, opacity standards do not apply during periods judged necessary to permit the observed excess emissions caused by soot-blowing and unstable process conditions; time exemptions are provided for source-specific circumstances (39 FR 9314, May 8, 1974).

For NSPS, it is anticipated that initial and subsequent performance tests will ensure that equipment is installed that will permit the standards to be attained and that such equipment is not allowed to deteriorate to the point where the standards are no longer attained. In addition, the requirement to use good control practices is intended to ensure that plant operators properly maintain and operate the affected facility and control equipment between performance tests and during periods of startup, shutdown, and unavoidable malfunction. Measurements obtained as the results of continuous monitoring are used as evidence in determining whether good maintenance and operating

procedures are being followed, but they are not used to determine compliance with mass emission standards unless they are approved as alternative methods for performance testing. In the future, the EPA may require that compliance with NSPS be determined by continuous monitoring, in which case the applicable standard will specify this, providing for startup and other situations as necessary.

A different approach was taken for opacity standards, because this is a primary means of enforcement employed by State and Federal officials. The EPA stated its belief that the burden should remain on the plant operator to justify a failure to comply with opacity standards; the burden will be with the plant operator rather than with the EPA or the States to show that the opacity standards were not met because of the special situations of startup, shutdown, or malfunction.

For NSPS, compliance with opacity standards is based on Reference Method 9 or an approved alternate method. Opacity standards apply except during startup, shutdown, and malfunctions. The O/O of affected facilities must record and report the opacity of emissions during the initial performance test (50 FR 53113, December 27, 1985). This requirement is "based on the Administrator's determination that opacity recordkeeping and reporting are necessary to demonstrate compliance with the respective opacity standards." The data collected are also to be used by the EPA during reviews of opacity standards. The details of the testing and reporting requirements are discussed in 50 FR 53108, December 27, 1985.

While Reference Method 9 remains the primary and accepted means for determining compliance with opacity standards in this part, the EPA will accept as probative evidence in certain situations and under certain conditions the results of continuous monitoring by transmissometer to determine whether a violation has in fact occurred (39 FR 39872, November 12, 1974). Even in such situations, the results of opacity readings by Method 9 remain presumptively valid and correct. Where a facility meets all applicable standards for which a performance test is conducted but fails to meet an applicable opacity standard, an O/O can petition the Administrator to establish an opacity standard for that facility. (See paragraph below.)

The November 12, 1974 notice (39 FR 39873) was followed by 52 FR 9778, March 26, 1987, which amends the opacity provisions to allow an O/O of an affected facility subject

to an opacity standard to submit, for compliance purposes, continuous opacity monitoring system (COMS) data results produced during any particulate matter performance test required under §60.8 in lieu of Method 9 observation data. The decision to elect the COMS option will be made by the source O/O, and the Administrator must be notified of that decision, in writing, at least 30 days before any performance test required under §60.8 is conducted. After such notification, COMS data results will be used to determine opacity compliance until the O/O notifies the Administrator in writing to the contrary. Various requirements for electing this alternative are then spelled out. Furthermore, an enforcement agency can still use Method 9 during the initial test or at any other time. If COMS data results and Method 9 results conflict, Method 9 data continue to represent the reference method data and would be used to determine compliance. COMS data results in such cases are probative, but not conclusive, evidence of the actual opacity. For a detailed discussion of the opacity amendments, significant comments, responses, and changes, see the March 26, 1987 Federal Register notice referenced above.

The EPA's policy on opacity standards has been: (1) opacity limits are independent enforceable standards; (2) where opacity and mass/concentration standards are applicable to the same source, the mass/concentration standards are established at a level that will result in the design, installation, and operation of the best adequately demonstrated system of emission reduction (taking costs into account); (3) the opacity standards are established at a level that will require proper operation and maintenance of such control systems (39 FR 39873, November 12, 1974).

The EPA's understanding about the relationship between the concentration standard and the opacity standard is presented at length in 39 FR 9308, March 8, 1974. Additional points are included here. Opacity standards are a necessary supplement to mass/concentration standards. They help ensure that sources and emission control systems continue to be properly maintained and operated so as to comply with mass/concentration standards. Without them, sources could inadequately operate or maintain pollution control equipment at all times except during periods of performance testing. Opacity of emissions is established as an independent standard rather than as an indicator because of the time and expense involved in trying to prove that proper procedures were not followed by a plant operator. Without opacity standards, the provision to adequately

operate and maintain pollution control equipment at all times (§60.11(d)) would not provide an economically sensible means of ensuring allowable emission limits.

Paragraphs 60.11(e)(1)-(8) present detailed instructions on: initial opacity tests, reporting requirements for test results and monitoring data, submittal of alternative information to show compliance, EPA findings concerning compliance based on submittals, the possibility of adjusting an opacity standard for an affected facility, the conditions for granting a petition for the adjustment of opacity standard, and the basis for a new standard for an affected facility.

Amendments to the opacity provisions affecting emissions from new stationary sources were promulgated on December 27, 1985 (50 FR 53108). The amendments implement section 114 and are based on the Administrator's determination that opacity recordkeeping and reporting are necessary to demonstrate compliance with the respective opacity standards. The data collected also will be used during reviews of the opacity standards so that the EPA can make a sound judgment as to whether the standards are appropriate (50 FR 3108, December 27, 1985).

In addition, O/O are required to report emissions measured or estimated to be greater than those allowable under applicable standards in "excess emissions" reports. The EPA stated its belief that this information would enable the EPA and the States to effectively enforce NSPS; the primary purpose of excess emissions reporting is to provide the EPA and the States with sufficient information to determine if further inspection or performance tests are warranted (38 FR 10820, May 2, 1973). Originally, the EPA believed that reports on a quarterly basis would be adequate for this purpose; however, in 55 FR 51378, December 13, 1990, the EPA revised the reporting requirements for certain facilities subject to part 60 in order to be consistent with more current EPA reporting frequency policy. The effect of the revision was to reduce the excess emissions reporting burden from quarterly to semi-annual except when more frequent reporting is specifically required by an applicable subpart, continuous monitoring system data are to be used directly for compliance determination (in which case quarterly reports are required), or the Administrator determines on a case-by-case basis that more frequent reporting is necessary to accurately assess the compliance status of the source.

General Control Device Requirements

These provisions deal primarily with flares. They require that an O/O (of an affected facility to which a standard under part 60 applies) shall monitor flares to ensure proper operation and maintenance; they require that emissions be vented to flares; they specify the reference method to be used; etc.

Waiver of Compliance

For part 61 NESHAP, §61.10 says that an O/O of an existing source unable to comply with a NESHAP within 90 days could request a waiver of compliance for up to 2 years. Requests had to include information on controls to be installed, a compliance schedule including four dates specified, and interim emission control steps. Any changes in the information reported under §61.10(a) (a description of the source and its operations) or 61.10(b) (the request for a waiver of compliance) had to be reported. Also, §61.07(c) and §61.08 could apply. Appendix A of the General Provisions for part 61 shows a possible reporting format.

Section 61.11 says the Administrator could grant a waiver for up to 2 years after a standard became effective. The waiver had to be in writing and had to specify conditions listed in §61.11(b)(1)-(4). The waiver had to be terminated if the specifications were not met. Before a denial of a request for a waiver of compliance, the O/O had to be notified with the reason(s) and given an opportunity to argue the case before the final decision was made. Time frames for presenting grounds for denial and presenting the final denial are specified in this provision. The granting of a waiver did not abrogate the Administrator's authority under section 114.

For part 61, the regulations did not require the O/O to request a waiver of compliance before a specific date, but the O/O should have submitted the request within 30 days after the effective date of the regulation to be assured that action would be taken on the waiver application prior to the 90th day after the effective date (38 FR 8825, April 6, 1973). Existing sources that had applied for a waiver for which final action had not been taken by the EPA by the time the 90 day compliance period was over would be considered in violation of the standard. The EPA stated its belief that this is consistent with the Act and that an O/O had time between proposal and promulgation to prepare

significant portions of a plan for achieving compliance. Also, sources should have continued to take all possible steps toward achieving compliance while the Agency was evaluating their waiver application, and sources should have submitted the waiver application as soon as practicable to allow time for the Agency to make a determination within the 90 day period after the effective date (50 FR 46290, November 7, 1985).

A waiver could be granted for up to 2 years for compliance, provided that steps would be taken during the waiver period to assure that the health of persons would be protected from imminent endangerment and provided that such a period was necessary for the installation of controls (38 FR 8826, April 6, 1973). Also, the President could exempt any new, modified, or existing source from compliance for a period of up to 2 years, provided the technology was not available to implement the standards and the operation of such source was required for reasons of national security. The President could grant exemptions for additional periods of 2 years or less (38 FR 8826, April 6, 1973) [section 112(c)(2)].

For two reasons, the EPA stated its belief that neither the General Provisions nor Appendix A (sample request for waiver form) for part 61 should be revised to describe the compliance schedule information required in applications for waivers of compliance with work practice or operational standards. The reasons were: (1) in most cases, an O/O should have been able to implement the requirements within 90 days, and (2) the information needed in the waiver application would be specific to the particular standard, so it is more appropriate to provide guidance in the subpart of the standard or through the enforcement agency rather than through the General Provisions. General guidance given by the EPA is that the application should contain sufficient information to show why the source is unable to comply within 90 days, the steps that the source is taking to achieve compliance in the minimum amount of time, and the dates for completing each step. Thus, the General Provisions and Appendix A would remain oriented toward equipment standards (see 50 FR 46290, November 7, 1985).

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

Standards promulgated under section 112 before the CAAA were enacted remain in force after the date of enactment unless they are modified before the date of enactment or under the Amendments. Categories of sources previously regulated under former section 112 may be listed by the Administrator for regulation under new section 112.

As was true for NESHAP promulgated under former section 112, MACT standards may take many forms including design, equipment, work practice, and operational standards. Specific forms specified in the CAAA are process changes, material substitutions, system enclosures, the collection, capture, and treatment of emitted pollutants, and any combination of measures from the above two lists. For standards that are not emission standards, operation and maintenance requirements must also be specified. The Administrator may permit an O/O to use an alternative means of emission limitation if the O/O can demonstrate that it will result in an emissions reduction at least equivalent to the regular standard.

Emission standards or other regulations are effective upon promulgation, as in former section 112; however, in some cases standards do not apply to affected sources until after their effective dates. Also, the Administrator (or a State with an approved permit program) may grant an existing source an extension of compliance for up to 1 year after the standard's effective date if the additional period is necessary for the installation of controls. Presidential exemptions are also allowed.

After the effective date of an emission standard, limitation, or regulation promulgated under new section 112, no person may construct a new major source or reconstruct or modify any existing major source subject to such regulation(s) unless the Administrator or the State determines that the source will comply with the regulation(s) if it is properly built, changed, and/or operated.

Compliance deadlines and exceptions are the following:

If a new source commences construction between the dates a standard is proposed and promulgated, the source is

not required to comply until 3 years after the promulgation date if the control level of the promulgated standard is more stringent than that of the proposed standard and the source complies with the standard as proposed during the 3-year period immediately after promulgation.

Existing sources must comply with standards and regulations by the date established by the Administrator for that source category, but in no case may the date be later than 3 years after the standard's effective date.

An additional 1 year extension of compliance may be granted to an existing source under a permit issued by a State with an approved permit program under title V if the additional period is necessary for the installation of controls.

The President may exempt any stationary source from compliance with any standard under new section 112 for up to 2 years (for reasons given in section 112(i)(4)). The exemption may be extended for 1 or more additional periods, each not to exceed 2 years.

New sources that commence construction, reconstruction, or modification between the dates the technology-based emission standard (under new section 112(d)) and the health-based emission standard, if applicable, (under new section 112(f)) are proposed are not required to comply with the latter standard until 10 years after the date the construction, reconstruction or modification is commenced.

Under new section 112(i)(5), sources can receive an extension of compliance with an applicable promulgated emission standard if they voluntarily reduce their emissions prior to the date the standard is first proposed. The extension is good for a period not to exceed 6 years from the compliance date for the otherwise applicable standard. Alternative emissions limitations (in terms of percent reductions) are specified in the CAAA, or they may be made more stringent by the States. Existing sources that cannot achieve the required reductions by the date the standard is proposed, but can achieve them by January 1, 1994 also may qualify for an alternative emissions limit if they make an enforceable commitment to achieve such reductions prior to proposal of the applicable standard. Each source that qualifies for and is granted an alternative emissions limitation under this subsection must be issued a permit under title V that reflects the alternative as an enforceable limitation.

CHAPTER 7 - TESTING AND MONITORING REQUIREMENTS

(1) WHY NEEDED:

For all sources covered under 40 CFR part 60, compliance with numerical emission limits must be determined through performance tests. For all sources covered under 40 CFR part 61, compliance with numerical emission limits is determined through emission tests or an approved alternative method.

Because HAP and processes causing their emissions vary widely, monitoring systems may vary widely; thus, a monitoring system is broadly defined as the system required by an applicable regulation to sample, to analyze, and to provide a record of emissions or process parameters. The General Provisions specify that the O/O shall operate the monitoring system as specified in the applicable standard, and they outline the type of information that the Administrator would use to determine whether acceptable operation and maintenance procedures are in use. The testing and monitoring will be used not only to determine whether a particular source is in compliance when it becomes subject to a standard, but also to ensure that the source remains in compliance with its relevant standard.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

The EPA has authority to require testing and monitoring under section 114 of the Act.

For both parts 60 and 61, an O/O must inform the EPA of the date of a performance or emission test (at least 30 days in advance) so an observer can be present. The O/O must provide testing facilities including sampling ports, sampling platforms, safe access, utilities to run equipment, etc.

Testing Requirements

For Part 61 NESHAP:

For NESHAP, conditions required for emission testing (including dates) were specified for existing sources and

new sources in paragraphs 61.13(a)(1)-(2). Section 114 authorizes the Administrator to require a test at any time.

The Administrator specified conditions for a test based on the design and operating characteristics of the source. Provisions for conducting tests were set forth in Appendix B of part 61, including exceptions. The Administrator could require the use of a reference method. An O/O could request to use an alternative method. Where reference and alternative methods disagreed, the reference method would prevail.

Samples had to be analyzed 30 days after a test and the O/O had to report the results on the 31st day after a test. This requirement was added to ensure that the test data were analyzed and results reported in a timely manner. Also, the O/O was required to save records for 2 years and make them available to the Administrator upon request. The deadlines for analyzing samples and submitting a report of sample results were found to be reasonable by the EPA (50 FR 46290, November 7, 1985); however, the existing General Provisions allow for a different time period to be specified in a particular subpart, if necessary. Also, the EPA would address testing schedules when each subpart was reviewed.

For NESHAP, an issue has been the date for submission of requests to use an alternative test method during the initial emission test for new sources that have initial startup before the effective date of the applicable standard. The EPA has said the date should be the same as for existing sources, which is 30 days after the effective date (50 FR 46290, November 7, 1985). The purpose of these requirements was to ensure that the Administrator had ample time to evaluate the alternative method and notify the O/O of his or her evaluation before the deadline for conducting the initial emission test (49 FR 23520, June 6, 1984).

<u>For Part 60 NSPS</u>:

An O/O must conduct performance tests and submit a written report of the results within a given time frame after startup. Methods and procedures by which tests are to be conducted and data reduced are given, including alternatives available for testing procedures. The EPA's authority to require testing under section 114 is maintained.

Performance tests are based on specified conditions based on representative operating conditions of a facility. Operations during startup, shutdown, or malfunction are not representative. Excess emissions during these conditions do not count as a violation of a standard unless otherwise specified. They are specifically exempted in §60.8(c). (This is clarified in 42 FR 57125, November 1, 1977: "By implication...compliance with numerical emission limits cannot be determined during periods of startup, shutdown, and malfunction.") However, this does not exempt the O/O from compliance with the requirements of §60.11(d) which say: "At all times, including periods of startup, shutdown, and malfunction, the O/O shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions" (42 FR 57126, November 1, 1977).

Each performance test has 3 separate runs. Generally, compliance with a standard is determined by the arithmetic mean of the results of 3 runs (or 2 runs, if permission is granted, if the third run is ruined).

Monitoring Requirements

For Part 61 NESHAP:

Section 61.14 was added to the General Provisions in 49 FR 23520, June 6, 1984. This section applies to each monitoring system required under each subpart that requires monitoring. It discusses monitoring requirements for combined sources subject to the same standard, for sources not subject to the same standard, and for cases where one source releases emissions through more than one point.

Monitoring is conducted as set forth in §61.14 and in an applicable subpart, unless: (1) minor changes are approved, or (2) alternatives are approved. Alternatives have to be approved by the Administrator on a case-by-case basis. If the Administrator disputes the results of an alternative, he or she can require monitoring requirements as specified in §61.14.

As required by a subpart or at any other time, the Administrator can require a performance evaluation of a monitoring system and a written report of the results. The evaluation is to be performed according to the

specifications in the applicable subpart. The O/O has to notify the Administrator of the date of the performance evaluation at least 30 days in advance. Unless otherwise specified in a particular subpart, compliance is determined by a performance test, and monitoring data are used to indicate excess emissions or improper operation and maintenance (50 FR 46290, November 7, 1985).

Monitoring requirements include the following:

* Each O/O has to maintain and operate each monitoring system as specified and in a manner consistent with good air pollution control practices.

* Repairs have to be made as soon as possible.

* Monitoring data have to be reduced as specified (data from breakdowns are not to be included).

* The O/O has to maintain records of all monitoring, calibration checks, and breakdowns for at least 2 years and make them available to the Administrator at any time.

* The Administrator bases his or her judgment about good operating practices on procedures, specifications, inspections, etc.

The difference between minor changes in methodology for a reference test method and for alternative methods has had to do with procedures for approving their use. The EPA has said minor changes pertain to contingencies that arise in the field and relate to improving the application of reference methods. The decisions to approve minor changes can be made by the implementing (delegated) agency because minor changes do not affect the precision or accuracy of the method and are not of national significance. Conversely, the EPA retained authority for the approval of an alternative method in order to ensure uniformity and technical quality in test methods used for enforcement of national standards (50 FR 46290, November 7, 1985). The Administrator has the authority to require the use of procedures specified in part 61 if he or she has reasonable grounds to dispute the results obtained by an alternative method.

For part 61, the EPA's position has been that monitoring data collected during periods of plant startup,

shutdown, and malfunction should be included in the monitoring data average that is reported. The EPA's reason is that such data contain relevant information about the event; it is important to know how much is being emitted during such periods and how long the periods last, especially during plant startup and malfunction.

Provisions to allow minor changes that do not affect the precision and accuracy of specified monitoring procedures were added to §61.14(g) in 50 FR 46290, November 7, 1985. These are similar in substance and purpose to those for the use of minor changes to reference emission-test methods.

For Part 60 NSPS:

All continuous monitoring systems (CMS) required under applicable subparts are subject to the provisions of §60.13 upon promulgation of performance specifications under Appendix B of part 60 unless otherwise specified by the applicable subpart or by the Administrator.

Monitoring requirements include the following:

* All CMS and monitoring devices shall be installed and operational prior to conducting performance tests under §60.8.

* If an O/O elects to submit continuous opacity monitoring system (COMS) data for compliance with an opacity emission standard (§60.11(e)(5)), he or she shall conduct a performance evaluation of the COMS before the performance test is conducted, during any performance test required under §60.8, or within 30 days thereafter, or when the Administrator so requires under section 114 of the Act. Reporting requirements for the COMS performance evaluation, calibration procedures for continuous emission monitoring systems (CEMS), and procedures for the use of COMS are given.

* Except for breakdowns, repairs, calibration checks, and required adjustments, all CMS must be in continuous operation and must meet minimum frequency of operation requirements as specified in §60.13.

* All CMS or monitoring devices must be installed such that representative measurements are obtained.

* Requirements for monitoring and reporting under various effluent situations are given. Requirements for reducing data from CMS for opacity measurements are given.

* After written application (from an O/O, manufacturer, or anyone else), the Administrator may approve alternatives to any monitoring procedures or requirements under part 60, including various alternatives listed in §60.13(i)(1)-(9). In addition, an alternative to the relative accuracy test specified in Appendix B may be requested (procedures for doing so are given).

Waiver of Emission Tests

For NESHAP, emission tests could be waived if "in the Administrator's judgment, the source [was] meeting the standard, or the source [was] being operated under a waiver of compliance, or the owner or operator [had] requested a waiver of compliance and the Administrator [was] still considering that request" (§61.13). A waiver application had to accompany the information submitted under §61.10 or §61.09, whichever was applicable. A possible format was provided in Appendix A of part 61. The Administrator could cancel a waiver later after notice was given to the O/O.

(3) STATUTORY REQUIREMENTS OF CAAA:

Under new section 112(b)(5) and section 114 of the Act, the Administrator may establish test measures and other analytic procedures for monitoring and measuring emissions and prescribe by rule procedures and methods for determining compliance with emission standards established to control pollutants regulated under the Act

In addition, title VII of the CAAA requires that "compliance certifications" based on monitoring activities be periodically submitted from an O/O at the Administrator's discretion. These compliance certifications may be required to verify that sources are meeting relevant emission standards established under part 63.

CHAPTER 8 - NOTIFICATION, RECORDKEEPING, AND REPORTING REQUIREMENTS

(1) WHY NEEDED:

Section 114 of the Act gives the Administrator the authority to require persons subject to emission standards under section 112 to establish and maintain records, make reports, install, use and maintain monitoring equipment or methods, sample emissions, and provide other information as required. Moreover, the Administrator may have access to and copy these reports, records, and other information.

Currently, requirements exist for sources to report monitoring data and the results of emissions/performance tests, to maintain records of such data, to notify the EPA of plans to construct, reconstruct, or modify, to notify the EPA of the dates of initial startup and of commencement of construction or reconstruction, and many other requirements.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

The EPA, States, and localities have information gathering authority under section 114 of the Act (39 FR 36946, October 15, 1974). (States and localities have authority delegated by the EPA.) Section 114 provides that the Administrator may require such reports "for the purpose...of determining whether any person is in violation of any such standard..." Also, section 301(a) provides the Administrator with the authority to issue regulations "necessary to carry out his functions" under the Act (40 FR 58416, December 16, 1975).

The EPA's experience is that knowledge of sources that may become subject to standards is important to effective implementation of the Act (40 FR 58416, December 16, 1975). Notifications of intention were not to be used for approval or disapproval of the planned construction or physical or operational change; rather, the purpose was to allow the Administrator to locate sources that would be subject to regulations under these parts and to inform the sources about applicable regulations in an effort to minimize future problems. Notification prior to commencement of a potential modification also allowed the Administrator to require emission testing, if necessary, before and after the physical or operational change to determine whether or not there was an emission increase.

Submittal of pertinent information has been required at the time of notification prior to commencement of a potential modification so that if a determination on whether an emission increase will occur can be made without emission tests or continuous monitoring data, the Administrator can advise the source O/O concerning the application of standards prior to the physical or operational change (39 FR 36948, October 15, 1974). Requests for determinations have been separate from other notification requirements.

For part 61, new sources to which a NESHAP applies have been required to notify the EPA of their startup date. State and local agencies obtained this information from the EPA, if they needed it. The O/O could satisfy this requirement by submitting to the Administrator (an identical) copy of a notification of startup sent to a State or local agency if the notification contained all the information required by §61.09.

For part 61, existing sources and new sources with startup dates before the effective date of applicable standards had to provide to the EPA the information required in §61.10(a)(1)-(7), including information about whether the source could comply with standards within 90 days. Existing sources unable to comply within 90 days could request a waiver of compliance of up to 2 years. This is discussed in this document in the chapter on provisions for compliance with standards and maintenance requirements.

Many of the requirements applicable to sources subject to NSPS (below) are also applicable to sources subject to NESHAP under former section 112.

<u>For Part 60 NSPS</u>:

* New sources to which a NSPS applies must notify the EPA of the date of commencement of construction or reconstruction, plans to reconstruct or modify, the anticipated date of initial startup, the actual startup date, any physical or operational change, the date by which the monitoring system is in place, the anticipated date for conducting opacity observations, and the use of opacity monitoring system data results.

* The O/O must maintain records of startup, shutdown, and malfunction.

* The O/O is required to submit a quarterly monitoring report of "excess emissions," including the magnitude and period identification of each excess emission, date, and time; also, the O/O must report when functioning is proper. Excess emissions are defined in §60.45(g) and elsewhere (38 FR 28565, October 15, 1973).

* The O/O must maintain a file of all measurements, maintenance reports, and records for a period of 2 years after they were taken or prepared.

* State or local agencies can get information on notifications from the EPA if required.

* Included in §60.7(f) is a clause that says "Individual subparts of this part may include specific provisions which clarify or make inapplicable the provisions set forth in this section."

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

New section 112 does not mandate specific notification, recordkeeping, and reporting requirements. However, no major source subject to emission standards, limitations, or regulations promulgated under new section 112 may be constructed, reconstructed, or modified unless the Administrator or a State determines that the source will comply with the applicable regulations if it is properly constructed, reconstructed, or modified and operated. By implication, sources must notify the implementing agency of their intentions prior to taking action.

Furthermore, under title V of the CAAA, if a source wants to make changes without the need for a permit revision, its emissions after the proposed changes must not exceed the emissions limitations in its permit, and it must notify the permitting authority at least 7 days in advance of the proposed changes. Sources must certify at least annually that they are in compliance with permit requirements and they must report deviations "promptly." Permits must include monitoring and reporting requirements, with the provision that monitoring results be reported at

least every 6 months, and other requirements and conditions to be specified in the permitting regulations.

In addition, title VII of the CAAA requires that "compliance certifications" based on monitoring activities be periodically submitted from an O/O at the Administrator's discretion. These compliance certifications may be required to verify that sources are meeting relevant emission standards established under part 63.

CHAPTER 9 - COMPLIANCE WITH PERMIT PROGRAM REQUIREMENTS

(1) WHY NEEDED:

Title V of the CAAA of 1990 instructs the Administrator to establish the minimum elements of a national air pollution control operating permit program to be delegated to State or local agencies, if they qualify. On July 21, 1992, the EPA promulgated a final rule for 40 CFR part 70 (see 57 FR 32250). This new part, which reflects the requirements in title V, establishes regulations requiring States to develop and submit to the EPA programs for issuing operating permits to major stationary sources, sources covered by NSPS, sources covered by NESHAP, and other sources as may be designated by the Administrator. (Area sources would also be included under new section 112.) It also requires that the permits for all part 70 sources address all obligations for applicable pollution control programs.

Many of the requirements of the published permit program regulations have implications for sources that will be regulated under new section 112. Indeed, one of the purposes of the operating permit program is to provide a ready vehicle for the States to take over administration of significant parts of the Federal air toxics program. Emission limitations and other requirements prescribed by MACT standards will be incorporated into comprehensive permits that consolidate all applicable requirements for a source. However, even where there is no applicable part 63 standard to implement, part 70 permits must still estimate HAP emissions at major sources and impose any applicable control requirements described in new sections 112(g) and 112(j) of the CAAA.

The EPA considers a State with an approved part 70 permit program to have automatic authority and responsibility to implement and enforce all applicable section 112 rules upon their promulgation. Section 112(l) outlines a program intended for State implementation and enforcement of section 112 rules that have been altered by a State. Consolidation of programs under new section 112(l) and title V is desirable to prevent duplication of State efforts to develop and implement operating permits.

New section 112(i)(5) provides an extension for existing sources to comply with otherwise applicable standards for HAP provided certain criteria concerning early

voluntary reductions are met. This subsection requires that the Administrator or a State acting pursuant to a title V permit program issue a permit allowing an existing source (for which the O/O demonstrates that the source has achieved a reduction of 90 percent or more in emissions of HAP, 95 percent in the case of particulate HAP, from the source) to meet an alternative emissions limitation reflecting such reduction in lieu of meeting a MACT standard. The part 70 permit process, where available, is the intended implementation mechanism for granting qualifying sources the extension for meeting otherwise applicable MACT standards.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

Prior to the CAAA of 1990, the Act did not authorize a comprehensive, national operating permit program. Thus, provisions for permit program requirements currently do not exist in parts 60 and 61.

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

After the effective date of a permit program approved or promulgated under title V, it is unlawful for any person to violate any requirement of a permit issued to him or her, or to operate a source subject to standards or regulations under new section 112 except in compliance with applicable permit program regulations. The Administrator has the discretion to exempt one or more source categories from compliance with these requirements if such compliance is "impracticable, infeasible, or unnecessarily burdensome," except that major sources cannot be exempted. Sources are required to have a permit either one year after an applicable permit program becomes effective or one year after the source becomes subject to regulation (because of the nature and magnitude of the pollutants it emits), whichever is later. "General permits" covering numerous similar sources are allowed.

Sources must submit an application for a permit to the appropriate permitting authority no later than 12 months after the date on which the source becomes subject to a permit program (or by an earlier date established by the permitting authority). Sources must submit with their permit application a compliance plan that incudes a

compliance schedule and schedule for submitting progress reports. Permittees must certify at least annually that they are in compliance with permit requirements, and they must report deviations promptly.

Each permit must include enforceable emission limitations and standards, a schedule of compliance, inspection, entry, monitoring, compliance certification, and reporting requirements, a requirement that the permittee submit to the permitting authority no less often than every 6 months the results of any required monitoring, and such other conditions as are necessary to ensure compliance with applicable requirements of the Act.

Compliance with a permit is compliance with section 502 of the Act, "Permit Programs." Except as provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of the Act. In this case, the permit must include these provisions or a determination by the permitting authority that the provisions are not applicable.

GENERAL PROVISIONS - 40 CFR PART 63

CHAPTER 10 - LIST OF POLLUTANTS

(1) WHY NEEDED:

Under both former section 112 and new section 112, HAP to be regulated must be listed in the regulations. The EPA will propose that subpart C of part 63 contain the HAP for standards to be promulgated under new section 112.

In addition, new section 112 requires that procedures be established for the public to petition the EPA to add or delete chemicals from the list. Under new section 112(b)(3), "Petitions to Modify the List," the Administrator may add or delete substances from the list upon a showing by the petitioner or on the Administrator's own determination that an air pollutant may reasonably be anticipated to cause adverse effects to human health or the environment, or that there is adequate data on the health and environmental effects of the substance to conclude that such effects may not reasonably be anticipated. Subpart C would contain the petitioning provisions as well as the list.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

For part 61 NESHAP, substances were listed because of serious health effects, including cancer, from ambient exposure. Emission standards were established at a level that in the judgement of the Administrator provided an "ample margin of safety" to protect the public health from HAP [former section 112(b)(1)(B)].

For part 61, substances were listed as HAP pursuant to section 112(b)(1)(A); also, a list was included of other substances considered serious in terms of their potential health effects, including cancer, from ambient air exposure. Publication of both lists served to inform the public as to the status of the EPA's program for assessing potentially toxic air pollutants, as well as provided a useful reference for Federal Register publications dealing with potentially toxic air pollutants. The first list removed public uncertainty regarding the status of a particular pollutant between listing and promulgation of its emission standard. The second list conveyed to the public the scope of the Agency's air toxics program by identifying all actions the EPA had taken with respect to potentially toxic air pollutants (50 FR 46290, November 7, 1985).

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

Pollutants will be listed and delisted per new section 112(b) of the Act. In this section, Congress established an initial list of the 189 hazardous air pollutants to be controlled by standards under new section 112. The Administrator must periodically review the list and revise it by rule, if appropriate. After the list is published, any person may petition the Administrator to add or delete a substance from the HAP list. The petition must be granted or denied according to the criteria specified in section 112(b)(3).

CHAPTER 11 - LIST OF SOURCE CATEGORIES AND SCHEDULE FOR REGULATION

(1) WHY NEEDED:

New section 112 requires that source categories that emit listed HAP be listed, along with a schedule for their regulation. On July 16, 1992 (57 FR 31576), the "Initial List of Categories of Sources Under section 112(c)(1) of the Clean Air Act Amendments of 1990" was published.

Also under new section 112, the public may petition the EPA to delete source categories from the list. Under new section 112(c)(9), "Deletions from the List," the Administrator may delete a source category from the list on petition by any person or on his or her own determination according to the decision rules spelled out in that subsection.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

For part 60, section 111 requires that NSPS be developed for stationary sources that the Administrator determines may contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. Section 111(b)(1) requires that the Administrator publish, and from time to time revise, a list of categories of major stationary sources for which NSPS are to be promulgated.

A category of sources that meets the statutory criterion for NSPS regulation is referred to as a "significant contributor" (47 FR 951, January 8, 1982). A "major source" under title I of the Act has been one that has the potential to emit 100 tons per year of any regulated air pollutant. The priority list (§60.16) identifies source categories in order of priority for development of regulations.

For part 61, NESHAP are developed on a pollutant-by-pollutant basis, rather than by source category. For more explanation, see Chapter 10 of this document.

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

On July 16, 1992, the Administrator published a list of categories of "major sources" and "area sources" (as these terms are defined in amended section 112) that emit the HAP listed in section 112(b) of the Act (57 FR 31576). Previously regulated categories are permitted to be included on the list, and additional categories may be designated and added to the list at any time. Categories may be deleted from the list by the Administrator or upon petition by any person if they meet the risk assessment criteria specified in new section 112(c)(9)(B)(i)-(ii). The list of categories must be revised "from time to time," if appropriate, but not less often than every 8 years. Emission standards must be established for the categories on the list according to a schedule to be published by the EPA.

CHAPTER 12 - STATE AUTHORITY

(1) WHY NEEDED:

Currently, General Provisions concerning State authority (§60.11 and §61.17) serve not to preclude State actions that are allowed under the Act (such as adopting more stringent emission limitations or requiring permits prior to construction, modification, or operation).

Similar provisions in part 63 may serve an additional function, that of enabling State actions that are authorized by the CAAA under new section 112(l), "State Programs" for implementing and enforcing air toxics regulations, and title V, operating permit program requirements.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

States or political subdivisions thereof can adopt their own emission limit regulations under parts 60 and 61 as long as they are as stringent as the Federal ones. Currently, States can require an O/O to obtain permits, licenses, and approvals prior to construction, modification, or operation.

Stationary sources owned or operated by the Federal government must comply with the provisions requiring prior approval for construction, modification, or operation (49 FR 23520, June 6, 1984). This stems from amended section 118(a) of the Clean Air Act Amendments of 1977.

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

Under new section 112(l), States may develop a program to implement and enforce emission standards and other requirements mandated by section 112. The Administrator may partially or wholly delegate authority to a State; however, a State may not establish less stringent standards, and the Administrator maintains ultimate enforcement authority. Regulations implementing the provisions of new section 112(l) have been proposed by the EPA in subpart E of part 63 (58 FR 29296, May 19, 1993).

GENERAL PROVISIONS - 40 CFR PART 63

CHAPTER 13 - ADDRESSES OF STATE AIR POLLUTION CONTROL AGENCIES AND THE EPA REGIONAL OFFICES

(1) WHY NEEDED:

Section 111(c) authorizes, and former section 112(d) authorized, the delegation of authority from the EPA to States to implement and enforce the standards established under those sections. Currently, where States have delegated authority, all information required by the EPA must be submitted to the appropriate State agency. In some situations the Administrator may permit all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency. Also, all communication to the EPA Administrator regarding §60.4 and §61.04 must be submitted in duplicate to the EPA Regional Office. The General Provisions in these parts list the mailing addresses of the ten EPA Regional Offices and the States whose delegation requests have been approved, and they contain tables indicating the delegation status of NESHAP and NSPS in various Regions and States.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

Currently, the Administrator may allow all or some of the information to be submitted to the appropriate State agency only, instead of to the EPA and the State agency, under former section 112(d) (specific written permission is required). However, the EPA will not relinquish its authority to collect requested information because both the EPA and the States have enforcement responsibilities. There are aspects of all the standards that the EPA will not delegate to any State, and the EPA reserves oversight authority for delegated activities. The EPA prefers the word "Administrator" to the term "authorized agency" throughout the General Provisions (50 FR 46290, November 7, 1985) because not all provisions are delegated to the States, and because the EPA always has the responsibility to ensure enforcement action under section 112(d).

Not all States have complete authority to enforce and implement for all sources or categories of pollutants. Source and pollutant categories that have been delegated to various states are listed in the General Provisions where the State does not have authority over all sources and categories. Most States do have full delegation of all applicable NESHAP, however. The EPA plans to continue

updating the listing to show exceptions to full delegation on a case-by-case basis.

(3) STATUTORY REQUIREMENTS OF CAAA:

No specific requirement to list addresses is included in the CAAA.

CHAPTER 14 - INCORPORATIONS BY REFERENCE

(1) WHY NEEDED:

In the Freedom of Information Act, Congress authorized incorporation of materials into regulations by reference in an effort to reduce the volume of material published in the Federal Register and the CFR. Incorporation by reference allows Federal agencies to comply with the requirement to publish regulations in the Federal Register simply by referring to material already published elsewhere, rather than by reprinting such material in the published regulations. The legal effect of incorporation by reference is that the material is treated as if it were published in the Federal Register. This material, like any other properly issued regulation, has the force and effect of law.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

Materials listed in §61.18 and §60.17 are incorporated by reference in the corresponding sections noted.

A technical amendment was published on January 27, 1983 (48 FR 3734) that incorporated certain materials by reference into existing NSPS and NESHAP promulgated under section 111 and former section 112 of the Act. Previously the materials were cited in those standards, but until this notice they had not been incorporated by reference under the applicable regulations of the Office of the Federal Register. This action intended to rectify the situation to comply with the regulations.

Materials are incorporated as they exist on the date of approval, and a notice of change is to be published in the Federal Register, if necessary. Addresses of where the materials can be purchased are included. The Director of the Federal Register must approve incorporations of materials by reference.

(3) STATUTORY REQUIREMENTS OF CAAA:

None.

GENERAL PROVISIONS - 40 CFR PART 63

CHAPTER 15 - AVAILABILITY OF INFORMATION AND CONFIDENTIALITY

(1) WHY NEEDED:

Reports, records, and other information collected by the Administrator under section 114 must be made available to the public, with the exception of trade secrets, which must be handled confidentially in accordance with the procedures in section 1905 of title 18 of the U.S. Code.

(2) RELEVANT REQUIREMENTS AND HISTORY OF PARTS 60 AND 61:

All emission data provided to or obtained by the Administrator in carrying out the regulations in parts 60 and 61 have been available to the public. Records, reports, or information other than trade secrets have been available to the public (38 FR 8826, April 6, 1973).

Availability to the public of information provided to, or otherwise obtained by, the Administrator under parts 60 and 61 has been governed by part 2 of chapter I of title 40 of the CFR. Additional governing sections are specified for part 60.

(3) STATUTORY REQUIREMENTS OF CAAA:

Summary

Pollution control measures that are acceptable as MACT standards shall not compromise trade secrets, patents, or other confidential business information.

A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under title V must be made available to the public. Confidential business information may be submitted separately by the applicant or the permittee in order to gain protection under section 114(c). Otherwise, the contents of a permit are not entitled to protection under section 114(c).

GENERAL PROVISIONS - 40 CFR PART 63

III. STATUTORY REQUIREMENTS OF THE CLEAN AIR ACT THAT ARE RELEVANT TO THE GENERAL PROVISIONS FOR 40 CFR PART 63

TABLE 4

SECTION 112 OF TITLE I OF CLEAN AIR ACT AS AMENDED BY TITLE III OF CLEAN AIR ACT AMENDMENTS OF 1990

Section	DESCRIPTION
112	HAZARDOUS AIR POLLUTANTS
112(a)	Definitions
112(b)	List of Pollutants
112(b)(1,2&3)	Pollutant Additions/Deletions & Petitions
112(b)(3)(D)	Compound Classes
112(c)	List of Source Categories
112(c)(3)	Area Source Categories
112(c)(4)	Previously Regulated Source Categories
112(c)(5)	Additional Source Categories
112(c)(6)	Source Categories of Specific Pollutants
112(c)(7)	Research Facilities
112(c)(8)	Boat Manufacturing
112(c)(9)	Petitions to Delete Source Categories
112(d)(1)	MACT Emission Standards
112(d)(2)	MACT Definition
112(d)(3)	MACT Floors for New & Existing Sources
112(d)(4)	Consideration of Health Thresholds
112(d)(5)	GACT for Area Sources
112(d)(6)	Standards Review and Revision
112(d)(7)	More Stringent Standards Override
112(d)(8)(A)	Coke Ovens - 2-Year MACT Standards
112(d)(8)(B)	Coke Ovens - Work Practice Standards
112(d)(8)(C)	Coke Ovens - Residual Risk Deferral
112(d)(9)	Sources Licensed by NRC
112(e)(1)	Schedule for MACT Standards
112(e)(2)	Determining Priorities
112(e)(3)	Schedule Publication
112(e)(4)	Judicial Review (Pollutants and Source Categories List)
112(e)(5)	Publicly Owned Treatment Works
112(f)(1)	EPA Risk Assessment Study
112(f)(2)	Residual Risk Emission Standards
112(f)(4)	Residual Risk Compliance Time
112(f)(5)	Residual Risk Discretion - Area Sources

112(f)(6)	Residual Risk for Unique Chemical Substances
112(g)(1)	Modifications - Offsets
112(g)(3)	Modifications - Uncontrolled Major Sources
112(h)	Work Practices
112(h)(3)	Work Practices - Alternative Standards
112(i)(1)	Compliance Schedule - Preconstruction
112(i)(2)	Compliance Schedule - Special Rule
112(i)(3)	Compliance Schedule - Existing Sources
112(i)(4)	Compliance Schedule - Presidential Exemption
112(i)(5)	Compliance Schedule - Voluntary Reduction
112(i)(6)	Compliance Schedule - BACT/LAER
112(i)(7)	Compliance Schedule - New Source Extension
112(i)(8)	Compliance Schedule - Coke Ovens
112(j)	Permit Hammer
112(k)	Area Source Program
112(k)(2)	Area Sources - Research Program
112(k)(3)	Area Sources - National Strategy
112(k)(4)	Area Sources - State Programs & Grants
112(k)(5)	Area Sources - Reports to Congress
112(l)	State Programs - Permits & Guidance
112(l)(3)	Tech. Assistance CTC, Air RISC, and NATICH
112(m)(1)	Great Lakes - Deposition Assessment
112(m)(2,3,&4)	Great Lakes - Monitoring Network
112(m)(5)	Great Lakes - Report to Congress
112(m)(6)	Great Lakes - Additional Regulation
112(n)(1)	Electric Utility Steam Generating Units
112(n)(2)	Coke Oven Production Technology Study
112(n)(3)	Publicly Owned Treatment Works
112(n)(4)	Oil and Gas Wells
112(n)(5)	Hydrogen Sulfide
112(n)(6)	Hydrofluoric Acid
112(n)(7)	RCRA Facilities
112(o)	National Academy of Sciences Study
112(p)	Urban Air Toxics Research Center
112(q)	Savings Provisions
112(r)	Accidental Releases
112(r)(3)	Accidental Releases - List of Substances
112(r)(7)	Chemical Safety Board
112(s)	Three-Year Reports to Congress

SECTION 112 OF CLEAN AIR ACT - HAZARDOUS AIR POLLUTANTS

AS AMENDED BY TITLE III OF CLEAN AIR ACT AMENDMENTS OF 1990

the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

(1) whether technologies exist to control some or all emissions of oxides of nitrogen from test cells;

(2) the effectiveness of such technologies;

(3) the cost of implementing such technologies;

(4) whether such technologies affect the safety, design, structure, operation, or performance of aircraft engines;

(5) whether such technologies impair the effectiveness and accuracy of aircraft engine safety design, and performance tests conducted in test cells; and

(6) the impact of not controlling such oxides of nitrogen in the applicable nonattainment areas and on other sources, stationary and mobile, on oxides of nitrogen in such areas.

(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990, the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.

SEC. 234. FUGITIVE DUST.

(a) Prior to any use of the Industrial Source Complex (ISC) Model using AP-42 Compilation of Air Pollutant Emission Factors to determine the effect on air quality of fugitive particulate emissions from surface coal mines, for purposes of new source review or for purposes of demonstrating compliance with national ambient air quality standards for particulate matter applicable to periods of 24 hours or less, under section 110 or parts C or D of title I of the Clean Air Act, the Administrator shall analyze the accuracy of such model and emission factors and make revisions as may be necessary to eliminate any significant over-prediction of air quality effect of fugitive particulate emissions from such sources. Such revisions shall be completed not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990. Until such time as the Administrator develops a revised model for surface mine fugitive emissions, the State may use alternative empirical based modeling approaches pursuant to guidelines issued by the Administrator.".

SEC. 235. FEDERAL COMPLIANCE.

42 USC 7418.

Section 118 of the Clean Air Act is amended by inserting "GENERAL COMPLIANCE.—" after "SEC. 118. (a)" and by adding at the end thereof the following:

"(c) GOVERNMENT VEHICLES.—Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government shall comply with all applicable provisions of a valid inspection and maintenance program established under the provisions of subpart 2 of part D or subpart 3 of part D except for such vehicles that are considered military tactical vehicles.

"(d) VEHICLES OPERATED ON FEDERAL INSTALLATIONS.—Each department, agency, and instrumentality of executive, legislative, and judicial branches of the Federal Government having jurisdiction over any property or facility shall require all employees which operate motor vehicles on the property or facility to furnish proof of compliance with the applicable requirements of any vehicle inspection and maintenance program established under the provisions of subpart 2 of part D or subpart 3 of part D for the State in which such property or facility is located (without regard to whether such vehicles are registered in the State). The installation shall use one of the following methods to establish proof of compliance—

"(1) presentation by the vehicle owner of a valid certificate of compliance from the vehicle inspection and maintenance program;

"(2) presentation by the vehicle owner of proof of vehicle registration within the geographic area covered by the vehicle inspection and maintenance program (except for any program whose enforcement mechanism is not through the denial of vehicle registration);

"(3) another method approved by the vehicle inspection and maintenance program administrator.".

TITLE III—HAZARDOUS AIR POLLUTANTS

SEC. 301. HAZARDOUS AIR POLLUTANTS.

Section 112 of the Clean Air Act is amended to read as follows: 42 USC 7412.

"SEC. 112. HAZARDOUS AIR POLLUTANTS.

"(a) DEFINITIONS.—For purposes of this section, except subsection (r)—

"(1) MAJOR SOURCE.—The term 'major source' means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The Administrator may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source than that specified in the previous sentence, on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

"(2) AREA SOURCE.—The term 'area source' means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term 'area source' shall not include motor vehicles or nonroad vehicles subject to regulation under title II.

"(3) STATIONARY SOURCE.—The term 'stationary source' shall have the same meaning as such term has under section 111(a).

"(4) NEW SOURCE.—The term 'new source' means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations

under this section establishing an emission standard applicable to such source.

"(5) MODIFICATION.—The term 'modification' means any physical change in, or change in the method of operation of, a major source which increases the actual emissions of any hazardous air pollutant emitted by such source by more than a de minimis amount or which results in the emission of any hazardous air pollutant not previously emitted by more than a de minimis amount.

"(6) HAZARDOUS AIR POLLUTANT.—The term 'hazardous air pollutant' means any air pollutant listed pursuant to subsection (b).

"(7) ADVERSE ENVIRONMENTAL EFFECT.—The term 'adverse environmental effect' means any significant and widespread adverse effect, which may reasonably be anticipated, to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas.

"(8) ELECTRIC UTILITY STEAM GENERATING UNIT.—The term 'electric utility steam generating unit' means any fossil fuel fired combustion unit of more than 25 megawatts that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale shall be considered an electric utility steam generating unit.

"(9) OWNER OR OPERATOR.—The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a stationary source.

"(10) EXISTING SOURCE.—The term 'existing source' means any stationary source other than a new source.

"(11) CARCINOGENIC EFFECT.—Unless revised, the term 'carcinogenic effect' shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment. Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

"(b) LIST OF POLLUTANTS.—

"(1) INITIAL LIST.—The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3'-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol

CAS number	Chemical name
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)
7783064	Hydrogen sulfide
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4'-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane

CAS number	Chemical name
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds [1]
0	Glycol ethers [2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers [3]
0	Nickel Compounds
0	Polycylic Organic Matter [4]
0	Radionuclides (including radon) [5]
0	Selenium Compounds

NOTE: For all listings above which contain the word "compounds" and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony. arsenic, etc.) as part of that chemical's infrastructure.

[1] X'CN where X = H' or any other group where a formal dissociation may occur. For example KCN or $Ca(CN)_2$

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol R-$(OCH_2CH_2)_n$-OR' where
n = 1, 2, or 3
R = alkyl or aryl groups
R' = R, H, or groups which, when removed, yield glycol ethers with the structure: R-$(OCH_2CH)_n$-OH. Polymers are excluded from the glycol category.

[3] Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

[4] Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100°C.

[5] A type of atom which spontaneously undergoes radioactive decay.

"(2) REVISION OF THE LIST.—The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be,

carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) as a result of emissions to the air. No air pollutant which is listed under section 108(a) may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 108(a) or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under title VI of this Act shall be subject to regulation under this section solely due to its adverse effects on the environment.

"(3) PETITIONS TO MODIFY THE LIST.—

"(A) Beginning at any time after 6 months after the date of enactment of the Clean Air Act Amendments of 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

"(B) The Administrator shall add a substance to the list upon a showing by the petitioner or on the Administrator's own determination that the substance is an air pollutant and that emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.

"(C) The Administrator shall delete a substance from the list upon a showing by the petitioner or on the Administrator's own determination that there is adequate data on the health and environmental effects of the substance to determine that emissions, ambient concentrations, bioaccumulation or deposition of the substance may not reasonably be anticipated to cause any adverse effects to the human health or adverse environmental effects.

"(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions, mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) for which a deletion petition has been filed within 12 months of the date of enactment of the Clean Air Act Amendments of 1990.

"(4) FURTHER INFORMATION.—If the Administrator determines that information on the health or environmental effects of a substance is not sufficient to make a determination required by this subsection, the Administrator may use any authority available to the Administrator to acquire such information.

"(5) TEST METHODS.—The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

"(6) PREVENTION OF SIGNIFICANT DETERIORATION.—The provisions of part C (prevention of significant deterioration) shall not apply to pollutants listed under this section.

"(7) LEAD.—The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

"(c) LIST OF SOURCE CATEGORIES.—

"(1) IN GENERAL.—Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b). To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 111 and part C. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

"(2) REQUIREMENT FOR EMISSIONS STANDARDS.—For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d), according to the schedule in this subsection and subsection (e).

"(3) AREA SOURCES.—The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and pursuant to subsection (k)(3)(B), list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after such date of enactment. Regulations.

"(4) PREVIOUSLY REGULATED CATEGORIES.—The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section

as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

"(5) ADDITIONAL CATEGORIES.—In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) for the category or subcategory shall be promulgated within 10 years after the date of enactment of the Clean Air Act Amendments of 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

"(6) SPECIFIC POLLUTANTS.—With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4). Such standards shall be promulgated not later than 10 years after such date of enactment. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

"(7) RESEARCH FACILITIES.—The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, 'research or laboratory facility' means any stationary source whose primary purpose is to conduct research and development into new processes and products, where such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

"(8) BOAT MANUFACTURING.—When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this Act.

"(9) DELETIONS FROM THE LIST.—

"(A) Where the sole reason for the inclusion of a source category on the list required under this subsection is the emission of a unique chemical substance, the Administrator shall delete the source category from the list if it is appropriate because of action taken under either subparagraphs (C) or (D) of subsection (b)(3).

"(B) The Administrator may delete any source category from the list under this subsection, on petition of any person or on the Administrator's own motion, whenever the Administrator makes the following determination or determinations, as applicable:

"(i) In the case of hazardous air pollutants emitted by sources in the category that may result in cancer in humans, a determination that no source in the category (or group of sources in the case of area sources) emits such hazardous air pollutants in quantities which may cause a lifetime risk of cancer greater than one in one million to the individual in the population who is most exposed to emissions of such pollutants from the source (or group of sources in the case of area sources).

"(ii) In the case of hazardous air pollutants that may result in adverse health effects in humans other than cancer or adverse environmental effects, a determination that emissions from no source in the category or subcategory concerned (or group of sources in the case of area sources) exceed a level which is adequate to protect public health with an ample margin of safety and no adverse environmental effect will result from emissions from any source (or from a group of sources in the case of area sources).

The Administrator shall grant or deny a petition under this paragraph within 1 year after the petition is filed.

"(d) EMISSION STANDARDS.—

Regulations.

"(1) IN GENERAL.—The Administrator shall promulgate regulations establishing emission standards for each category or subcategory of major sources and area sources of hazardous air pollutants listed for regulation pursuant to subsection (c) in accordance with the schedules provided in subsections (c) and (e). The Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory in establishing such standards except that, there shall be no delay in the compliance date for any standard applicable to any source under subsection (i) as the result of the authority provided by this sentence.

"(2) STANDARDS AND METHODS.—Emissions standards promulgated under this subsection and applicable to new or existing sources of hazardous air pollutants shall require the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies, through application of measures, processes, methods, systems or techniques including, but not limited to, measures which—

"(A) reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications,

"(B) enclose systems or processes to eliminate emissions,

"(C) collect, capture or treat such pollutants when released from a process, stack, storage or fugitive emissions point,

"(D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in subsection (h), or

"(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 114(c), in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

"(3) NEW AND EXISTING SOURCES.—The maximum degree of reduction in emissions that is deemed achievable for new sources in a category or subcategory shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator. Emission standards promulgated under this subsection for existing sources in a category or subcategory may be less stringent than standards for new sources in the same category or subcategory but shall not be less stringent, and may be more stringent than—

"(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined by section 171) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

"(B) the average emission limitation achieved by the best performing 5 sources (for which the Administrator has or could reasonably obtain emissions information) in the category or subcategory for categories or subcategories with fewer than 30 sources.

"(4) HEALTH THRESHOLD.—With respect to pollutants for which a health threshold has been established, the Administrator may consider such threshold level, with an ample margin of safety, when establishing emission standards under this subsection.

"(5) ALTERNATIVE STANDARD FOR AREA SOURCES.—With respect only to categories and subcategories of area sources listed pursuant to subsection (c), the Administrator may, in lieu of the authorities provided in paragraph (2) and subsection (f), elect to promulgate standards or requirements applicable to sources in such categories or subcategories which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.

"(6) REVIEW AND REVISION.—The Administrator shall review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under this section no less often than every 8 years.

"(7) OTHER REQUIREMENTS PRESERVED.—No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 111, part C or D, or other authority of this Act or a standard issued under State authority.

"(8) COKE OVENS.—

"(A) Not later than December 31, 1992, the Administrator shall promulgate regulations establishing emission standards under paragraphs (2) and (3) of this subsection for coke oven batteries. In establishing such standards, the Administrator shall evaluate— Regulations.

"(i) the use of sodium silicate (or equivalent) luting compounds to prevent door leaks, and other operating practices and technologies for their effectiveness in reducing coke oven emissions, and their suitability for use on new and existing coke oven batteries, taking into account costs and reasonable commercial door warranties; and

"(ii) as a basis for emission standards under this subsection for new coke oven batteries that begin construction after the date of proposal of such standards, the Jewell design Thompson non-recovery coke oven batteries and other non-recovery coke oven technologies, and other appropriate emission control and coke production technologies, as to their effectiveness in reducing coke oven emissions and their capability for production of steel quality coke.

Such regulations shall require at a minimum that coke oven batteries will not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing oven doors. Notwithstanding subsection (i), the compliance date for such emission standards for existing coke oven batteries shall be December 31, 1995.

"(B) The Administrator shall promulgate work practice regulations under this subsection for coke oven batteries requiring, as appropriate— Regulations.

"(i) the use of sodium silicate (or equivalent) luting compounds, if the Administrator determines that use of sodium silicate is an effective means of emissions control and is achievable, taking into account costs and reasonable commercial warranties for doors and related equipment; and

"(ii) door and jam cleaning practices.

Notwithstanding subsection (i), the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) in accordance with subsection (i)(8), the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i), the compliance date for such emission standards for existing coke oven batteries seeking an exten-

sion shall be not later than the date 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(9) SOURCES LICENSED BY THE NUCLEAR REGULATORY COMMISSION.—No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 111 or this section.

"(10) EFFECTIVE DATE.—Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

"(e) SCHEDULE FOR STANDARDS AND REVIEW.—

Regulations.

"(1) IN GENERAL.—The Administrator shall promulgate regulations establishing emission standards for categories and subcategories of sources initially listed for regulation pursuant to subsection (c)(1) as expeditiously as practicable, assuring that—

"(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after the date of enactment of the Clean Air Act Amendments of 1990;

"(B) emission standards for coke oven batteries shall be promulgated not later than December 31, 1992;

"(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after the date of enactment of the Clean Air Act Amendments of 1990;

"(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after the date of enactment of the Clean Air Act Amendments of 1990; and

"(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(2) In determining priorities for promulgating standards under subsection (d), the Administrator shall consider—

"(A) the known or anticipated adverse effects of such pollutants on public health and the environment;

"(B) the quantity and location of emissions or reasonably anticipated emissions of hazardous air pollutants that each category or subcategory will emit; and

"(C) the efficiency of grouping categories or subcategories according to the pollutants emitted, or the processes or technologies used.

"(3) PUBLISHED SCHEDULE.—Not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990 and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 304 of this Act.

"(4) JUDICIAL REVIEW.—Notwithstanding section 307 of this Act, no action of the Administrator adding a pollutant to the list under subsection (b) or listing a source category or subcategory under subsection (c) shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 307 when the Administrator issues emission standards for such pollutant or category.

"(5) PUBLICLY OWNED TREATMENT WORKS.—The Administrator shall promulgate standards pursuant to subsection (d) applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act) not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(f) STANDARD TO PROTECT HEALTH AND THE ENVIRONMENT.—

"(1) REPORT.—Not later than 6 years after the date of enactment of the Clean Air Act Amendments of 1990 the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

"(A) methods of calculating the risk to public health remaining, or likely to remain, from sources subject to regulation under this section after the application of standards under subsection (d);

"(B) the public health significance of such estimated remaining risk and the technologically and commercially available methods and costs of reducing such risks;

"(C) the actual health effects with respect to persons living in the vicinity of sources, any available epidemiological or other health studies, risks presented by background concentrations of hazardous air pollutants, any uncertainties in risk assessment methodology or other health assessment technique, and any negative health or environmental consequences to the community of efforts to reduce such risks; and

"(D) recommendations as to legislation regarding such remaining risk.

"(2) EMISSION STANDARDS.—

"(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d), promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental

effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before the date of enactment of the Clean Air Act Amendments of 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) and applicable to a category or subcategory of sources emitting a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

"(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before the date of enactment of the Clean Air Act Amendments of 1990 and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

"(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) are required to be promulgated within 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

"(3) EFFECTIVE DATE.—Any emission standard established pursuant to this subsection shall become effective upon promulgation.

"(4) PROHIBITION.—No air pollutant to which a standard under this subsection applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

"(A) such standard shall not apply until 90 days after its effective date, and

"(B) the Administrator may grant a waiver permitting such source a period of up to 2 years after the effective date of a standard to comply with the standard if the Administrator finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

"(5) AREA SOURCES.—The Administrator shall not be required to conduct any review under this subsection or promulgate emission limitations under this subsection for any category or subcategory of area sources that is listed pursuant to subsection (c)(3) and for which an emission standard is promulgated pursuant to subsection (d)(5).

"(6) UNIQUE CHEMICAL SUBSTANCES.—In establishing standards for the control of unique chemical substances of listed pollutants without CAS numbers under this subsection, the Administrator shall establish such standards with respect to the health and environmental effects of the substances actually emitted by sources and direct transformation byproducts of such emissions in the categories and subcategories.

"(g) MODIFICATIONS.—

"(1) OFFSETS.—

"(A) A physical change in, or change in the method of operation of, a major source which results in a greater than de minimis increase in actual emissions of a hazardous air pollutant shall not be considered a modification, if such increase in the quantity of actual emissions of any hazardous air pollutant from such source will be offset by an equal or greater decrease in the quantity of emissions of another hazardous air pollutant (or pollutants) from such source which is deemed more hazardous, pursuant to guidance issued by the Administrator under subparagraph (B). The owner or operator of such source shall submit a showing to the Administrator (or the State) that such increase has been offset under the preceding sentence.

"(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

"(2) CONSTRUCTION, RECONSTRUCTION AND MODIFICATIONS.—

"(A) After the effective date of a permit program under title V in any State, no person may modify a major source of hazardous air pollutants in such State, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for existing sources will be met. Such determination shall be made on a case-by-case basis where no applicable emissions limitations have been established by the Administrator.

"(B) After the effective date of a permit program under title V in any State, no person may construct or reconstruct any major source of hazardous air pollutants, unless the Administrator (or the State) determines that the maximum achievable control technology emission limitation under this section for new sources will be met. Such determination shall be made on a case-by-case basis where no applicable emission limitations have been established by the Administrator.

"(3) PROCEDURES FOR MODIFICATIONS.—The Administrator (or the State) shall establish reasonable procedures for assuring that the requirements applying to modifications under this section are reflected in the permit.

"(h) WORK PRACTICE STANDARDS AND OTHER REQUIREMENTS.—

"(1) IN GENERAL.—For purposes of this section, if it is not feasible in the judgment of the Administrator to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, the Administrator may, in lieu thereof, promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in the Administrator's judgment is consistent with the provisions of subsection (d) or (f). In the event the Administrator promulgates a design or equipment standard under this subsection, the Administrator shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

"(2) DEFINITION.—For the purpose of this subsection, the phrase 'not feasible to prescribe or enforce an emission standard' means any situation in which the Administrator determines that—

"(A) a hazardous air pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State or local law, or

"(B) the application of measurement methodology to a particular class of sources is not practicable due to technological and economic limitations.

"(3) ALTERNATIVE STANDARD.—If after notice and opportunity for comment, the owner or operator of any source establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

"(4) NUMERICAL STANDARD REQUIRED.—Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it is feasible to promulgate and enforce a standard in such terms.

"(i) SCHEDULE FOR COMPLIANCE.—

"(1) PRECONSTRUCTION AND OPERATING REQUIREMENTS.—After the effective date of any emission standard, limitation, or regulation under subsection (d), (f) or (h), no person may construct any new major source or reconstruct any existing major source subject to such emission standard, regulation or limitation unless the Administrator (or a State with a permit program approved under title V) determines that such source, if properly constructed, reconstructed and operated, will comply with the standard, regulation or limitation.

"(2) SPECIAL RULE.—Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to

comply with such promulgated standard until the date 3 years after the date of promulgation if—

"(A) the promulgated standard, limitation or regulation is more stringent than the standard, limitation or regulation proposed; and

"(B) the source complies with the standard, limitation, or regulation as proposed during the 3-year period immediately after promulgation.

"(3) COMPLIANCE SCHEDULE FOR EXISTING SOURCES.—

"(A) After the effective date of any emissions standard, limitation or regulation promulgated under this section and applicable to a source, no person may operate such source in violation of such standard, limitation or regulation except, in the case of an existing source, the Administrator shall establish a compliance date or dates for each category or subcategory of existing sources, which shall provide for compliance as expeditiously as practicable, but in no event later than 3 years after the effective date of such standard, except as provided in subparagraph (B) and paragraphs (4) through (8).

"(B) The Administrator (or a State with a program approved under title V) may issue a permit that grants an extension permitting an existing source up to 1 additional year to comply with standards under subsection (d) if such additional period is necessary for the installation of controls. An additional extension of up to 3 years may be added for mining waste operations, if the 4-year compliance time is insufficient to dry and cover mining waste in order to reduce emissions of any pollutant listed under subsection (b).

"(4) PRESIDENTIAL EXEMPTION.—The President may exempt any stationary source from compliance with any standard or limitation under this section for a period of not more than 2 years if the President determines that the technology to implement such standard is not available and that it is in the national security interests of the United States to do so. An exemption under this paragraph may be extended for 1 or more additional periods, each period not to exceed 2 years. The President shall report to Congress with respect to each exemption (or extension thereof) made under this paragraph. President. Reports.

"(5) EARLY REDUCTION.—

"(A) The Administrator (or a State acting pursuant to a permit program approved under title V) shall issue a permit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this

subparagraph as a condition of granting the extension authorized by the previous sentence.

"(B) An existing source which achieves the reduction referred to in subparagraph (A) after the proposal of an applicable standard but before January 1, 1994, may qualify under subparagraph (A), if the source makes an enforceable commitment to achieve such reduction before the proposal of the standard. Such commitment shall be enforceable to the same extent as a regulation under this section.

"(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to the enactment of the Clean Air Act Amendments of 1990, pursuant to an information request issued under section 114.

"(D) For each source granted an alternative emission limitation under this paragraph there shall be established by a permit issued pursuant to title V an enforceable emission limitation for hazardous air pollutants reflecting the reduction which qualifies the source for an alternative emission limitation under this paragraph. An alternative emission limitation under this paragraph shall not be available with respect to standards or requirements promulgated pursuant to subsection (f) and the Administrator shall, for the purpose of determining whether a standard under subsection (f) is necessary, review emissions from sources granted an alternative emission limitation under this paragraph at the same time that other sources in the category or subcategory are reviewed.

"(E) With respect to pollutants for which high risks of adverse public health effects may be associated with exposure to small quantities including, but not limited to, chlorinated dioxins and furans, the Administrator shall by regulation limit the use of offsetting reductions in emissions of other hazardous air pollutants from the source as counting toward the 90 per centum reduction in such high-risk pollutants qualifying for an alternative emissions limitation under this paragraph.

"(6) OTHER REDUCTIONS.—Notwithstanding the requirements of this section, no existing source that has installed—

"(A) best available control technology (as defined in section 169(3)), or

"(B) technology required to meet a lowest achievable emission rate (as defined in section 171),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date

on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

"(7) EXTENSION FOR NEW SOURCES.—A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) shall not be required to comply with the emission standard under subsection (f) until the date 10 years after the date construction or reconstruction is commenced.

"(8) COKE OVENS.

"(A) Any coke oven battery that complies with the emission limitations established under subsection (d)(8)(C), subparagraph (B), and subparagraph (C), and complies with the provisions of subparagraph (E), shall not be required to achieve emission limitations promulgated under subsection (f) until January 1, 2020.

"(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 171 for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

"(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

"(II) 1 per centum leaking lids;

"(III) 4 per centum leaking offtakes; and

"(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices. Regulations.

"(ii) If the Administrator fails to promulgate such emission limitations under this subparagraph prior to the effective date of such emission limitations, the emission limitations applicable to coke oven batteries under this subparagraph shall be—

"(I) 3 per centum leaking doors (5 per centum leaking doors for six meter batteries);

"(II) 1 per centum leaking lids;
"(III) 4 per centum leaking offtakes; and
"(IV) 16 seconds visible emissions per charge,

or the total mass emissions equivalent (if the total mass emissions equivalent is determined to be practicable and enforceable), with no exclusion for emissions during the period after the closing of self-sealing oven doors.

"(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 171 at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

"(D) At any time prior to January 1, 1998, the owner or operator of any coke oven battery may elect to comply with emission limitations promulgated under subsection (f) by the date such emission limitations would otherwise apply to such coke oven battery, in lieu of the emission limitations and the compliance dates provided under subparagraphs (B) and (C) of this paragraph. Any such owner or operator shall be legally bound to comply with such emission limitations promulgated under subsection (f) with respect to such coke oven battery as of January 1, 2003. If no such emission limitations have been promulgated for such coke oven battery, the Administrator shall promulgate such emission limitations in accordance with subsection (f) for such coke oven battery.

"(E) Coke oven batteries qualifying for an extension under subparagraph (A) shall make available not later than January 1, 2000, to the surrounding communities the results of any risk assessment performed by the Administrator to determine the appropriate level of any emission standard established by the Administrator pursuant to subsection (f).

"(F) Notwithstanding the provisions of this section, reconstruction of any source of coke oven emissions qualifying for an extension under this paragraph shall not subject such source to emission limitations under subsection (f) more stringent than those established under subparagraphs (B) and (C) until January 1, 2020. For the purposes of this subparagraph, the term "reconstruction" includes the replacement of existing coke oven battery capacity with new coke oven batteries of comparable or lower capacity and lower potential emissions.

"(j) EQUIVALENT EMISSION LIMITATION BY PERMIT.—

"(1) EFFECTIVE DATE.—The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to title V in such State, but not prior to the date 42 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(2) FAILURE TO PROMULGATE A STANDARD.—In the event that the Administrator fails to promulgate a standard for a category or subcategory of major sources by the date established pursuant to subsection (e)(1) and (3), and beginning 18 months after such date (but not prior to the effective date of a permit program under title V), the owner or operator of any major source in such category or subcategory shall submit a permit application under paragraph (3) and such owner or operator shall also comply with paragraphs (5) and (6).

"(3) APPLICATIONS.—By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

"(4) REVIEW AND APPROVAL.—Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 505. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

"(5) EMISSION LIMITATION.—The permit shall be issued pursuant to title V and shall contain emission limitations for the hazardous air pollutants subject to regulation under this section and emitted by the source that the Administrator (or the State) determines, on a case-by-case basis, to be equivalent to the limitation that would apply to such source if an emission standard had been promulgated in a timely manner under subsection (d). In the alternative, if the applicable criteria are met, the permit may contain an emissions limitation established according to the provisions of subsection (i)(5). For purposes of the preceding sentence, the reduction required by subsection (i)(5)(A) shall be achieved by the date on which the relevant standard should have been promulgated under subsection (d). No such pollutant may be emitted in amounts exceeding an emission limitation contained in a permit immediately for new sources and, as expeditiously as practicable, but not later than the date 3 years after the permit is issued for existing sources or such other compliance date as would apply under subsection (i).

"(6) APPLICABILITY OF SUBSEQUENT STANDARDS.—If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i). If the Administrator

ard under subsection (d) that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

"(k) AREA SOURCE PROGRAM.—

"(1) FINDINGS AND PURPOSE.—The Congress finds that emissions of hazardous air pollutants from area sources may individually, or in the aggregate, present significant risks to public health in urban areas. Considering the large number of persons exposed and the risks of carcinogenic and other adverse health effects from hazardous air pollutants, ambient concentrations characteristic of large urban areas should be reduced to levels substantially below those currently experienced. It is the purpose of this subsection to achieve a substantial reduction in emissions of hazardous air pollutants from area sources and an equivalent reduction in the public health risks associated with such sources including a reduction of not less than 75 per centum in the incidence of cancer attributable to emissions from such sources.

"(2) RESEARCH PROGRAM.—The Administrator shall, after consultation with State and local air pollution control officials, conduct a program of research with respect to sources of hazardous air pollutants in urban areas and shall include within such program—

"(A) ambient monitoring for a broad range of hazardous air pollutants (including, but not limited to, volatile organic compounds, metals, pesticides and products of incomplete combustion) in a representative number of urban locations;

"(B) analysis to characterize the sources of such pollution with a focus on area sources and the contribution that such sources make to public health risks from hazardous air pollutants; and

"(C) consideration of atmospheric transformation and other factors which can elevate public health risks from such pollutants.

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990.

Reports.

"(3) NATIONAL STRATEGY.—

"(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after the date of enactment of the Clean Air Act Amendments of 1990 and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to

control emissions of hazardous air pollutants from area sources in urban areas.

"(B) The strategy shall—

"(i) identify not less than 30 hazardous air pollutants which, as the result of emissions from area sources, present the greatest threat to public health in the largest number of urban areas and that are or will be listed pursuant to subsection (b), and

"(ii) identify the source categories or subcategories emitting such pollutants that are or will be listed pursuant to subsection (c). When identifying categories and subcategories of sources under this subparagraph, the Administrator shall assure that sources accounting for 90 per centum or more of the aggregate emissions of each of the 30 identified hazardous air pollutants are subject to standards pursuant to subsection (d).

"(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act, the Federal Insecticide, Fungicide and Rodenticide Act and the Resource Conservation and Recovery Act) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

"(D) The strategy may also identify research needs in monitoring, analytical methodology, modeling or pollution control techniques and recommendations for changes in law that would further the goals and objectives of this subsection.

"(E) Nothing in this subsection shall be interpreted to preclude or delay implementation of actions with respect to area sources of hazardous air pollutants under consideration pursuant to this or any other law and that may be promulgated before the strategy is prepared.

"(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after the date of enactment of the Clean Air Act Amendments of 1990.

"(G) As part of such strategy the Administrator shall provide for ambient monitoring and emissions modeling in urban areas as appropriate to demonstrate that the goals and objectives of the strategy are being met.

"(4) AREAWIDE ACTIVITIES.—In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not

less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

"(5) REPORT.—The Administrator shall report to the Congress at intervals not later than 8 and 12 years after the date of enactment of the Clean Air Act Amendments of 1990 on actions taken under this subsection and other parts of this Act to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

"(l) STATE PROGRAMS.—

"(1) IN GENERAL.—Each State may develop and submit to the Administrator for approval a program for the implementation and enforcement (including a review of enforcement delegations previously granted) of emission standards and other requirements for air pollutants subject to this section or requirements for the prevention and mitigation of accidental releases pursuant to subsection (r). A program submitted by a State under this subsection may provide for partial or complete delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements but shall not include authority to set standards less stringent than those promulgated by the Administrator under this Act.

"(2) GUIDANCE.—Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b).

Public information.

"(3) TECHNICAL ASSISTANCE.—The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 103 to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

"(4) GRANTS.—Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section. Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k).

"(5) APPROVAL OR DISAPPROVAL.—Not later than 180 days after receiving a program submitted by a State, and after notice and opportunity for public comment, the Administrator shall either approve or disapprove such program. The Administrator shall disapprove any program submitted by a State, if the Administrator determines that—

"(A) the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section;

"(B) adequate authority does not exist, or adequate resources are not available, to implement the program;

"(C) the schedule for implementing the program and assuring compliance by affected sources is not sufficiently expeditious; or

"(D) the program is otherwise not in compliance with the guidance issued by the Administrator under paragraph (2) or is not likely to satisfy, in whole or in part, the objectives of this Act.

If the Administrator disapproves a State program, the Administrator shall notify the State of any revisions or modifications necessary to obtain approval. The State may revise and resubmit the proposed program for review and approval pursuant to the provisions of this subsection.

"(6) WITHDRAWAL.—Whenever the Administrator determines, after public hearing, that a State is not administering and enforcing a program approved pursuant to this subsection in accordance with the guidance published pursuant to paragraph (2) or the requirements of paragraph (5), the Administrator shall so notify the State and, if action which will assure prompt compliance is not taken within 90 days, the Administrator shall withdraw approval of the program. The Administrator shall not withdraw approval of any program unless the State shall have been notified and the reasons for withdrawal shall have been stated in writing and made public.

"(7) AUTHORITY TO ENFORCE.—Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

"(8) LOCAL PROGRAM.—The Administrator may, after notice and opportunity for public comment, approve a program developed and submitted by a local air pollution control agency (after consultation with the State) pursuant to this subsection and any such agency implementing an approved program may take any action authorized to be taken by a State under this section.

"(9) PERMIT AUTHORITY.—Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under title V.

"(m) ATMOSPHERIC DEPOSITION TO GREAT LAKES AND COASTAL WATERS.—

"(1) DEPOSITION ASSESSMENT.—The Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall conduct a program to identify and assess the extent of atmospheric deposition of hazardous air pollutants (and in the discretion of the Administrator, other air pollutants) to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters. As part of such program, the Administrator shall—

"(A) monitor the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters, including monitoring of the Great Lakes through the monitoring network established pursuant to paragraph (2) of this subsection and designing and deploying an atmospheric monitoring network for coastal waters pursuant to paragraph (4);

"(B) investigate the sources and deposition rates of atmospheric deposition of air pollutants (and their atmospheric transformation precursors);

"(C) conduct research to develop and improve monitoring methods and to determine the relative contribution of atmospheric pollutants to total pollution loadings to the Great Lakes, the Chesapeake Bay, Lake Champlain, and coastal waters;

"(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act and drinking water standards established pursuant to the Safe Drinking Water Act; and

"(E) sample for such pollutants in biota, fish, and wildlife of the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters and characterize the sources of such pollutants.

"(2) GREAT LAKES MONITORING NETWORK.—The Administrator shall oversee, in accordance with Annex 15 of the Great Lakes Water Quality Agreement, the establishment and operation of a Great Lakes atmospheric deposition network to monitor atmospheric deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) to the Great Lakes.

"(A) As part of the network provided for in this paragraph, and not later than December 31, 1991, the Administrator shall establish in each of the 5 Great Lakes at least 1 facility capable of monitoring the atmospheric deposition of hazardous air pollutants in both dry and wet conditions.

"(B) The Administrator shall use the data provided by the network to identify and track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support [illegible] of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

"(C) The Administrator shall assure that the data collected by the Great Lakes atmospheric deposition monitoring network is in a format compatible with databases sponsored by the International Joint Commission, Canada, and the several States of the Great Lakes region.

"(3) MONITORING FOR THE CHESAPEAKE BAY AND LAKE CHAMPLAIN.—The Administrator shall establish at the Chesapeake Bay and Lake Champlain atmospheric deposition stations to monitor deposition of hazardous air pollutants (and in the Administrator's discretion, other air pollutants) within the Chesapeake Bay and Lake Champlain watersheds. The Administrator shall determine the role of air deposition in the pollutant loadings of the Chesapeake Bay and Lake Champlain, investigate the sources of air pollutants deposited in the watersheds, evaluate the health and environmental effects of such pollutant loadings, and shall sample such pollutants in biota, fish and wildlife within the watersheds, as necessary to characterize such effects.

"(4) MONITORING FOR COASTAL WATERS.—The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, 'coastal waters' shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act or listed pursuant to section 320(a)(2)(B) of such Act or estuarine research reserves designated pursuant to section 315 of the Coastal Zone Management Act (16 U.S.C. 1461).

"(5) REPORT.—Within 3 years of the date of enactment of the Clean Air Act Amendments of 1990 and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

"(A) the contribution of atmospheric deposition to pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

"(B) the environmental and public health effects of any pollution which is attributable to atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters;

"(C) the source or sources of any pollution to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters which is attributable to atmospheric deposition;

"(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act or water quality standards pursuant to the Federal Water Pollution Control Act or, with respect to the Great Lakes, exceedances of the

specific objectives of the Great Lakes Water Quality Agreement; and

"(E) a description of any revisions of the requirements, standards, and limitations pursuant to this Act and other applicable Federal laws as are necessary to assure protection of human health and the environment.

"(6) ADDITIONAL REGULATION.—As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 328(a).

"(n) OTHER PROVISIONS.—

"(1) ELECTRIC UTILITY STEAM GENERATING UNITS.—

"(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) after imposition of the requirements of this Act. The Administrator shall report the results of this study to the Congress within 3 years after the date of the enactment of the Clean Air Act Amendments of 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

"(B) The Administrator shall conduct, and transmit to the Congress not later than 4 years after the date of enactment of the Clean Air Act Amendments of 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

"(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990, a study to determine the

threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

"(2) COKE OVEN PRODUCTION TECHNOLOGY STUDY.—

"(A) The Secretary of the Department of Energy and the Administrator shall jointly undertake a 6-year study to assess coke oven production emission control technologies and to assist in the development and commercialization of technically practicable and economically viable control technologies which have the potential to significantly reduce emissions of hazardous air pollutants from coke oven production facilities. In identifying control technologies, the Secretary and the Administrator shall consider the range of existing coke oven operations and battery design and the availability of sources of materials for such coke ovens as well as alternatives to existing coke oven production design.

"(B) The Secretary and the Administrator are authorized to enter into agreements with persons who propose to develop, install and operate coke production emission control technologies which have the potential for significant emissions reductions of hazardous air pollutants provided that Federal funds shall not exceed 50 per centum of the cost of any project assisted pursuant to this paragraph.

"(C) The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d). Reports.

"(D) There are authorized to be appropriated $5,000,000 for each of the fiscal years 1992 through 1997 to carry out the program authorized by this paragraph. Appropriation authorization.

"(3) PUBLICLY OWNED TREATMENT WORKS.—The Administrator may conduct, in cooperation with the owners and operators of publicly owned treatment works, studies to characterize emissions of hazardous air pollutants emitted by such facilities, to identify industrial, commercial and residential discharges that contribute to such emissions and to demonstrate control measures for such emissions. When promulgating any standard under this section applicable to publicly owned treatment works, the Administrator may provide for control measures that include pretreatment of discharges causing emissions of hazardous air pollutants and process or product substitutions or limitations that may be effective in reducing such emissions. The Administrator may prescribe uniform sampling, modeling and risk assessment methods for use in implementing this subsection.

"(4) OIL AND GAS WELLS; PIPELINE FACILITIES.—

"(A) Notwithstanding the provisions of subsection (a), emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggre-

gated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources, and in the case of any oil or gas exploration or production well (with its associated equipment), such emissions shall not be aggregated for any purpose under this section.

"(B) The Administrator shall not list oil and gas production wells (with its associated equipment) as an area source category under subsection (c), except that the Administrator may establish an area source category for oil and gas production wells located in any metropolitan statistical area or consolidated metropolitan statistical area with a population in excess of 1 million, if the Administrator determines that emissions of hazardous air pollutants from such wells present more than a negligible risk of adverse effects to public health.

"(5) HYDROGEN SULFIDE.—The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after the date of enactment of the Clean Air Act Amendments of 1990 with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this Act including sections 111 and this section.

"(6) HYDROFLUORIC ACID.—Not later than 2 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

"(7) RCRA FACILITIES.—In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act, the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

"(o) NATIONAL ACADEMY OF SCIENCES STUDY.—

"(1) REQUEST OF THE ACADEMY.—Within 3 months of the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

"(A) risk assessment methodology used by the Environmental Protection Agency to determine the carcinogenic risk associated with exposure to hazardous air pollutants from source categories and subcategories subject to the requirements of this section; and

"(B) improvements in such methodology.

"(2) ELEMENTS TO BE STUDIED.—In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

"(A) the techniques used for estimating and describing the carcinogenic potency to humans of hazardous air pollutants; and

"(B) the techniques used for estimating exposure to hazardous air pollutants (for hypothetical and actual maximally exposed individuals as well as other exposed individuals).

"(3) OTHER HEALTH EFFECTS OF CONCERN.—To the extent practicable, the Academy shall evaluate and report on the methodology for assessing the risk of adverse human health effects other than cancer for which safe thresholds of exposure may not exist, including, but not limited to, inheritable genetic mutations, birth defects, and reproductive dysfunctions.

"(4) REPORT.—A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(5) ASSISTANCE.—The Administrator shall assist the Academy in gathering any information the Academy deems necessary to carry out this subsection. The Administrator may use any authority under this Act to obtain information from any person, and to require any person to conduct tests, keep and produce records, and make reports respecting research or other activities conducted by such person as necessary to carry out this subsection.

"(6) AUTHORIZATION.—Of the funds authorized to be appropriated to the Administrator by this Act, such amounts as are required shall be available to carry out this subsection.

"(7) GUIDELINES FOR CARCINOGENIC RISK ASSESSMENT.—The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f), and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 307.

"(p) MICKEY LELAND URBAN AIR TOXICS RESEARCH CENTER.—

"(1) ESTABLISHMENT.—The Administrator shall oversee the establishment of a National Urban Air Toxics Research Center, to be located at a university, a hospital, or other facility capable

of undertaking and maintaining similar research capabilities in the areas of epidemiology, oncology, toxicology, pulmonary medicine, pathology, and biostatistics. The center shall be known as the Mickey Leland National Urban Air Toxics Research Center. The geographic site of the National Urban Air Toxics Research Center should be further directed to Harris County, Texas, in order to take full advantage of the well developed scientific community presence on-site at the Texas Medical Center as well as the extensive data previously compiled for the comprehensive monitoring system currently in place.

"(2) BOARD OF DIRECTORS.—The National Urban Air Toxics Research Center shall be governed by a Board of Directors to be comprised of 9 members, the appointment of which shall be allocated pro rata among the Speaker of the House, the Majority Leader of the Senate and the President. The members of the Board of Directors shall be selected based on their respective academic and professional backgrounds and expertise in matters relating to public health, environmental pollution and industrial hygiene. The duties of the Board of Directors shall be to determine policy and research guidelines, submit views from center sponsors and the public and issue periodic reports of center findings and activities.

Reports.

"(3) SCIENTIFIC ADVISORY PANEL.—The Board of Directors shall be advised by a Scientific Advisory Panel, the 13 members of which shall be appointed by the Board, and to include eminent members of the scientific and medical communities. The Panel membership may include scientists with relevant experience from the National Institute of Environmental Health Sciences, the Center for Disease Control, the Environmental Protection Agency, the National Cancer Institute, and others, and the Panel shall conduct peer review and evaluate research results. The Panel shall assist the Board in developing the research agenda, reviewing proposals and applications, and advise on the awarding of research grants.

"(4) FUNDING.—The center shall be established and funded with both Federal and private source funds.

(q) SAVINGS PROVISION.—

"(1) STANDARDS PREVIOUSLY PROMULGATED.—Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 307 is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

"(2) SPECIAL RULE.—Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from such plants and stacks.

"(3) OTHER CATEGORIES.—Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990, shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

"(4) MEDICAL FACILITIES.—Notwithstanding paragraph (1), no standard promulgated under this section prior to the date of enactment of the Clean Air Act Amendments of 1990 with respect to medical research or treatment facilities shall take effect for two years following the date of enactment of the Clean Air Act Amendments of 1990, unless the Administrator makes a determination pursuant to a rulemaking under section 112(d)(9). If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of section 112 shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in section 112(d)(9).

"(r) PREVENTION OF ACCIDENTAL RELEASES.—

"(1) PURPOSE AND GENERAL DUTY.—It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654, title 29 of the United States Code, to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 304 shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability

injury or property damages to any person which may result from accidental releases of such substances.

"(2) DEFINITIONS.—

"(A) The term 'accidental release' means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

"(B) The term 'regulated substance' means a substance listed under paragraph (3).

"(C) The term 'stationary source' means any buildings, structures, equipment, installations or substance emitting stationary activities (i) which belong to the same industrial group, (ii) which are located on one or more contiguous properties, (iii) which are under the control of the same person (or persons under common control), and (iv) from which an accidental release may occur.

"(3) LIST OF SUBSTANCES.—The Administrator shall promulgate not later than 24 months after enactment of the Clean Air Act Amendments of 1990 an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know Act of 1986, with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under title VI shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b).

Regulations.

"(4) FACTORS TO BE CONSIDERED.—In listing substances under paragraph (3), the Administrator shall consider each of the following criteria—

"(A) the severity of any acute adverse health effects associated with accidental releases of the substance;

"(B) the likelihood of accidental releases of the substance; and

"(C) the potential magnitude of human exposure to accidental releases of the substance.

"(5) THRESHOLD QUANTITY.—At the time any substance is listed pursuant to paragraph (3), the Administrator shall establish by rule, a threshold quantity for the substance, taking into account the toxicity, reactivity, volatility, dispersibility, combustibility, or flammability of the substance and the amount of the substance which, as a result of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury or serious adverse effects to human health for which the substance was listed. The Administrator is authorized to establish a greater threshold quantity for, or to exempt entirely, any substance that is a nutrient used in agriculture when held by a farmer.

"(6) CHEMICAL SAFETY BOARD.—

Establishment.

"(A) There is hereby established an independent safety board to be known as the Chemical Safety and Hazard Investigation Board.

"(B) The Board shall consist of 5 members, including a Chairperson, who shall be appointed by the President, by and with the advice and consent of the Senate. Members of the Board shall be appointed on the basis of technical qualification, professional standing, and demonstrated knowledge in the fields of accident reconstruction, safety engineering, human factors, toxicology, or air pollution regulation. The terms of office of members of the Board shall be 5 years. Any member of the Board, including the Chairperson, may be removed for inefficiency, neglect of duty, or malfeasance in office. The Chairperson shall be the Chief Executive Officer of the Board and shall exercise the executive and administrative functions of the Board.

"(C) The Board shall—

"(i) investigate (or cause to be investigated), determine and report to the public in writing the facts, conditions, and circumstances and the cause or probable cause of any accidental release resulting in a fatality, serious injury or substantial property damages;

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"(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

"(iii) establish by regulation requirements binding on persons for reporting accidental releases into the am-

bient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

"(D) The Board may utilize the expertise and experience of other agencies.

"(E) The Board shall coordinate its activities with investigations and studies conducted by other agencies of the United States having a responsibility to protect public health and safety. The Board shall enter into a memorandum of understanding with the National Transportation Safety Board to assure coordination of functions and to limit duplication of activities which shall designate the National Transportation Safety Board as the lead agency for the investigation of releases which are transportation related. The Board shall not be authorized to investigate marine oil spills, which the National Transportation Safety Board is authorized to investigate. The Board shall enter into a memorandum of understanding with the Occupational Safety and Health Administration so as to limit duplication of activities. In no event shall the Board forego an investigation where an accidental release causes a fatality or serious injury among the general public, or had the potential to cause substantial property damage or a number of deaths or injuries among the general public.

"(F) The Board is authorized to conduct research and studies with respect to the potential for accidental releases, whether or not an accidental release has occurred, where there is evidence which indicates the presence of a potential hazard or hazards. To the extent practicable, the Board shall conduct such studies in cooperation with other Federal agencies having emergency response authorities, State and local governmental agencies and associations and organizations from the industrial, commercial, and nonprofit sectors.

"(G) No part of the conclusions, findings, or recommendations of the Board relating to any accidental release or the investigation thereof shall be admitted as evidence or used in any action or suit for damages arising out of any matter mentioned in such report.

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"(H) Not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B) in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

"(I) Whenever the Board submits a recommendation with respect to accidental releases to the Administrator, the Administrator shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Administrator will—

"(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

"(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Administrator not to implement a recommendation of the Board or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Administrator setting forth the reasons for such determination.

"(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator shall indicate whether the Secretary will—

"(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;

"(ii) decline to initiate a rulemaking or issue orders as recommended.

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

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"(K) Within 2 years after enactment of the Clean Air Act Amendments of 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than

threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

"(L) The Board, or upon authority of the Board, any member thereof, any administrative law judge employed by or assigned to the Board, or any officer or employee duly designated by the Board, may for the purpose of carrying out duties authorized by subparagraph (C)—

"(i) hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or otherwise attendance and testimony of such witnesses and the production of evidence and may require by order that any person engaged in the production, processing, handling, or storage of extremely hazardous substances submit written reports and responses to requests and questions within such time and in such form as the Board may require; and

"(ii) upon presenting appropriate credentials and a written notice of inspection authority, enter any property where an accidental release causing a fatality, serious injury or substantial property damage has occurred and do all things therein necessary for a proper investigation pursuant to subparagraph (C) and inspect at reasonable times records, files, papers, processes, controls, and facilities and take such samples as are relevant to such investigation.

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act.

"(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this Act, including the subpoena power provided in section 307(a)(1) of this Act.

"(N) The Board is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions and duties. The Board is authorized without regard to section 5 of title 41 of the United States Code to enter into contracts, leases, cooperative agreements or other transactions as may be necessary in the conduct of the duties and functions of the Board with any other agency, institution, or person.

"(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 113 and 114. Any request for information from the

owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 113, 114, 116, 120, 303, 304 and 307 and any other enforcement provisions of this Act, as a request made by the Administrator under section 114 and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

"(P) The Administrator shall provide to the Board such support and facilities as may be necessary for operation of the Board.

"(Q) Consistent with subsection (G) and section 114(c) any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this Act or when relevant under any proceeding under this Act. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress. Records.

"(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this Act, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5, United States Code to officers or employees of the Board.

Reports.

"(S) The Board shall submit an annual report to the President and to the Congress which shall include, but not be limited to, information on accidental releases which have been investigated by or reported to the Board during the previous year, recommendations for legislative or administrative action which the Board has made, the actions which have been taken by the Administrator or the Secretary of Labor or the heads of other agencies to implement such recommendations, an identification of priorities for study and investigation in the succeeding year, progress in the development of risk-reduction technologies and the response to and implementation of significant research findings on chemical safety in the public and private sector.

"(7) ACCIDENT PREVENTION.—

"(A) In order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements. Regulations promulgated under this paragraph may make distinctions between various types, classes, and kinds of facilities, devices and systems taking into consideration factors including, but not limited to, the size, location, process, process controls, quantity of substances handled, potency of substances, and response capabilities present at any stationary source. Regulations promulgated pursuant to this subparagraph shall have an effective date, as determined by the Administrator, assuring compliance as expeditiously as practicable.

Regulations.

"(B)(i) Within 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

"(ii) The regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment. Such plan shall provide for compliance with the requirements of this subsection and shall also include each of the following:

"(I) a hazard assessment to assess the potential effects of an accidental release of any regulated substance. This assessment shall include an estimate of potential release quantities and a determination of downwind effects, including potential exposures to affected populations. Such assessment shall include a previous release history of the past 5 years, including the size, concentration, and duration of releases, and shall include an evaluation of worst case accidental releases;

"(II) a program for preventing accidental releases of regulated substances, including safety precautions and maintenance, monitoring and employee training measures to be used at the source; and

"(III) a response program providing for specific actions to be taken in response to an accidental release of a regulated substance so as to protect human health and the environment, including procedures for informing the public and local agencies responsible for responding to accidental releases, emergency health care, and employee training measures.

At the time regulations are promulgated under this subparagraph, the Administrator shall promulgate guidelines to assist stationary sources in the preparation of risk management plans. The guidelines shall, to the extent practicable, include model risk management plans.

"(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 114(c). The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

"(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the rec-

Small businesses.

ommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

"(D) In carrying out the authority of this paragraph, the Administrator shall consult with the Secretary of Labor and the Secretary of Transportation and shall coordinate any requirements under this paragraph with any requirements established for comparable purposes by the Occupational Safety and Health Administration or the Department of Transportation. Nothing in this subsection shall be interpreted, construed or applied to impose requirements affecting, or to grant the Administrator, the Chemical Safety and Hazard Investigation Board, or any other agency any authority to regulate (including requirements for hazard assessment), the accidental release of radionuclides arising from the construction and operation of facilities licensed by the Nuclear Regulatory Commission.

"(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 113, 114, 116, 120, 304, and 307 and other enforcement provisions of this Act, be treated as a standard in effect under subsection (d).

"(F) Notwithstanding the provisions of title V or this section, no stationary source shall be required to apply for, or operate pursuant to, a permit issued under such title solely because such source is subject to regulations or requirements under this subsection.

"(G) In exercising any authority under this subsection, the Administrator shall not, for purposes of section 653(b)(1) of title 29 of the United States Code, be deemed to be exercising statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

"(8) RESEARCH ON HAZARD ASSESSMENTS.—The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for hazard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

"(9) ORDER AUTHORITY.—

"(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 303 rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

"(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 303.

"(C) Within 180 days after enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 106 of the Comprehensive Environmental Response, Compensation and Liability Act, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act, sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act, sections 1445 and 1431 of the Safe Drinking Water Act, sections 5 and 7 of the Toxic Substances Control Act, and sections 113, 114, and 303 of this Act.

"(10) PRESIDENTIAL REVIEW.—The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

"(11) STATE AUTHORITY.—Nothing in this subsection shall preclude, deny or limit any right of a State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard (including any procedural requirement) that is more stringent than a regulation, requirement, limitation or standard in effect under this subsection or that applies to a substance not subject to this subsection.

"(s) PERIODIC REPORT.—Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants

and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

"(1) a status report on standard-setting under subsections (d) and (f);

"(2) information with respect to compliance with such standards including the costs of compliance experienced by sources in various categories and subcategories;

"(3) development and implementation of the national urban air toxics program; and

"(4) recommendations of the Chemical Safety and Hazard Investigation Board with respect to the prevention and mitigation of accidental releases.".

SEC. 302. CONFORMING AMENDMENTS.

42 USC 7411. (a) Section 111(d)(1) of the Clean Air Act is amended by striking "112(b)(1)(A)" and inserting in lieu thereof "112(b)".

(b) Section 111 of the Clean Air Act is amended by striking paragraphs (g)(5) and (g)(6) and redesignating the succeeding paragraphs accordingly. Such section is further amended by striking "or section 112" in paragraph (g)(5) as redesignated in the preceding sentence.

42 USC 7414. (c) Section 114(a) of the Clean Air Act is amended by striking "or" after "section 111," and by inserting ", or any regulation of solid waste combustion under section 129," after "section 112".

42 USC 7418. (d) Section 118(b) of the Clean Air Act is amended by striking "112(c)" and inserting in lieu thereof "112(i)(4)".

42 USC 7602. (e) Section 302(k) of the Clean Air Act is amended by adding before the period at the end thereof ", and any design, equipment, work practice or operational standard promulgated under this Act.".

42 USC 7604. (f) Section 304(b) of the Clean Air Act is amended by striking "112(c)(1)(B)" and inserting in lieu thereof "112(i)(3)(A) or (f)(4)".

42 USC 7607. (g) Section 307(b)(1) is amended by striking "112(c)" and inserting in lieu thereof "112".

(h) Section 307(d)(1) is amended by inserting—

"(D) the promulgation of any requirement for solid waste combustion under section 129,"

after subparagraph (C) and redesignating the succeeding subparagraphs accordingly.

42 USC 7412 note. **SEC. 303. RISK ASSESSMENT AND MANAGEMENT COMMISSION.**

(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the "Commission"), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

(b) CHARGE.—The Commission shall consider—

(1) the report of the National Academy of Sciences authorized by section 112(o) of the Clean Air Act, the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects

or other chronic health effects and the suitability of risk assessment for such purposes;

(2) the most appropriate methods for measuring and describing cancer risks or risks of other chronic health effects from exposure to hazardous substances considering such alternative approaches as the lifetime risk of cancer or other effects to the individual or individuals most exposed to emissions from a source or sources on both an actual and worst case basis, the range of such risks, the total number of health effects avoided by exposure reductions, effluent standards, ambient standards, exposures standards, acceptable concentration levels, tolerances and other environmental criteria, reductions in the number of persons exposed at various levels of risk, the incidence of cancer, and other public health factors;

(3) methods to reflect uncertainties in measurement and estimation techniques, the existence of synergistic or antagonistic effects among hazardous substances, the accuracy of extrapolating human health risks from animal exposure data, and the existence of unquantified direct or indirect effects on human health in risk assessment studies;

(4) risk management policy issues including the use of lifetime cancer risks to individuals most exposed, incidence of cancer, the cost and technical feasibility of exposure reduction measures and the use of site-specific actual exposure information in setting emissions standards and other limitations applicable to sources of exposure to hazardous substances; and

(5) and comment on the degree to which it is possible or desirable to develop a consistent risk assessment methodology, or a consistent standard of acceptable risk, among various Federal programs.

(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990.

(d) ASSISTANCE FROM AGENCIES.—The Administrator of the Environmental Protection Agency and the heads of all other departments, agencies, and instrumentalities of the executive branch of the Federal Government shall, to the maximum extent practicable, assist the Commission in gathering such information as the Commission deems necessary to carry out this section subject to other provisions of law.

(e) STAFF AND CONTRACTS.—

(1) In the conduct of the study required by this section, the Commission is authorized to contract (in accordance with Federal contract law) with nongovernmental entities that are competent to perform research or investigations within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation.

(2) The Commission may appoint and fix the pay of such staff as it deems necessary in accordance with the provisions of title 5, United States Code. The Commission may request the temporary assignment of personnel from the Environmental Protection Agency or other Federal agencies.

(3) The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chair, shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for Grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, including travel time, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law for persons in the Government service employed intermittently.

(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

(g) AUTHORIZATION.—There are authorized to be appropriated such sums as are necessary to carry out the activities of the Commission established by this section.

29 USC 655 note.

SEC. 304. CHEMICAL PROCESS SAFETY MANAGEMENT.

(a) CHEMICAL PROCESS SAFETY STANDARD.—The Secretary of Labor shall act under the Occupational Safety and Health Act of 1970 (29 U.S.C. 653) to prevent accidental releases of chemicals which could pose a threat to employees. Not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990, the Secretary of Labor, in coordination with the Administrator of the Environmental Protection Agency, shall promulgate, pursuant to the Occupational Safety and Health Act, a chemical process safety standard designed to protect employees from hazards associated with accidental releases of highly hazardous chemicals in the workplace.

(b) LIST OF HIGHLY HAZARDOUS CHEMICALS.—The Secretary shall include as part of such standard a list of highly hazardous chemicals, which include toxic, flammable, highly reactive and explosive substances. The list of such chemicals may include those chemicals listed by the Administrator under section 302 of the Emergency Planning and Community Right to Know Act of 1986. The Secretary may make additions to such list when a substance is found to pose a threat of serious injury or fatality in the event of an accidental release in the workplace.

(c) ELEMENTS OF SAFETY STANDARD.—Such standard shall, at minimum, require employers to—

(1) develop and maintain written safety information identifying workplace chemical and process hazards, equipment used in the processes, and technology used in the processes;

(2) perform a workplace hazard assessment, including, as appropriate, identification of potential sources of accidental releases, an identification of any previous release within the facility which had a likely potential for catastrophic consequences in the workplace, estimation of workplace effects of a range of releases, estimation of the health and safety effects of such range on employees;

(3) consult with employees and their representatives on the development and conduct of hazard assessments and the development of chemical accident prevention plans and provide access to these and other records required under the standard;

(4) establish a system to respond to the workplace hazard assessment findings, which shall address prevention, mitigation, and emergency responses;

(5) periodically review the workplace hazard assessment and response system;

(6) develop and implement written operating procedures for the chemical process including procedures for each operating phase, operating limitations, and safety and health considerations;

(7) provide written safety and operating information to employees and train employees in operating procedures, emphasizing hazards and safe practices;

(8) ensure contractors and contract employees are provided appropriate information and training;

(9) train and educate employees and contractors in emergency response in a manner as comprehensive and effective as that required by the regulation promulgated pursuant to section 126(d) of the Superfund Amendments and Reauthorization Act;

(10) establish a quality assurance program to ensure that initial process related equipment, maintenance materials, and spare parts are fabricated and installed consistent with design specifications;

(11) establish maintenance systems for critical process related equipment including written procedures, employee training, appropriate inspections, and testing of such equipment to ensure ongoing mechanical integrity;

(12) conduct pre-start-up safety reviews of all newly installed or modified equipment;

(13) establish and implement written procedures to manage change to process chemicals, technology, equipment and facilities; and

(14) investigate every incident which results in or could have resulted in a major accident in the workplace, with any findings to be reviewed by operating personnel and modifications made if appropriate.

(d) STATE AUTHORITY.—Nothing in this section may be construed to diminish the authority of the States and political subdivisions thereof as described in section 112(r)(11) of the Clean Air Act.

SEC. 305. SOLID WASTE COMBUSTION.

(a) Part A of title I of the Clean Air Act is amended by adding the following new section at the end thereof:

42 USC 7429.

"SEC. 129. SOLID WASTE COMBUSTION.

"(a) NEW SOURCE PERFORMANCE STANDARDS.—

"(1) IN GENERAL.—(A) The Administrator shall establish performance standards and other requirements pursuant to section 111 and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 111(d) and this section) and other requirements applicable to existing units.

"(B) Standards under section 111 and this section applicable to solid waste incineration units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after the date of enactment of the Clean Air Act Amendments of 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 111 pursuant to any settlement and consent decree entered by the Administrator before the date of enactment of the Clean Air Act Amendments of 1990: *Provided,* That, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

"(C) Standards under section 111 and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after the date of enactment of the Clean Air Act Amendments of 1990.

"(D) Standards under section 111 and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after the date of enactment of the Clean Air Act Amendments of 1990 and promulgated not later than 48 months after such date of enactment.

"(E) Not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990, the Administrator shall publish a schedule for the promulgation of standards under section 111 and this section applicable to other categories of solid waste incineration units.

"(2) EMISSIONS STANDARD.—Standards applicable to solid waste incineration units promulgated under section 111 and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same

category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

"(3) CONTROL METHODS AND TECHNOLOGIES.—Standards under section 111 and this section applicable to solid waste incineration units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment.

"(4) NUMERICAL EMISSIONS LIMITATIONS.—The performance standards promulgated under section 111 and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

"(5) REVIEW AND REVISION.—Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 111 applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 111, revise such standards and requirements.

"(b) EXISTING UNITS.—

"(1) GUIDELINES.—Performance standards under this section and section 111 for solid waste incineration units shall include guidelines promulgated pursuant to section 111(d) and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) (emissions limitations, notwithstanding any restriction in section 111(d) regarding issuance of such limitations), subsection (c) (monitoring), subsection (d) (operator training), subsection (e) (permits), and subsection (h)(4) (residual risk).

"(2) STATE PLANS.—Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180

days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

"(3) FEDERAL PLAN.—The Administrator shall develop, implement and enforce a plan for existing solid waste incineration units within any category located in any State which has not submitted an approvable plan under this subsection with respect to units in such category within 2 years after the date on which the Administrator promulgated the relevant guidelines. Such plan shall assure that each unit subject to the plan is in compliance with all provisions of the guidelines not later than 5 years after the date the relevant guidelines are promulgated.

Regulations.

"(c) MONITORING.—The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) and section 111, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

"(1) to monitor emissions from the unit at the point at which such emissions are emitted into the ambient air (or within the stack, combustion chamber or pollution control equipment, as appropriate) and at such other points as necessary to protect public health and the environment;

"(2) to monitor such other parameters relating to the operation of the unit and its pollution control technology as the Administrator determines are appropriate; and

"(3) to report the results of such monitoring.

Such regulations shall contain provisions regarding the frequency of monitoring, test methods and procedures validated on solid waste incineration units, and the form and frequency of reports containing the results of monitoring and shall require that any monitoring reports or test results indicating an exceedance of any standard under this section shall be reported separately and in a manner that facilitates review for purposes of enforcement actions. Such regulations shall require that copies of the results of such monitoring be maintained on file at the facility concerned and that copies shall be made available for inspection and copying by interested members of the public during business hours.

"(d) OPERATOR TRAINING.—Not later than 24 months after the enactment of the Clean Air Act Amendments of 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (a) and section 111 for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

"(e) PERMITS.—Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) and section 111 applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under title V in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and title V. Permits required by this subsection may be renewed according to the provisions of title V. Notwithstanding any other provision of this Act, each permit for a solid waste incineration unit combusting municipal waste issued under this Act shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this Act by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The Administrator's determination under the preceding sentence is a discretionary decision.

"(f) EFFECTIVE DATE AND ENFORCEMENT.—

"(1) NEW UNITS.—Performance standards and other requirements promulgated pursuant to this section and section 111 and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

"(2) EXISTING UNITS.—Performance standards and other requirements promulgated pursuant to this section and section 111 and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) (or promulgation of a plan by the Administrator under subsection (b)(3)) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

"(3) PROHIBITION.—After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 111, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.

"(4) COORDINATION WITH OTHER AUTHORITIES.—For purposes of sections 111(e), 113, 114, 116, 120, 303, 304, 307 and other provisions for the enforcement of this Act, each performance standard, emission limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 111 which is an emission limitation.

"(g) DEFINITIONS.—For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only—

"(1) SOLID WASTE INCINERATION UNIT.—The term 'solid waste incineration unit' means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act. The term 'solid waste incineration unit' does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 3(17)(C) of the Federal Power Act (16 U.S.C. 769(17)(C)), or qualifying cogeneration facilities, as defined in section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)), which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

"(2) NEW SOLID WASTE INCINERATION UNIT.—The term 'new solid waste incineration unit' means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

"(3) MODIFIED SOLID WASTE INCINERATION UNIT.—The term 'modified solid waste incineration unit' means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 111.

"(4) EXISTING SOLID WASTE INCINERATION UNIT.—The term 'existing solid waste incineration unit' means a solid waste unit which is not a new or modified solid waste incineration unit.

"(5) MUNICIPAL WASTE.—The term 'municipal waste' means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 111 or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

"(6) OTHER TERMS.—The terms 'solid waste' and 'medical waste' shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act.

"(h) OTHER AUTHORITY.—

"(1) STATE AUTHORITY.—Nothing in this section shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce any regulation, requirement, limitation or standard relating to solid waste incineration units that is more stringent than a regulation, requirement, limitation or standard in effect under this section or under any other provision of this Act.

"(2) OTHER AUTHORITY UNDER THIS ACT.—Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 111 shall be subject to standards under section 112(d) of this Act.

"(3) RESIDUAL RISK.—The Administrator shall promulgate standards under section 112(f) for a category of solid waste incineration units, if promulgation of such standards is required under section 112(f). For purposes of this preceding sentence only—

"(A) the performance standards under subsection (a) and section 111 applicable to a category of solid waste incineration units shall be deemed standards under section 112(d)(2), and

"(B) the Administrator shall consider and regulate, if required, the pollutants listed under subsection (a)(4) and no others.

"(4) ACID RAIN.—A solid waste incineration unit shall not be a utility unit as defined in title IV: *Provided*, That, more than 80 per centum of its annual average fuel consumption measured on a Btu basis, during a period or periods to be determined by the Administrator, is from a fuel (including any waste burned as a fuel) other than a fossil fuel.

"(5) REQUIREMENTS OF PARTS C AND D.—No requirement of an applicable implementation plan under section 165 (relating to construction of facilities in regions identified pursuant to section 107(d)(1)(A) (ii) or (iii)) or under section 172(c)(5) (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.".

(b) CONFORMING AMENDMENT.—Section 169(1) of the Clean Air Act is amended by striking "two hundred and" after "municipal incinerators capable of charging more than". 42 USC 7479.

(c) REVIEW OF ACID GAS SCRUBBING REQUIREMENTS.—Prior to the promulgation of any performance standard for solid waste incineration units combusting municipal waste under section 111 or section 42 USC 7429 note.

129 of the Clean Air Act, the Administrator shall review the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 Federal Register 52190 (December 20, 1989), taking into account the provisions of subsection (a)(2) of section 129 of the Clean Air Act.

42 USC 6921 note.

SEC. 306. ASH MANAGEMENT AND DISPOSAL.

For a period of 2 years after the date of enactment of the Clean Air Act Amendments of 1990, ash from solid waste incineration units burning municipal waste shall not be regulated by the Administrator of the Environmental Protection Agency pursuant to section 3001 of the Solid Waste Disposal Act. Such reference and limitation shall not be construed to prejudice, endorse or otherwise affect any activity by the Administrator following the 2-year period from the date of enactment of the Clean Air Act Amendments of 1990.

TITLE IV—ACID DEPOSITION CONTROL

SEC. 401. ACID DEPOSITION CONTROL.

The Clean Air Act is amended by adding the following new title after title III:

"TITLE IV—ACID DEPOSITION CONTROL

42 USC 7651.

"SEC. 401. FINDINGS AND PURPOSES.

"(a) FINDINGS.—The Congress finds that—

"(1) the presence of acidic compounds and their precursors in the atmosphere and in deposition from the atmosphere represents a threat to natural resources, ecosystems, materials,

"(2) the principal sources of the acidic compounds and their precursors in the atmosphere are emissions of sulfur and nitrogen oxides from the combustion of fossil fuels;

"(3) the problem of acid deposition is of national and international significance;

"(4) strategies and technologies for the control of precursors to acid deposition exist now that are economically feasible, and improved methods are expected to become increasingly available over the next decade;

"(5) current and future generations of Americans will be adversely affected by delaying measures to remedy the problem;

"(6) reduction of total atmospheric loading of sulfur dioxide and nitrogen oxides will enhance protection of the public health and welfare and the environment; and

"(7) control measures to reduce precursor emissions from steam-electric generating units should be initiated without delay.

"(b) PURPOSES.—The purpose of this title is to reduce the adverse effects of acid deposition through reductions in annual emissions of sulfur dioxide of ten million tons from 1980 emission levels, and, in combination with other provisions of this Act, of nitrogen oxides emissions of approximately two million tons from 1980 emission levels, in the forty-eight contiguous States and the District of Columbia. It is the intent of this title to effectuate such reductions by requiring compliance by affected sources with prescribed emission limitations by specified deadlines, which limitations may be met through alternative methods of compliance provided by an emission allocation and transfer system. It is also the purpose of this title to encourage energy conservation, use of renewable and clean alternative technologies, and pollution prevention as a long-range strategy, consistent with the provisions of this title, for reducing air pollution and other adverse impacts of energy production and use.

SEC. 402. DEFINITIONS. 42 USC 7651a.

"As used in this title:

"(1) The term 'affected source' means a source that includes one or more affected units.

"(2) The term 'affected unit' means a unit that is subject to emission reduction requirements or limitations under this title.

"(3) The term 'allowance' means an authorization, allocated to an affected unit by the Administrator under this title, to emit, during or after a specified calendar year, one ton of sulfur dioxide.

"(4) The term 'baseline' means the annual quantity of fossil fuel consumed by an affected unit, measured in millions of British Thermal Units ('mmBtu's'), calculated as follows:

"(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3). For non-

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SECTION 114 OF CLEAN AIR ACT - INSPECTIONS, MONITORING, AND ENTRY

AS AMENDED BY CLEAN AIR ACT AMENDMENTS OF 1990

the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 304(a), or an assessment may be made under section 120, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) AWARDS.—The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this title or title III, IV, V, or VI of this Act enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer, or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) SETTLEMENTS; PUBLIC PARTICIPATION.—At least 30 days before a consent order or settlement agreement of any kind under this Act to which the United States is a party (other than enforcement actions under section 113, 120, or title II, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this Act. Nothing in this subsection shall apply to civil or criminal penalties under this Act.

(h) OPERATOR.—For purposes of the provisions of this section and section 120, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section,

the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

[42 U.S.C. 7413]

INSPECTIONS, MONITORING, AND ENTRY

SEC. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard of performance under section 111, [1] any emission standard under section 112, [, or any regulation of solid waste combustion under section 129,] [or any regulation under section 129 (relating to solid waste combustion),] [1] (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this Act (except a provision of title II with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this Act (other than a manufacturer subject to the provisions of section 206(c) or 208 with respect to a provision of title II) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

(C) install, use, and maintain such monitoring equipment, and use such audit procedures, or methods;

(D) sample such emissions (in accordance with such procedures or methods, at such locations, at such intervals, during such periods and in such manner as the Administrator shall prescribe);

(E) keep records on control equipment parameters, production variables or other indirect data when direct monitoring of emissions is impractical;

(F) submit compliance certifications in accordance with section 114(a)(3); and

(G) provide such other information as the Administrator may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required

[1] P.L. 101-549, sec. 302(c), 104 Stat. 2574, and sec. 702(a)(1), 104 Stat. 2680, both struck the word "or" and both amended section 114(a) to refer, in slighly different language, to a new section 129. See P.L. 101-549, sec. 302(c), 104 Stat. 2574 and sec. 702(a)(1)-(2), 104 Stat. 2680. In addition to being duplicative, the amendment made by section 302(c) adds a second comma following "section 112,".

to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment and method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).

(3) The Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this Act. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after the enactment of the Clean Air Act Amendments of 1990.

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(b)(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Any records, reports, or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(d)(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 113(d), before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in

the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 110(c).

(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

[42 U.S.C. 7414]

INTERNATIONAL AIR POLLUTION

SEC. 115. (a) Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) The notice of the Administrator shall be deemed to be a finding under section 110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a). Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations issued following any abatement conference conducted prior to the enactment of the Clean Air Act Amendments of 1977 shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 109 of this Act unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

[42 U.S.C. 7415]

GENERAL PROVISIONS - 40 CFR PART 63

SECTIONS 501 THROUGH 504 OF CLEAN AIR ACT DEALING WITH PERMIT PROGRAMS

AS ADDED BY TITLE V OF CLEAN AIR ACT AMENDMENTS OF 1990

SEC. 409. REPORT ON CLEAN COAL TECHNOLOGIES EXPORT PROGRAMS.

The Secretary of Energy in consultation with the Secretary of Commerce shall provide a report to the Congress within one year of enactment of this legislation which will identify, inventory and analyze clean coal technologies export programs within United States Government agencies including the Departments of State, Commerce, and Energy and at the Export-Import Bank and the Overseas Private Investment Corporation. The study shall address the effectiveness of interagency coordination of export promotion and determine the feasibility of establishing an interagency commission for the purpose of promoting the export and use of clean coal technologies.

SEC. 410. ACID DEPOSITION RESEARCH BY THE UNITED STATES FISH AND WILDLIFE SERVICE.

Appropriation authorization.

There are authorized to be appropriated to the United States Fish and Wildlife Service of the Department of the Interior an amount equal to $500,000 to fund research related to acid deposition and the monitoring of high altitude mountain lakes in the Wind River Reservation, Wyoming, to be conducted through the Management Assistance Office of the United States Fish and Wildlife Service located in Lander, Wyoming and the University of Wyoming.

SEC. 411. STUDY OF BUFFERING AND NEUTRALIZING AGENTS.

There are authorized to be appropriated to the United States Fish and Wildlife Service of the Department of the Interior an amount equal to $250,000 to fund a study to be conducted in conjunction with the University of Wyoming of the effectiveness of various buffering and neutralizing agents used to restore lakes and streams damaged by acid deposition.

SEC. 412. CONFORMING AMENDMENT.

42 USC 7410.

Section 110(f)(1) of the Clean Air Act is amended by inserting "or of any requirement under section 411 (concerning excess emissions penalties or offsets) of title IV of the Act" after "implementation plan".

SEC. 413. SPECIAL CLEAN COAL TECHNOLOGY PROJECT.

(a) DEMONSTRATION PROJECT.—The Secretary of Energy shall, subject to appropriation, as part of the Secretary's activities with respect to fossil energy research and development under the Department of Energy Organization Act (Public Law 95-91) consider funding at least 50 percent of the cost of a demonstration project to design, construct, and test a technology system for a cyclone boiler that will serve as a model for sulfur dioxide and nitrogen oxide reduction technology at a combustion unit required to meet the emissions reductions prescribed in this bill. The Secretary shall expedite approval and funding to enable such project to be completed no later than January 1, 1995.

The unit selected for this project shall be in a utility plant that (1) is among the top 10 emitters of sulfur dioxide as identified on Table A of section 404; (2) has 3 or more units, 2 of which are cyclone boiler units; and (3) has no existing scrubbers.

(b) AUTHORIZATION.—There are authorized to be appropriated such sums as may be necessary to carry out this section, to remain

TITLE V—PERMITS

SEC. 501. PERMITS.

Add the following new title after title IV:

"TITLE V—PERMITS

"SEC. 501. DEFINITIONS. 42 USC 7661

As used in this title—

"(1) AFFECTED SOURCE.—The term 'affected source' shall have the meaning given such term in title IV.

"(2) MAJOR SOURCE.—The term 'major source' means any stationary source (or any group of stationary sources located within a contiguous area and under common control) that is either of the following:

"(A) A major source as defined in section 112.

"(B) A major stationary source as defined in section 302 or part D of title I.

"(3) SCHEDULE OF COMPLIANCE.—The term 'schedule of compliance' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

"(4) PERMITTING AUTHORITY.—The term 'permitting authority' means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this title.

"SEC. 502. PERMIT PROGRAMS. 42 USC 766

"(a) VIOLATIONS.—After the effective date of any permit program approved or promulgated under this title, it shall be unlawful for any person to violate any requirement of a permit issued under this title, or to operate an affected source (as provided in title IV), a major source, any other source (including an area source) subject to standards or regulations under section 111 or 112, any other source required to have a permit under parts C or D of title I, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this title. (Nothing in this subsection shall be construed to alter the applicable requirements of this Act that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this Act, promulgate regulations to exempt one or more source categories (in whole or in part) from the

requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

"(b) REGULATIONS.—The Administrator shall promulgate within 12 months after the date of the enactment of the Clean Air Act Amendments of 1990 regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

"(1) Requirements for permit applications, including a standard application form and criteria for determining in a timely fashion the completeness of applications.

"(2) Monitoring and reporting requirements.

"(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this title pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title, including section 507, including the reasonable costs of—

"(i) reviewing and acting upon any application for such a permit,

"(ii) if the owner or operator receives a permit for such source, whether before or after the date of the enactment of the Clean Air Act Amendments of 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

"(iii) emissions and ambient monitoring,

"(iv) preparing generally applicable regulations, or guidance,

"(v) modeling, analyses, and demonstrations, and

"(vi) preparing inventories and tracking emissions.

"(B) The total amount of fees collected by the permitting authority shall conform to the following requirements:

"(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

"(ii) As used in this subparagraph, the term 'regulated pollutant' shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 111 or 112; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

"(iii) In determining the amount under clause (i), the permitting authority is not required to include any amount of regulated pollutant emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

"(iv) The requirements of clause (i) shall not apply if the permitting authority demonstrates that collecting an amount less than the amount specified under clause (i) will meet the requirements of subparagraph (A).

"(v) The fee calculated under clause (i) shall be increased (consistent with the need to cover the reasonable costs authorized by subparagraph (A)) in each year beginning after the year of the enactment of the Clean Air Act Amendments of 1990 by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause—

"(I) the Consumer Price Index for any calendar year is the average of the Consumer Price Index for all-urban consumers published by the Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year, and

"(II) the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for calendar year 1989 shall be used.

"(C)(i) If the Administrator determines, under subsection (d), that the fee provisions of the operating permit program do not meet the requirements of this paragraph, or if the Administrator makes a determination, under subsection (i), that the permitting authority is not adequately administering or enforcing an approved fee program, the Administrator may, in addition to taking any other action authorized under this title, collect reasonable fees from the sources identified under subparagraph (A). Such fees shall be designed solely to cover the Administrator's costs of administering the provisions of the permit program promulgated by the Administrator.

"(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of the Internal Revenue Code of 1986 (relating to computation of interest on underpayment of Federal taxes).

"(iii) Any fees, penalties, and interest collected under this subparagraph shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available for appropriation, to remain available until expended, subject to appropriation, to carry out the Agency's activities for which the fees were collected. Any fee required to be collected by a State, local, or interstate agency under this subsection shall be utilized solely to cover all reasonable (direct and indirect) costs required to support the permit program as set forth in subparagraph (A).

"(4) Requirements for adequate personnel and funding to administer the program.

"(5) A requirement that the permitting authority have adequate authority to:

"(A) issue permits and assure compliance by all sources required to have a permit under this title with each applicable standard, regulation or requirement under this Act;

"(B) issue permits for a fixed term, not to exceed 5 years;

"(C) assure that upon issuance or renewal permits incorporate emission limitations and other requirements in an applicable implementation plan;

"(D) terminate, modify, or revoke and reissue permits for cause;

"(E) enforce permits, permit fee requirements, and the requirement to obtain a permit, including authority to recover civil penalties in a maximum amount of not less than $10,000 per day for each violation, and provide appropriate criminal penalties; and

"(F) assure that no permit will be issued if the Administrator objects to its issuance in a timely manner under this title.

"(6) Adequate, streamlined, and reasonable procedures for expeditiously determining when applications are complete, for processing such applications, for public notice, including offering an opportunity for public comment and a hearing, and for expeditious review of permit actions, including applications, renewals, or revisions, and including an opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public comment process, and any other person who could obtain judicial review of that action under applicable law.

"(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 503 or, as appropriate, title IV) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

"(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 503(e), subject to the provisions of section 114(c) of this Act.

"(9) A requirement that the permitting authority, in the case of permits with a term of 3 or more years for major sources, shall require revisions to the permit to incorporate applicable standards and regulations promulgated under this Act after the issuance of such permit. Such revisions shall occur as expeditiously as practicable and consistent with the procedures established under paragraph (6) but not later than 18 months after the promulgation of such standards and regulations. No such revision shall be required if the effective date of the standards or regulations is a date after the expiration of the permit term. Such permit revision shall be treated as a permit renewal if it complies with the requirements of this title regarding renewals.

"(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 503(d)) without requiring a permit revision, if the changes are not modifications under any provision of title I and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate

facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

"(c) SINGLE PERMIT.—A single permit may be issued for a facility with multiple sources.

"(d) SUBMISSION AND APPROVAL.—(1) Not later than 3 years after the date of the enactment of the Clean Air Act Amendments of 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this title. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this Act, including the regulations issued under subsection (b). If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

"(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(C) The sanctions under section 179(b)(2) shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of title I).

"(3) If a program meeting the requirements of this title has not been approved in whole for any State, the Administrator shall, 2 years after the date required for submission of such a program under paragraph (1), promulgate, administer, and enforce a program under this title for that State.

"(e) SUSPENSION.—The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce feder-

ally issued permits under this title until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

"(f) PROHIBITION.—No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this title and each of the following:

"(1) All requirements established under title IV applicable to 'affected sources'.

"(2) All requirements established under section 112 applicable to 'major sources', 'area sources,' and 'new sources'.

"(3) All requirements of title I (other than section 112) applicable to sources required to have a permit under this title.

Approval of a partial program shall not relieve the State of its obligation to submit a complete program, nor from the application of any sanctions under this Act for failure to submit an approvable permit program.

"(g) INTERIM APPROVAL.—If a program (including a partial permit program) submitted under this title substantially meets the requirements of this title, but is not fully approvable, the Administrator may by rule grant the program interim approval. In the notice of final rulemaking, the Administrator shall specify the changes that must be made before the program can receive full approval. An interim approval under this subsection shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed. For the period of any such interim approval, the provisions of subsection (d)(2), and the obligation of the Administrator to promulgate a program under this title for the State pursuant to subsection (d)(3), shall be suspended. Such provisions and such obligation of the Administrator shall apply after the expiration of such interim approval.

"(h) EFFECTIVE DATE.—The effective date of a permit program, or partial or interim program, approved under this title, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

"(i) ADMINISTRATION AND ENFORCEMENT.—(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 179(b).

"(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this title, 18 months after the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 179(b) in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 179(a).

"(3) The sanctions under section 179(b)(2) shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

"(4) Whenever the Administrator has made a finding under paragraph (1) with respect to any State, unless the State has corrected such deficiency within 18 months after the date of such finding, the Administrator shall, 2 years after the date of such finding, promulgate, administer, and enforce a program under this title for that State. Nothing in this paragraph shall be construed to affect the validity of a program which has been approved under this title or the authority of any permitting authority acting under such program until such time as such program is promulgated by the Administrator under this paragraph.

"SEC. 503. PERMIT APPLICATIONS. 42 US

"(a) APPLICABLE DATE.—Any source specified in section 502(a) shall become subject to a permit program, and required to have a permit, on the later of the following dates—

"(1) the effective date of a permit program or partial or interim permit program applicable to the source; or

"(2) the date such source becomes subject to section 502(a).

"(b) COMPLIANCE PLAN.—(1) The regulations required by section 502(b) shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this Act. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months. Repor

"(2) The regulations shall further require the permittee to periodically (but no less frequently than annually) certify that the facility is in compliance with any applicable requirements of the permit, and to promptly report any deviations from permit requirements to the permitting authority.

"(c) DEADLINE.—Any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted. The permitting authority shall approve or disapprove a completed application (consistent with the procedures established under this title for consideration of such applications), and shall issue or deny the permit, within 18 months after the date of receipt thereof, except that the permitting authority shall establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of a permit program (or a partial or interim program). Any such schedule shall assure that at least one-third of such permits will be acted on by such authority annually over a period of not to exceed 3 years after such effective date. Such authority shall establish reasonable procedures to prioritize such approval or disapproval actions in the case of applications for construction or modification under the applicable requirements of this Act.

"(d) TIMELY AND COMPLETE APPLICATIONS.—Except for sources required to have a permit before construction or modification under the applicable requirements of this Act, if an applicant has submitted a timely and complete application for a permit required by this title (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a

violation of this Act, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this title shall be in violation of section 502(a) before the date on which the source is required to submit an application under subsection (c).

Public information.

"(e) COPIES; AVAILABILITY.—A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this title, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 114(c) of this Act, the applicant or permittee may submit such information separately. The requirements of section 114(c) shall apply to such information. The contents of a permit shall not be entitled to protection under section 114(c).

42 USC 7661c.

"SEC. 504. PERMIT REQUIREMENTS AND CONDITIONS.

"(a) CONDITIONS.—Each permit issued under this title shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this Act, including the requirements of the applicable implementation plan.

"(b) MONITORING AND ANALYSIS.—The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this Act, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of title IV, or where required elsewhere in this Act.

"(c) INSPECTION, ENTRY, MONITORING, CERTIFICATION, AND REPORTING.—Each permit issued under this title shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b). Any report required to be submitted by a permit issued to a corporation under this title shall be signed by a responsible corporate official, who shall certify its accuracy.

"(d) GENERAL PERMITS.—The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this title. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 503.

"(e) TEMPORARY SOURCES.—The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this Act at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of title I. Any [illegible] permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

"(f) PERMIT SHIELD.—Compliance with a permit issued in accordance with this title shall be deemed compliance with section 502. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this Act that relate to the permittee if—

"(1) the permit includes the applicable requirements of such provisions, or

"(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 303, including the authority of the Administrator under that section.

"SEC. 505. NOTIFICATION TO ADMINISTRATOR AND CONTIGUOUS STATES. 42 US

"(a) TRANSMISSION AND NOTICE.—(1) Each permitting authority—

"(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this Act, and

"(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

"(2) The permitting authority shall notify all States—

"(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

"(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

"(b) OBJECTION BY EPA.—(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this Act, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1), or (B) within 45 days after receiving notification under subsection (a)(2), objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

"(2) If the Administrator does not object in writing to the issuance

TECHNICAL REPORT DATA
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1. REPORT NO.	2.	3. RECIPIENT'S ACCESSION NO.
EPA-450/3-91-019		

4. TITLE AND SUBTITLE	5. REPORT DATE
General Provisions for 40 CFR Part 63 Background Information for Proposed Regulation	June 1993
	6. PERFORMING ORGANIZATION CODE

7. AUTHOR(S)	8. PERFORMING ORGANIZATION REPORT NO.
Emission Standards Division OAQPS, OAR, U.S.EPA	

9. PERFORMING ORGANIZATION NAME AND ADDRESS	10. PROGRAM ELEMENT NO.
Office of Air Quality Planning and Standards U.S. Environmental Protection Agency Reserach Triangle Park, N.C. 27711	11. CONTRACT/GRANT NO.

12. SPONSORING AGENCY NAME AND ADDRESS	13. TYPE OF REPORT AND PERIOD COVERED
Office of Air Quality Planning and Standards Office of Air and Radiation U.S. Environmental Protection Agency Research Triangle Park, N.C. 27711	14. SPONSORING AGENCY CODE

15. SUPPLEMENTARY NOTES

16. ABSTRACT General provisions are being proposed for 40 CFR Part 63 (a new part) which will include national emission standards for hazardous air pollutants (NESHAP) for source categories to be established pursuant to Section 112 of the Clean Air Act Amendments of 1990 (CAAA). The proposed general provisions eliminate the need to repeat general information and requirements within these standards; they include "generic" information, such as definitions of terms, and sections that spell out the administrative responsibilities of EPA and the compliance responsibilities of owners or operators who are subject to a relevant emission standard or other requirement. This document contains a summary of the requirements and history of general provisions codified in 40 CFR Parts 60 and 61 from which the proposed general provisions were adapted; it also contains an explanation of why such requirements were needed and a summary of the statutory requirements of the CAAA that affect the proposed general provisions for Part 63.

17. KEY WORDS AND DOCUMENT ANALYSIS

a. DESCRIPTORS	b. IDENTIFIERS/OPEN ENDED TERMS	c. COSATI Field/Group
Air pollution Pollution control Administrative practice and procedure Hazardous substances	Air pollution control	

18. DISTRIBUTION STATEMENT	19. SECURITY CLASS *(This Report)*	21. NO. OF PAGES
Release unlimited.	Unclassified	
	20. SECURITY CLASS *(This page)*	22. PRICE
	Unclassified	