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Clean Air Act Amendments Of 1989

Section-By-Section Analysis

SECTION-BY-SECTION ANALYSIS OF THE "CLEAN AIR ACT AMENDMENTS OF 1989"

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SECTION-BY-SECTION ANALYSIS OF THE "CLEAN AIR ACT AMENDMENTS OF 1989"

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Section 101. General Planning Requirements.

SECTION 101(a)(1)

Section 101 of the bill substantially amends section 110 of the CAA. Section 101(a)(1) of the bill replaces current CAA sections 110(a)(1) through 110(a)(3)(A) with new CAA sections 110(a)-(h). Section 110 is overhauled to set out a scheme, generally in chronological order, for State and EPA action following promulgation of new or revised national ambient air quality standards ("NAAQS"), which includes designating areas attainment, nonattainment, or unclassifiable.

CAA Section 110(a)--Initial Plan Elements

After promulgating a new or revised NAAQS, EPA may require any State to submit an initial plan or plan revision that meets any of the requirements of subsection 110(d) (discussed below). These requirements include authority to gather information concerning air quality, which would facilitate the designation process under subsection 110(b) (discussed below).

CAA Section 110(b)--Designations

This subsection sets out the provisions concerning designations, replacing the current CAA section 107(d).

Paragraph (1)--Designations Generally:

After EPA promulgates a new or revised NAAQS, each State is required to designate each area within the State as nonattainment, attainment, or unclassifiable (i.e., inadequate information to determine whether attainment or nonattainment) for the new or revised NAAQS. At any other time, a State may designate any area of the State as nonattainment, attainment, or unclassifiable for any standard.

The State must submit the designations to EPA, which must promulgate them, making any modifications that EPA deems appropriate. If EPA intends to make a modification, it must so inform the State prior to promulgating the designation, to give the State an opportunity to respond.

After promulgating a new or revised NAAQS, EPA must promulgate the designations for all areas of the country as expeditiously as practicable, and no later than two years after the promulgation, except that a one-year extension is available if EPA has insufficient information to make the designation.

Areas that EPA has designated under the current CAA section 107(d) retain their current designation.

Paragraph (2)--Procedure:

To promulgate a designation or redesignation, EPA must publish a notice in the Federal Register. In the case of initial designations (including initial ozone, carbon, monoxide, and PM-10 designations required under the bill), this notice is not subject to notice and comment, but remains subject to judicial review.

Paragraph (3)--Redesignation:

At any time, EPA may notify a State that a redesignation of any area may be necessary. The State must submit any redesignation that it considers necessary within 120 days. EPA must finalize the redesignation within another 120 days, making any appropriate modifications, after first giving the State an opportunity to respond to those modifications.

A State may, on its own motion, redesignate an area and submit the redesignation to EPA. EPA must then approve or deny the redesignation. The mere submission of a redesignation by the State, however, has no effect on the SIP requirements for the area.

EPA can redesignate a nonattainment area to attainment only if (i) the area has attained the NAAQS; (ii) the area has a fully approved plan; (iii) EPA determines that the improvement in the air quality is due to permanent and enforceable reductions in emissions due to implementation of the plan (and federal controls) and other permanent reductions; (iv) the State has submitted, and EPA has approved, a maintenance plan for the area; and (v) the area has met all applicable requirements resulting from any "SIP call" (as described below) (including any SIP call issued under new section 110(e)(4)) to address the area's contribution to air pollution problems in an interstate transport region under section 176).

EPA may not redesignate any nonattainment area as unclassifiable.

Paragraph (4)--New Designations for Ozone, Carbon Monoxide ("CO"), and Particulate Matter ("PM-10"):

Within 120 days of the enactment of the bill, each State must designate, affirm or reaffirm the designation of, or redesignate all areas with respect to ozone and carbon monoxide. Each State must submit the designations or redesignations to EPA, which must promulgate them within another 120 days. EPA may modify the State's designations or redesignations, after first giving the States an opportunity to respond to any modifications the EPA intends to make.

The bill provides specific requirements for PM-10 designations: areas identified at 52 Federal Register 29383 (Aug. 7, 1987) as Group I areas (except as modified by EPA prior to the enactment of this bill), and all areas that measured exceedance of the PM-10 NAAQS, are designated nonattainment by operation of law. All other areas are designated unclassifiable for PM-10 until redesignation.

The particulate matter designations made previously by EPA under the particulate matter standards measured in terms of "total suspended particulates" (EPA replaced these standards with the new PM-10 standards in 1987) will remain in effect for a period of time in order to implement the particulate matter prevention of significant deterioration (PSD) "increments" (measured in terms of total suspended particulates) under section 163(d), which is discussed below. These designations will remain in place until EPA determines that they are no longer necessary for that purpose.

Paragraph (5)--Designations for Lead:

EPA is authorized, at any time, to require a State to designate any area with respect to lead.

CAA Section 110(c)--Maintenance Plans

This subsection provides that EPA may, but is not obligated to, require any area designated attainment or unclassifiable to submit a "maintenance SIP" to assure that the standard is not violated for the period EPA determines appropriate. At any time (before or after the expiration of the period covered by the initial maintenance plan), EPA may require a subsequent maintenance plan or plans for additional periods. As determined appropriate by EPA, these maintenance plans may include any of the provisions, including emissions inventories, that are described under subsection 110(d), below. States must submit the required maintenance plans according to reasonable schedules prescribed by EPA.

CAA Section 110(d)--Requirements for All

Implementation Plan Submittals

This subsection contains the basic requirements that SIPs must meet, most of which parallel existing section 110(a)(2). First, all SIPs or SIP revisions must be adopted by the State after reasonable notice and public hearing. Beyond that, the requirements listed in the paragraphs of this subsection (i) apply in whole or in part, as determined by EPA, to initial SIPs required by EPA after promulgating a new or revised NAAQS (as described above under subsection 110(a)) and to maintenance SIPs (as described above under subsection (c)); and (ii) apply in whole to SIPs required for nonattainment areas (as described below under Part D).

The following lists the requirements for SIPs found in the paragraphs of subsection 110(d):

Paragraph (1):

The SIP must include enforceable emission limitations, other measures (including economic incentives such as fees or auctions), and schedules and timetables for compliance that are necessary or appropriate to meet the applicable Clean Air Act requirements.

Paragraph (2):

The SIP must provide for the establishment and operation of appropriate devices or systems to develop air quality data and for making the data available to EPA.

Paragraph (3):

The SIP must provide for the enforcement of the emission limitations and other measures, and regulate stationary sources (including permit programs for attainment and nonattainment areas) as necessary to achieve the NAAQS.

Paragraph (4):

The SIP must prohibit any source or other emissions activity from emitting air pollutants that will contribute significantly to nonattainment in another State, or interfere with any other State's program for the prevention of significant deterioration in air quality or the protection of visibility; it also must ensure compliance with interstate and international pollution requirements of the Act.

Paragraph (5):

The SIP must provide assurances that the State (or local or regional authority, if designated as the air pollution control agency) has adequate personnel, funding, and authority to carry

out the SIP (including a statement from the attorney for the State, local, or regional authority that the State or local laws provide adequate authority); assure that the State complies with Clean Air Act requirements concerning conflicts of interest for members of State boards that approve permits or enforcement orders; and assure that if the State has delegated to a local or regional agency authority to implement the SIP, the State has retained ultimate responsibility for implementation.

Paragraph (6):

The SIP must require (i) stationary sources, in accordance with EPA's prescription, to take necessary steps to monitor emissions, and (ii) the State to submit periodic reports concerning such emissions as well as to correlate such reports with emissions requirements. The SIP must also require the State to submit reports on other emissions-related data, in accordance with EPA prescription.

Paragraph (7):

The SIP must provide authority, including contingency plans, to restrict emissions of air pollutants that present an imminent and substantial danger.

Paragraph (8):

The SIP must provide for revision of the plan as may be necessary to take account of revisions in the NAAQS or improved methods to attain the NAAQS, and to respond to findings by EPA that the plan is substantially inadequate to attain the NAAQS (a "SIP call"). However, the current provision that revisions to the plan are not necessary with respect to exemptions specified under section 110(j)(2) (formerly section 110(a)(3)(C)) (e.g., federal facilities and temporary energy or economic authority) is continued.

Paragraph (9):

The SIP must meet the requirements of the nonattainment provisions of the Act (part D), if the area is designated nonattainment.

Paragraph (10):

The SIP must meet the requirements, to the extent applicable, of the consultation provisions (section 121), the public notification provisions (section 127), and the provisions related to prevention of significant deterioration in air quality and visibility (part C), of the Act.

Paragraph (11):

The SIP must provide for air quality modeling as EPA may prescribe, and submission of such data from such modeling to EPA, upon request.

Paragraph (12):

The SIP must include provisions to require stationary sources to pay permit fees to cover the costs of reviewing, acting on, and implementing the permit (except for court costs or the costs of enforcement action), except that those provisions may be superseded by the expanded permit fees requirement under section 402(b)(3) of new Title IV of the Act (concerning permits).

CAA Section 110(e)--EPA Action on Plan Submissions

This subsection contains the requirements for EPA action on SIP submissions, including timetables and the types of actions EPA is authorized to take.

Paragraph (1)--Completeness of Plan Submissions:

EPA is required to promulgate minimum criteria for completeness that all plan submissions (except initial SIP elements submitted after promulgation of a new or revised NAAQS) must meet before EPA is obliged to approve or disapprove them. Within 60 days of EPA's receipt of a submission (but no later than 6 months after the date the SIP was due), EPA must determine whether the submission meets those minimum criteria. If EPA determines that the submission does not meet the minimum criteria for completeness, the State is treated as having failed to make the submission, and, in the case of submissions required by Part D (for nonattainment areas) or in response to EPA's SIP calls, EPA must follow the applicable provisions of sections 179 and 180 (concerning sanctions and Federal Implementation Plans).

Paragraph (2)--Deadline for Action:

EPA must act on each complete submission within 12 months of its submission, and also act on submissions not subject to the completeness criteria within 12 months of submission.

Paragraph (3)--Full and Partial Approval and Disapproval:

This authorizes EPA to approve a submission in full, disapprove it in full, or approve it in part and disapprove it in part, depending on the extent to which it meets the requirements of the Act.

Paragraph (4)--Calls for Plan Revisions ("SIP Calls"):

This authorizes EPA to require a State to revise its plan

whenever EPA finds that the plan is substantially inadequate to attain or maintain the NAAQS for any area, to mitigate interstate pollutant transport, or to otherwise comply with any requirement of the Act. EPA may establish a schedule for the State's submission of such a SIP revision. In addition, EPA may, in its discretion, subject the State to the same requirements that applied to the SIP for which EPA issued the finding, to establish appropriate deadlines.

Paragraph (5)--Corrections:

This explicitly authorizes EPA on its own motion to correct any errors it may make in taking any action, such as issuing any designation or classification, or approving or disapproving any plan.

CAA Section 110(f)--Plan Revisions

This subsection requires EPA to approve a SIP revision if, but only if, the revision will not interfere with any requirement of the Act (including any reasonable further progress or attainment requirement).

CAA Section 110(g)--Sanctions and Federal Implementation Plans

EPA is authorized, but not obligated, to apply sanctions (the types of which are set out in section 179, described below) or promulgate a federal implementation plan if (i) the State has failed to submit one or more of the elements required for a nonattainment area; (ii) EPA disapproves such an element submitted by the State; (iii) the State has failed to make any other required submission (including a maintenance plan), or EPA has disapproved such other required submission; or (iv) any requirement of an approved plan is not being implemented. However, the highway sanction applies only with respect to (i) and (ii) above. EPA may apply a sanction or promulgate a federal implementation plan with respect to any portion of the State determined appropriate. FIPs are subject to further requirements under section 180.

CAA Section 110(h)--Savings Clauses

In making the transition from the requirements of the current Clean Air Act to the requirements of the Clean Air Act as amended by this bill, certain savings clauses, set out in this subsection 110(h), are appropriate:

Paragraph (1)--Plan Provisions under Existing Standards:

Currently approved plan provisions remain in effect, until EPA approves a revision. If a State submits an original SIP for an area not designated nonattainment, to provide for attainment of a NAAQS in effect prior to these amendments (e.g., the lead NAAQS,

for which there are no designations at all), that SIP must provide for attainment within 3 years of submittal of the SIP. If a State received a notification (under current section 110(a)(2)(H)(ii), prior to the enactment of these amendments), that its SIP for an area not designated nonattainment is substantially inadequate, then a SIP revision submitted in response to that finding must provide for attainment within 5 years of the finding of inadequacy.

Paragraph (2)--Retention of Construction Moratorium in Certain Areas:

Any construction ban currently in place in any area (under section 110(a)(2)(I)) due to failure to submit a new source review permit program, or failure to submit an approvable SIP providing for attainment or maintenance of the sulfur oxides NAAQS by December 31, 1982, remains in place until EPA approves a plan correcting those deficiencies by meeting the requirements of new section 172(c)(5) and subpart 5 of Part D, as applicable.

SECTION 101(a)(2) THROUGH (a)(11)

Numerous conforming, technical, clarifying, and other changes are made to other subsections of CAA Section 110. Current CAA Sections 110(a)(3)(B) through 110(j) are amended, revised, or repealed, as follows:

Current CAA Section--	Is Revised as Follows--
110(a)(3)(B) (taking steps to reduce fuel burning).	Redesignated as 110(j)(1), with conforming changes.
110(a)(3)(C) (exemptions from SIP revision requirements).	Redesignated as 110(j)(2), with conforming changes.
110(a)(3)(D) (requirement that ozone and CO extension area plans meet basic transportation needs).	Repealed, because revised Part D adequately addresses transportation-related issues.
110(a)(4) (preconstruction review of the location of new sources).	Repealed, because unnecessary given requirements of Parts C and D.
110(a)(5) (indirect source review).	Redesignated as 110(k), with conforming changes.
110(a)(6) (supplemental or intermittent control system).	Redesignated as 110(l).

110(b) (extension of period for plan submission).	Repealed, because new schedule in section 110(e) is adequate for these purposes.
110(c)(1) (promulgation by EPA of federal implementation plan).	Repealed and replaced by new sections 110(g) and 180.
110(c)(2)(A) (study concerning certain transportation control measures).	Repealed as deadwood.
110(c)(2)(B) (parking surcharge regulations).	Redesignated as 110(m)(1), with conforming changes.
110(c)(2)(C) (suspension of regulations concerning parking supply).	Repealed as deadwood.
110(c)(2)(D) (definitions relating to transportation control measures).	Redesignated as 110(m)(2), with conforming changes.
110(c)(2)(E) (requirement for public hearing for certain provisions concerning transportation management).	Redesignate as 110(m)(3), with conforming changes.
110(c)(3) (delegation by EPA to local government of authority to implement federal plan).	Redesignated as 110(m)(4), with conforming changes.
110(c)(4) (temporary suspension of plan provisions concerning retrofits, gas rationing, and parking supply).	Repealed as deadwood.
110(c)(5) (bridge toll and related provisions).	Redesignated as 110(m)(5), with conforming changes.
110(d) (definition of applicable implementation plan).	Redefined as 110(n)(1), with conforming changes.
110(e) (two-year extension of time to attain the NAAQS).	Repealed because new attainment dates adequately address circumstances of the extension.
110(f) (national or regional emergencies).	Redesignated as 110(o).

110(g) (temporary emergency suspensions).	Redesignated as 110(p), with the reference to four-month period replaced by a reference to 12-month period.
110(h) (publication in the Federal Register of SIPs)	Redesignated as 110(q), periods extended from annually to five years after enactment of this bill, and every three years thereafter.
110(i) (limits on SIP revisions).	Redesignated as 110(r), with conforming changes.
110(j) (technological systems of continuous emission reduction).	Redesignated as 110(s).

SECTION 101(b)

This section of the bill amends Clean Air Act section 118, to explicitly waive immunity for federal facilities from permit fees charged by the States (or political subdivisions thereof) that meet the requirements of section 402(b)(3) of Title IV or that are reasonable service charges, as long as those fees or charges do not discriminate in favor of State and local facilities.

SECTION 101(c)

This section of the bill amends Clean Air Act ection 123, concerning stack heights. The bill amends section 123 to clarify the definition of "dispersion technique" with respect to major sources and the use of merged stacks, and to prescribe the GEP ("good engineering practice") formulas as the proper means for establishing stack height credit for existing sources. The bill would also prescribe that a major source seeking to demonstrate a higher GEP stack height than formula height must meet the applicable new source performance standard limits. New sources would be excluded from coverage.

Section 102. General Provisions for Nonattainment Areas.

In general, this section of the bill amends Part D of the Clean Air Act to include 5 subparts that (i) provide general requirements for all nonattainment areas, (ii) specific requirements for ozone nonattainment areas, (iii) specific requirements for CO nonattainment areas, (iv) specific requirements for PM-10 nonattainment areas, and (v) specific requirements for sulfur oxides, nitrogen dioxide, and lead nonattainment areas.

SECTION 102(a)(1) THROUGH (a)(2)

This section of the bill amends existing CAA section 171, regarding definitions, and redesignates the section as CAA section 170. The definition of "reasonable further progress" is revised to mean such annual incremental reductions as prescribed by the Clean Air Act or EPA. The definition of "nonattainment area" is revised to mean any area whose designation of nonattainment is promulgated by EPA.

SECTION 102(a)(3)

This section of the bill adds a new CAA Section 171--Applicability. The generally applicable provisions of part D, subpart 1 apply to all nonattainment areas, except as explicitly provided otherwise under other subparts relating to specific pollutants.

SECTION 102(b)

This section of the bill substantially amends existing CAA Section 172--Nonattainment Plan Provisions in General.

CAA Section 172(a)--Classifications and Attainment Dates

Paragraph (1)--Initial Classification:

After promulgating designation of an area as nonattainment, either soon after promulgating a new or revised NAAQS or at any other time, EPA is authorized to classify nonattainment areas for purposes of imposing different attainment dates and different control requirements. In determining the classifications, EPA may consider the severity of the air quality problem, the feasibility of pollution control measures, and other factors. To announce the classifications, EPA must publish a notice in the Federal Register, which is not subject to notice and comment and is not subject to judicial review. However, EPA's classification may be challenged after EPA takes action on a SIP submittal or imposes sanctions.

Paragraph (2)--Attainment Dates for Nonattainment Areas:

For primary NAAQS, a nonattainment area must reach attainment as expeditiously as practicable, but no later than five years from the date of designation to nonattainment. EPA may grant an extension of up to 20 years, depending on the severity of the problem and the feasibility of control measures.

For secondary standards, the attainment date is a reasonable time after the date of designation.

The Administrator may grant up to two one-year extensions of the attainment date, upon request by the State, if the State complies with all plan requirements and no more than a minimal number of exceedances of the standard, as determined by EPA, has occurred.

CAA Section 172(b)--Schedule for Plan Submissions

When EPA promulgates designation of an area as nonattainment, it must set a schedule for plan submittal. At the latest, all elements of the plan other than the attainment demonstration must be submitted within 3 years from the promulgation of the nonattainment designation.

CAA Section 172(c)--Nonattainment Plan Provisions

The nonattainment plan must include the following provisions (in addition to the provisions identified under section 110(d), which generally apply to all SIPs):

Paragraph (1):

Reasonably available control measures (including reasonably available control technology ("RACT") on stationary sources), as EPA may require.

Paragraph (2):

Requirements for reasonable further progress.

Paragraph (3):

Emissions inventories, including periodic updates as may be required by EPA.

Paragraph (4):

An identification of expected emissions from new sources and a demonstration that those emissions will be consistent with the projected progress towards attainment and ultimate attainment by the date required.

Paragraph (5):

Requirements for permits for new sources, in accordance with CAA section 173 (below).

Paragraph (6):

Emission limits and other measures necessary for attainment (including, at the State's choice, economic incentives such as fees or auctions).

CAA Section 172(d)--Plan Revisions
Required in Response to Findings of Plan Inadequacy

If the State is required to submit a SIP revision because EPA has issued a finding that the SIP is substantially inadequate to provide for attainment or meet any other requirement of the Act, the SIP revision must correct any deficiencies identified by EPA, and meet all other applicable requirements of the Act. EPA is authorized to adjust otherwise applicable dates (for example, the dates the inventory and control measures are due) to the extent necessary to apply those requirements in a consistent fashion.

SECTION 102(c)

This section of the bill amends CAA section 173, concerning permit requirements.

Requirements for New Sources

The current Clean Air Act requirements for new and modified major stationary sources, including permits, are retained, revised, and expanded.

Permit Requirements

The requirement that new sources, under certain circumstances, obtain offsets for their emissions is retained (although it is limited in the manner discussed below). EPA is given the authority to set the rules for determining the amount of offsets necessary--the "baseline"--(e.g., based on actual or allowable emissions) but this determination must be consistent with the assumptions used in the attainment demonstration. The bil also retains and expands the provision requiring States to analyze possible alternative sites in issuing new source permits.

Sources that emit 100 tons per year or more must obtain case-specific offsets (and cannot rely on any growth allowance in the attainment demonstration), except for sources located in zones targeted by the Department of Housing and Urban Development and EPA for economic development.

Current section 173(4), which is redesignated as section 173(a)(4), is amended to provide that permits cannot be issued under an approved permit program if EPA determines that the State's plan is not being adequately implemented.

Technical and clarifying changes are made to the flush language at the conclusion of current section 173 (which, as noted above, is redesignated as section 173(a)).

Prohibition on Use of Old Growth Allowances

A new provision is added which prohibits continued use of growth allowances approved prior to any SIP call. Formerly, such growth allowances could permit construction of new sources or modification of existing sources.

SECTION 102(d)

This section of the bill amends CAA Section 174--Planning Procedures. The planning procedures set out in the current CAA sections 174(a) and (b) are broadened to ensure that state and local (including regional) authorities share in the development and implementation of the SIP, with some technical revisions to make clear that implementation includes enforcement and to conform this section with revisions in other parts of the Act. In addition, a new subsection (c) is added, which clarifies that when a nonattainment area is included within more than one State, the affected States may jointly undertake these planning procedures.

SECTION 102(e)

This section of the bill amends CAA Section 175--Maintenance Plans. Any nonattainment area seeking redesignation to attainment must submit an approvable maintenance plan showing that the standard will be maintained for at least 10 years. This provision replaces the current section 175, which provides for EPA grants to localities for transportation or air quality maintenance planning responsibilities.

SECTION 102(f)

This section of the bill amends CAA Section 176--Interstate Transport Commissions. This new section authorizes EPA to establish an interstate transport region, consisting of all States or parts of States with a shared air pollution problem.

New CAA Section 176(a)--Authority to Establish Interstate Transport Regions

EPA is authorized, upon its own motion or upon petition from a State, to establish an interstate transport region that consists of all States pollution emissions from which contribute to NAAQS violations in any one State. After establishing such a region, EPA may add or remove States from it, based on the same considerations concerning emissions.

New CAA Section 176(b)--Transport Commissions

Whenever EPA establishes an interstate transport region, it must establish a commission, consisting of one air pollution official from each State in the region, and a representative of EPA (along with non-voting representatives from each of the relevant EPA regions). The Commission may recommend that EPA issue a SIP call to certain States, requiring them to include specified measures in their SIPs to solve the interstate transport problem.

New CAA Section 176(c)--Commission Requests

EPA is obligated to act on each of the Commission's recommendations within 18 months, although EPA may disapprove them (i.e., decline to issue the SIP call).

Conforming changes are made to CAA section 106 (authorizing EPA to fund interstate air quality agencies) to authorize EPA funding for transport commissions formed under new CAA section 176.

SECTION 102(g)

This section of the bill adds two new sections to the CAA: Section 179--Sanctions and Consequences of Failure to Attain, and Section 180--Federal Implementation Plans.

New section 179 provides EPA with the authority to impose sanctions on States when EPA finds that the State has committed one of several specified planning failures, and where EPA determines that the State is not using reasonable efforts to cure those failures. This section revises current law to provide a uniform procedure for imposing sanctions, require close and regular EPA scrutiny of State actions, and provide greater EPA flexibility in imposing any sanctions.

New CAA Section 179(a)--Initial Reasonable Efforts Determination

Under the new scheme, at the time EPA finds that State action is deficient in one or more respects, as described under CAA section 110(g), EPA must publish in the Federal Register a proposed determination of whether the State is making reasonable efforts to cure the failure. If EPA proposes to find that the State is not making reasonable efforts, EPA must, at the same time, propose to apply one or more sanctions (described below). Within the next six months, EPA must finalize the notice, and, if it finds no reasonable efforts, apply one or more the sanctions. The criteria for applying sanctions are whether it will encourage the State to undertake reasonable efforts and prevent further deterioration of the State's air quality.

New CAA Section 179(b)--Available Sanctions

The sanctions that are available include (i) a ban on the construction or modification of major stationary sources in the nonattainment area (or portion of such area, if the State failure relates exclusively to that portion). In the case of ozone, the ban is also available with respect to the area within 25 miles of the nonattainment boundary; (ii) a moratorium, imposed by the Secretary of Transportation, on the approval of any highway projects, or the award of any highway grants in the area (except that the highway sanction applies only with respect to certain State failures, as described under the summary for section 110(g), above). This highway sanction applies only if EPA believes that attainment and maintenance of a NAAQS cannot reasonably be achieved without the inclusion of transportation control measures in the plan. The Secretary of Transportation may also exempt certain projects from the moratorium. In addition, the highway sanction may be imposed, as to a particular nonattainment area (or portion thereof), located within a particular State, no more than once in any consecutive five-year period beginning with the date of enactment; (iii) a ban on drinking water hookups in the nonattainment area (or portion of such area), except for hookups necessary to correct a public health hazard; and (iv) a withholding of all or part of the air pollution grants that EPA may award under CAA section 105.

New CAA Section 179(c)--
Subsequent Reasonable Efforts Determinations

No later than 12 months after publishing a final notice as to whether the State has made reasonable efforts, EPA must publish another proposal on whether the State currently is or is not making reasonable efforts, followed by a final notice within six months. If EPA determines that the State is making reasonable efforts, EPA must lift any sanctions that had previously been imposed (except as described below, under CAA section 179(d)). If EPA determines that the State is not making reasonable efforts, EPA must keep in place any existing sanctions and (in EPA's discretion) add any further sanctions or impose at least one sanction if none were in place.

New CAA Section 179(d)--Failure to
Submit a Reviewable Plan Within 18 Months of the Required Date

Even if the State is making reasonable efforts to submit a complete SIP or SIP revision, if it fails to do so within 18 months of the required due date, EPA must propose to apply at least one sanction. EPA must make that sanction final within six months thereafter (if the failure has continued).

New CAA Section 179(e)--Notice of Failure to Attain

EPA is required to publish a notice in the Federal Register, as expeditiously as practicable after the attainment date, identifying areas that failed to attain.

CAA Section 179(f)--Consequences for Failure to Attain

For areas that fail to attain, EPA is authorized to determine additional measures to be implemented--including all feasible measures--and the States are required to submit a SIP revision containing such measures within three years (or sooner, if required by EPA). Areas that fail to attain are granted a new attainment period, starting from the date EPA notified the area of its failure to attain, that is the same as the initial attainment period provided under section 172(a)(2).

New CAA Section 179(g)--Construction Bans

Any area designated nonattainment upon enactment of the bill and that does not receive EPA approval of its construction permit program for major new and modified sources by December 31, 1992, will face a moratorium on the construction of such sources. The same ban will also apply to areas designated nonattainment after enactment if they do not receive EPA approval of such a program within 42 months of the designation.

New CAA Section 180--Federal Implementation Plans

This section on federal implementation plans ("FIPs") effectively replaces the former section 110(c)(1) in order to maintain EPA's opportunity to promulgate a federal plan, but in a more practicable and flexible manner.

New CAA Section 180(a)--General Authority

EPA is authorized to promulgate a FIP at any time it finds the State has failed to submit a SIP, or after EPA disapproves the SIP.

New CAA Section 180(b)--Requirement Following Reasonable Efforts Determination

Although EPA is never required to promulgate a FIP, the Agency must decide, at the time it reviews a previous finding concerning reasonable efforts by the State, and determines that a State is not making reasonable efforts, whether to promulgate one. In determining whether to promulgate a FIP, EPA must consider the practicality of such a plan, the severity of the nonattainment problem, the extent to which the State is making reasonable efforts, costs, and the amount of emissions reductions that would be achieved by the FIP. EPA may not promulgate a FIP unless the FIP will result in significant additional progress towards meeting

the requirements of the Clean Air Act. EPA must explain the reasons underlying the decision, and take final action within 6 months of the date of proposal.

CAA Section 180(c)--FIP Obligations

EPA is currently under court order (or has entered into judicial settlement agreements) requiring the Agency to promulgate several FIPs pursuant to the former section 110(c). Subsection 180(c) provides that EPA is not required to promulgate any of these FIPs.

Section 103. Additional Provisions For Ozone Nonattainment Areas.

This section adds a new Subpart 2 to Part D of Title I of the Clean Air Act, consisting of new sections 181 through 185.

New Section 181--Classifications and Attainment Dates

Ozone nonattainment areas are subject to four classifications with attainment dates based on design value, as shown below. EPA must classify ozone nonattainment areas at the time it designates areas as nonattainment. This initial classification is not subject to notice-and-comment or judicial review, although the classification may be challenged after EPA takes action on a SIP submittal or imposes sanctions.

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

Several special rules and adjustments apply with respect to these classifications and attainment dates: (i) Areas currently designated nonattainment, but having a design value of less than .13 ppm, are to be classified as marginal. (ii) EPA may adjust the classification of any area whose design value is within 5 percent of the classification "cut-point". (iii) EPA may allow up to two one-year extensions of the attainment date as long as the State has met all SIP commitments and has not recorded more than one exceedance of the ambient air quality standard in the year preceding the extension year.

New CAA Section 181(b)--New Designations and Reclassifications

Areas subsequently designated nonattainment after the initial designation and classification are given the same time frames to reach attainment as areas initially designated nonattainment. No later than 6 months after the attainment date has passed, EPA must publish a notice identifying each area that failed to attain. EPA must reclassify each such area to the next higher classification, or (if higher) the classification applicable to the area's design value. Areas that are "bumped up" in this respect must begin to meet the requirements of the new classification from the date of reclassification.

New CAA Section 182--Plan Submissions and Requirements

All ozone nonattainment areas are subject to specified planning and control requirements, depending on their classification. Each higher classification must comply with the requirements of the preceding classification, plus additional requirements.

New CAA Section 182(a)--Marginal Areas

States must make the following submissions, with respect to marginal areas:

Paragraph (1):

Within two years after enactment, the State must submit a comprehensive inventory.

Paragraph (2):

The State must submit various SIP revisions, to the extent it has not already done so, to include (i) reasonably available control technology requirements, which EPA has identified in various guidance documents; (ii) corrections to any motor vehicle emission control inspection and maintenance program, as previously required in the area, to assure that the program is the most stringent that is required or already in place for the area; and (iii) requirements that new or modified sources obtain permits and undergo new source review, in the manner provided under EPA guidance.

Paragraph (3):

Each year after the initial inventory is due, the State must submit an updated inventory. In addition, within 2 years after enactment, the State must require all stationary sources (except, under certain circumstances, for sources emitting less than 25 tons per year of VOCs or oxides of nitrogen) to submit emissions statements.

New CAA Section 182(b)--Moderate Areas

States containing these areas must make the same submissions as marginal areas, as well as the following submissions:

Paragraph (1):

These States must submit SIPs within three years of enactment providing for 15% reductions, from 1990 through 1995, from baseline emissions in the year of enactment. Baseline emissions are actual emissions during the year of enactment, except for emissions that are expected to be eliminated under current EPA regulations due to (i) motor vehicle fleet turnover or (ii) regulations concerning gasoline volatility. All emissions reductions are creditable against the 15% requirement, except for reductions due to (i) or (ii) above, and for reductions due to corrections to current SIPs concerning reasonably available control technology and motor vehicle inspection and maintenance. This 15% reduction requirement applies in lieu of any other requirement for reasonable further progress or submission of an attainment demonstration.

Paragraph (2):

States must implement new RACT control measures recommended by EPA, and must apply RACT to sources with the potential to emit 100 tons per year.

Paragraph (3):

Within 2 years after the date of enactment, States must submit a SIP revision requiring owners or operators of gasoline dispensing systems to install and operate a system for gasoline vapor recovery of emissions from the fueling of motor vehicles (known as "Stage II controls"). These SIP provisions must take effect within 6 months to 2 years of State adoption of the SIP revision, depending on the size of the gasoline dispensing facilities (including retail gasoline stations and fleet fueling facilities) and whether they are newly constructed. EPA is directed to issue guidance as appropriate on the effectiveness of the required Stage II controls. EPA is authorized to exempt small facilities.

New CAA Section 182(c)--Serious Areas

A State with a serious ozone nonattainment area must meet the same requirements imposed with respect to a moderate area, as well as the following:

Paragraph (1)--Attainment and Reasonable Further Progress Demonstrations:

The State must submit, by 1995, an attainment demonstration based on photochemical grid modelling. At the same time, the State

must submit a demonstration that the plan provides for emissions reductions of three percent a year, averaged over each three-year period starting in 1996 (on a rolling basis). However, the State may provide for less than three-percent per year if it includes all feasible measures, or if less than three percent is necessary for the area to reach attainment (or if the area controls NOx emissions in accordance with EPA guidance). The three-percent reductions are required to be computed in the same manner as the 15 percent reductions required for the first five years.

Paragraph (2)--Enhanced Vehicle Inspection and Maintenance Program:

Within 2 years of enactment, the State is required to implement an enhanced program of motor vehicle inspection and maintenance, in accordance with EPA guidance. The program must meet a performance standard achievable by a program combining emission testing with inspection to detect tampering with emission control devices or misfueling of all light-duty vehicles subject to section 202. This program must apply for each urbanized area with a population of 200,000 or more. The programs must include computerized emission analyzers, as well as enforcement through vehicle registration denial unless the State can show that the enforcement provisions of an existing program are more effective in assuring that non-complying vehicles are not operated in the area. The programs may not allow waivers for any vehicles covered by the emission control performance warranty under section 207(b) or for tampering-related repairs. If waivers are allowed the programs must require a minimum expenditure of $75 on pre-1981 models and of $200 for the initial waiver period and $75 in an immediately subsequent period for 1981 and later models. These dollar amounts are to be adjusted periodically for inflation.

Paragraph (3)--Clean-fuel Vehicle Program:

The State must submit a SIP revision, for each area covered by the clean-fuel vehicle program prescribed under section 212(b), which includes measures EPA may require to ensure the effectiveness of that program, including all measures necessary to make use of clean alternative fuels in clean fuel vehicles economic from the vehicle owners' standpoint. Each area which seeks voluntary inclusion in the Federal clean fuel vehicle program must also submit a SIP revision. If a State fails to meet this requirement, it may not receive credit in any attainment demonstration or reasonable further progress demonstration for emissions reductions from implementation of the Federal clean-fuel vehicle requirements under section 212.

However, a State may opt out of this requirement, in whole or in part, if, within 30 months of enactment, EPA approves a SIP revision, submitted by the State within 24 months, that will achieve long-term reductions in ozone-producing and air toxic emissions equal to the performance standard prescribed under

Section 212(b)(1) or the percentage thereof attributable to the part of the program the State is opting out of, employing measures other than those already required under the bill (either expressly or as necessary to meet requirements for annual percentage reductions). In addition, if EPA approves any fuel-pooling plan applicable to an area, EPA may approve a SIP revision to assure consistency with such plan.

Paragraph (4)--Transportation control:

The State must also submit transportation controls if greater-than-anticipated mobile source emissions occur. These controls must include measures selected from section 108(f) as necessary to reduce vehicle mile and congestion levels. Alternatively, the State may obtain equivalent reductions from other types of transportation or mobile source controls, or controls on other sources.

New CAA Section 182(d)--Severe Areas

A State containing a severe ozone nonattainment area must make the submissions required for serious areas, and must submit a revised attainment demonstration, by December 31, 2000, which includes the sanctions provisions required under CAA section 185 (described below).

New CAA Section 182(e)--
Certain Non-self-generating (Non-MSA) Areas

If EPA determines that any nonattainment area outside, and not adjacent to, an MSA or CMSA (if any) does not significantly contribute to ozone nonattainment in that area or another area, the area may be subject to only the requirements applicable to marginal areas, regardless of the air quality.

New CAA Section 182(f)--Reclassified Areas

Areas that are reclassified because they fail to attain must meet the requirements applicable to the reclassification. EPA may adjust dates for submission of SIPs as appropriate. Areas reclassified as moderate are granted an attainment date of December 31, 2000, and must meet the 3% progress requirement that is otherwise applicable only to serious and severe areas.

New CAA Section 183(a)-(b)--Control Techniques Guidelines for VOC Sources, and Alternative Control Techniques Document for NOx

EPA is required to publish seven control techniques documents (CTGs), and prepare an alternative control techniques document for NOx sources, within three years of enactment.

New CAA Section 183(c)--Consumer or Commercial Products

EPA is required to submit, within two years of enactment, a study to Congress concerning emissions of volatile organic compounds from consumer and commercial products. Following submission of this study, EPA is authorized to issue regulations reducing emissions from consumer and commercial products to a level that reflects reasonably available controls. Consumer and commercial products are defined as any article or product the use, consumption, storage, disposal, or destruction of which causes release of volatile organic compounds.

EPA may apply the regulations at only the level of the manufacturer, processor, wholesale distributor, or importer, and may exempt health use products for which there are no suitable substitutes. EPA is given broad discretion in fashioning appropriate regulations, including the use of economic incentives (such as fees or auctions). EPA may retain any funds collected. If the State develops adequate procedures under State law for implementing and enforcing these regulations, EPA may approve such procedures.

New CAA Section 183(d)--Marine Vessels

EPA is required to promulgate, within four years after the date of enactment of the bill, standards for emissions from loading and unloading marine tank vessels, to take effect after the period EPA finds necessary to permit the development of the requisite technology. The Department within which the Coast Guard is operating is required to issue regulations to ensure the safety of the required emission controls. Until EPA promulgates these standards, no State or locality may regulate marine vessel emissions, and after EPA promulgates these standards, any State or locality regulating such emissions must apply standards at least as strict as EPA's.

New CAA Section 183(e)--Ozone Design Value Study

EPA is required to complete, within three years of the date of enactment of the bill, a study on the methodology used to establish the design value for ozone.

New CAA Section 184--Northeast Transport Region and Commission

The bill establishes a Northeast Corridor regional ozone transport commission containing 11 States and the District of Columbia. This commission will convene within six months of enactment.

New Clean Air Act Section 185--Sanction for Severe Ozone Nonattainment Areas for Failure to Attain

SIPs for severe areas are required to impose a fee of $5,000

per ton of VOC on major stationary sources, in areas that fail to attain by the applicable date. The fee applies only to the extent the source fails to reduce its emissions by 20% following the attainment date. The fee begins in the year after the attainment year, and lasts until the area is redesignated attainment (except that the fee does not apply during any of the one-year extensions of the attainment date authorized under section 181). If EPA finds that the State is not collecting the fees properly, EPA may collect them, with interest for the period when the fees were not paid to the State. The amount of the fee is to be adjusted each year (beginning with the year after enactment) for inflation.

Areas with a total population under 200,000 that fail to attain the standard by the applicable date, are not subject to sanctions if the State demonstrates that ozone transport is the cause of the nonattainment problem, and if the area otherwise meets all of the Act's requirements.

Section 104. Additional Provisions For Carbon Monoxide Nonattainment Areas

This section of the bill adds a new subpart 3 to Part D of Title I of the Clean Air Act, consisting of new sections 186 and 187.

New Section 186--Classification and Attainment Dates

Carbon monoxide nonattainment areas are subject to two classifications with attainment dates based on design value, as shown below.

Area Classification	Design Value	Primary Standard Attainment Date
Moderate	9.5-16.4 ppm	December 31, 1995
Serious	16.5 ppm and above	December 31, 2000

Similar rules as found in the ozone nonattainment area apply with respect to (i) EPA publication of a notice announcing the classification of carbon monoxide areas; (ii) areas designated nonattainment prior to the enactment of this Act, but showing a design value of under 9.5 ppm; (iii) EPA authority to adjust the classification of nonattainment areas that are close to the cut-off point for another classification; (iv) EPA authority to allow brief extensions of the attainment date; (v) requirements for areas redesignated nonattainment after the effective date of this Act; and (vi) reclassification of areas that fail to attain the ambient air quality standard (the "bump-up").

New CAA Section 187--Plan Submissions and Requirements

As in the case of ozone nonattainment areas, carbon monoxide nonattainment areas must meet requirements that escalate in stringency with the severity of the nonattainment problem.

New CAA Section 187(a)--Moderate Areas

Moderate areas are required to (i) submit an initial inventory, followed by updated inventories; and (ii) assure that pre-1987 requirements for inspection and maintenance of motor vehicles are met, as required for marginal ozone nonattainment areas.

New CAA Section 187(b)--Serious Areas

All serious areas must meet the requirements for moderate areas, as well as (i) submit an attainment demonstration, due by December 31, 1995; (ii) implement an enhanced program for motor vehicle inspection and maintenance, as required for serious ozone nonattainment areas; and (iii) submit provisions to comply with the requirements for transportation control measures, as required for serious ozone nonattainment areas.

In addition, serious areas must submit a SIP revision to include an oxygenated fuels program. This program must require that gasoline available in the Consolidated Metropolitan Statistical Area (or, if none, the Metropolitan Statistical Area) in which the serious area is located be blended with oxygenated fuels during the carbon monoxide season as necessary, in combination with other measures, to provide for timely attainment and maintenance of the carbon monoxide NAAQS. This program must take effect by October 1, 1993. States may opt out of this requirement by demonstrating that the revision is not necessary to provide for timely attainment and maintenance of the carbon monoxide NAAQS.

New CAA Section 187(c)--Reclassified Areas

Moderate areas that are reclassified as serious because they fail to attain must meet the requirements applicable to serious areas. EPA may adjust dates for required submissions as appropriate. Attainment dates may not be adjusted.

New CAA Section 187(d)--Serious Areas that Fail to Attain

Any serious area that fails to attain must submit, within three years of such failure, a SIP revision that includes any additional measures that EPA may prescribe, considering all feasible measures.

Section 105. Additional Provisions for Particulate Matter (PM-10) Nonattainment Areas.

This section adds a new subpart 4 to Part D of Title I of the Clean Air Act, consisting of sections 188 through 190.

New CAA Section 188(a)--Initial Classifications

All PM-10 nonattainment areas will initially be classified as moderate.

New CAA Section 188(b)--Reclassification as Serious

EPA may redesignate to serious those areas which cannot practicably attain by the moderate attainment date. EPA must make these redesignations by the end of 1991 for areas designated nonattainment under section 110(b)(5), and within 18 months of the due date for the SIP submission for areas subsequently designated nonattainment. All moderate areas that fail to attain by the attainment date are automatically reclassified as serious.

New CAA Section 188(c)--Attainment Dates

All areas must attain as expeditiously as practicable, with the following outside dates: Moderate areas designated nonattainment under section 110(b)(4) must attain no later than December 31, 1994; for all other moderate areas, the attainment date is no later than 6 years after designation. Serious areas designated nonattainment under section 110(b)(4) must attain no later than December 31, 2001; for all other serious areas, the attainment date is no later than 10 years after the date of designation to nonattainment.

New CAA Section 188(d)--Extension of Attainment Date for Moderate Areas

Moderate areas may receive up to two one-year extensions of the attainment date, in a manner similar to ozone and carbon monoxide nonattainment areas.

New CAA Section 188(e)--Extension of Attainment Date for Serious Areas

Serious areas may receive an extension of up to 5 years if the otherwise applicable attainment date would be impracticable, the SIP has been fully implemented, the SIP includes the most stringent measures of any other State's SIP that are feasible for the area, and the State submits a demonstration of attainment by the most expeditious alternative date practicable. This subsection lists a number of factors that the Administrator may consider in determining whether or not to grant an extension, and the length of such extension.

New CAA Section 188(f)--Waivers for Certain Areas

EPA may waive any requirement applicable to a serious area, it determines that anthropogenic sources of PM-10 do not contribute significantly to the PM-10 problem in that area. Similarly, EPA may waive the requirement of a specific attainment date where it determines that nonanthropogenic sources of PM-10 contribute significantly to the problem.

New CAA Section 189(a)--Moderate Areas

Moderate areas must submit SIPs that require a new source review permit program, and either a demonstration that the plan will provide for attainment by the attainment date, or a demonstration that attainment by that date is impracticable.

New CAA Section 189(b)--Serious Areas

Serious areas must meet the requirements applicable to moderate areas, impose reasonably available control measures (including the adoption of reasonably available control technology by all major stationary sources), and either a demonstration that the plan will provide for attainment by the attainment date, or (for those areas for which the State is seeking an extension), a demonstration of attainment by the most expeditious alternate date practicable.

New CAA Section 190--Issuance of RACM Guidance

EPA must issue technical guidance on RACM for urban fugitive dust and emissions from residential wood combustion and prescribed open burning within 18 months of enactment.

Section 106. Additional Provisions for Areas Designated Nonattainment for Sulfur Oxides, Nitrogen Dioxide, and Lead.

This section adds a new subpart 5 to Part D of Title I of the Clean Air Act, consisting of new sections 191 and 192. This subpart establishes SIP submittal and attainment dates for areas that need to do additional planning to attain the SO2, NO2, and lead standards.

New CAA Section 191--Plan Submission Deadlines

Areas that are newly designated nonattainment for one of these pollutants after enactment of the bill would need to submit a new plan within 18 months of the designation, showing attainment within five years of the designation. Areas that are currently designated nonattainment for SO2 or NO2 but which never received full approval of their SIPs under the current law would have to submit corrective

SIPs within 18 months of enactment showing attainment within five years of enactment.

New CAA Section 192--Attainment Dates

The corrective SIPs for areas that received (or in the future receive) SIP calls for one of these pollutants must provide for attainment within five years of the date of the call.

Section 107. Provisions Related To Indian Tribes.

The section includes a series of provisions authorizing EPA to treat Indian tribes as States for certain purposes, including, under certain circumstances, allowing tribes to develop implementation plans and receive grants.

CAA Section 301--Authority to Treat Tribes as States

The Administrator is authorized to treat tribes as States for Clean Air Act purposes and for providing financial assistance (although tribes are not entitled to the minimum of one-half of one percent of annual appropriations to which States are entitled under Section 105). EPA may promulgate regulations outlining the circumstances under which treatment as a State is appropriate for tribes and procedures for approving tribal implementation plans. If treatment as a State is inappropriate, the Administrator may devise other means of administering the Clean Air Act on reservations. The receipt of grants is not contingent on the promulgation of regulations so that, until EPA promulgates regulations, EPA may continue to give grants to tribes.

CAA Section 105(a)(1)(B)--Grant Eligibility

Tribes are eligible to receive air grants by including tribal air pollution control agencies in the list of agencies eligible to receive grants. At his discretion, the Administrator may decide which of the eligible tribes shall receive grants.

CAA Section 302(b)--Definition of Air Pollution Control Agency

The definition of air pollution control agencies is broadened to include those of Indian tribes.

New CAA Section 302(q)--Definition of Tribe

Indian tribe is defined similarly to the definition under the Comprehensive Environmental Response, Compensation and Liability Act, as amended by the Superfund Amendments and Reauthorization Act of 1986.

New CAA Section 110(t)--Tribal Implementation Plans

Tribal implementation plans are to be reviewed in the same manner as SIPs. When plans become effective, they shall apply within the exterior borders of the reservation.

Section 108. Miscellaneous.

This section includes a number of miscellaneous amendments to Title I of the CAA, including, among others, the following:

SECTION 108(a)

CAA Section 108--Transportation Guidance

EPA, after consultation with the Secretary of Transportation, must update the transportation-air quality planning guidelines issued in 1978, at the start of the initial Part D planning process. EPA must also update its guidance on various types of transportation controls. The list of controls is refined from the initial list appearing in current section 108.

SECTION 108(b)

CAA Section 110--State Reports on Emissions-related Data

A new section 110(u) is added, which requires that States submit any reports EPA may require to assess the effectiveness of any SIP or SIP revision.

SECTION 108(c)

CAA Section 111--New Source Performance Standards ("NSPS")

The time frames for developing proposed and final regulations establishing NSPS are extended. The schedules for completion of the NSPS for source categories that EPA has already listed for regulation, and for revision of existing NSPS, are updated and extended. EPA is authorized to waive review of a standard if review is not necessary in light of readily available information.

SECTION 108(e)

CAA Section 114--Authority to Obtain Information

EPA's information-gathering authority is broadened to include obtaining information from persons who manufacture control equipment or who may have relevant information necessary for the purposes of section 114.

SECTION 108(g)

CAA Section 126--Permit Process for Addressing Interstate Effects

Under this provision, a source or plan in an area with a permit program meeting the Title IV requirements, including the requirements to address interstate effects of stationary sources, is not subject to the interstate provisions of section 126.

SECTION 108(h) and (i)

CAA Sections 163, 165--PM-10 PSD Increments

These provisions replace the sections 163 and 165 particulate matter prevention of significant deterioration ("PSD") "increments" (which were measured by the former indicator for particulate matter, "total suspended particulates"), with increments of comparable stringency measured by the new PM-10 indicator. The amendments also provide that any previously-established baseline areas and baseline dates shall remain in effect, in order to allow approximately the same amount of growth as would have been permitted had the indicator never been changed. In addition, the total suspended particulates increments and implementing regulations in an applicable implementation plan must remain in effect as to an area in that plan until a PM-10 PSD or new source review plan has been approved by EPA and made effective in the plan for that area. Furthermore, these provisions, and an accompanying amendment to section 302(j), bring coal mines within the coverage of new source review provisions, and allow for an exemption from the class II and class III increments (but not class I increments) with respect to fugitive dust from such mines.

SECTION 108(i)

CAA Section 166--PSD Increments for Other Pollutants

Subsection (a) is amended so that EPA is no longer obligated to promulgate PSD increments for any pollutants other than particulate matter and sulfur dioxide, although EPA is given the authority to promulgate such increments. This provision also allows EPA to modify the particulate matter increments if it further revises the particulate matter indicator. The new increments would have to be roughly comparable in terms of stringency to the PM-10 increments. EPA is not required to promulgate new particulate matter increments if it promulgates a new particulate matter NAAQS.

SECTION 108(k)--Definitions

New CAA Section 302(r)--Definition of Federal Implementation Plan

New CAA section 302(r) defines a federal implementation plan as a plan, or a portion of a plan, promulgated by EPA to fill a gap in the SIP, that includes enforceable emission limits or other control measures, but that does not necessarily ensure attainment of the standard.

SECTION 108(l)

CAA Section 307--Preenforcement Review

CAA section 307(e) is amended to preclude judicial review of regulations or other actions of EPA taken under color of the Clean Air Act, except as provided under the Act. This provision, along with a revision to section 304(e), clarifies that the judicial review provisions in the Act are exclusive, and precludes pre-enforcement review.

SECTION 108(m)

CAA Section 307--Interpretation of State Implementation Plan

A new subsection (h) is added to CAA section 307, providing that in the case of conflict between a State's and EPA's interpretation of a SIP provision, EPA's interpretation is to be given deference by a court, as long as that interpretation is rational.

SECTION 108(n)

CAA Section 318--Ethics, Financial Disclosure, and Conflicts of Interest

This section is repealed because its provisions are archaic or superceded by other statutes or by other legislation proposed by the Administration.

SECTION 108(o)

CAA Section 101--Pollution Prevention

A new subsection (c) is added to section 101 to declare that a primary goal of the Act is to promote Federal, State, and local governmental actions for pollution prevention.

SECTION 108(p)

New CAA Section 103--General Savings Clause

A general savings clause is provided, under which all regulations and standards issued by EPA as in effect before the date of enactment of this Act remain in effect, except to the extent otherwise provided by the Act, inconsistent with the Act, or changed by EPA.

SECTION 108(t)

New CAA Section 307(i)--Reports

A new subsection is added to CAA section 307 precluding judicial review of any reports to Congress required by the Act.

Section 109. Conforming Amendments.

This section contains conforming amendments.

TITLE II--PROVISIONS RELATING TO MOBILE SOURCES

Section 201. Clean Fuel Requirements.

This section deletes existing CAA section 212 and inserts a new section 212--"Clean Fuel Requirements", establishing two programs for increasing the use of vehicles operated on "clean alternative fuel" such as methanol, ethanol, natural gas, propane, electricity or other motor vehicle fuel such as reformulated gasoline if such other fuel has comparably low emissions, as determined by the Administrator.

The first program requires that new urban buses operated primarily in metropolitan areas having a population of over 1,000,000 be capable of operating, and exclusively operated, on clean alternative fuel. The Administrator is to phase in this requirement over the 1991 through 1994 model years. If the Administrator, after consultation with the Secretary of Transportation, finds that delaying the program would substantially increase its benefits or decrease its costs, the requirement may be postponed for up to two years. For diesel-fueled buses sold during the phase-in period, the particulate matter emission standard is set at 0.25 gram per brake horsepower-hour. The Administrator is required to issue regulations implementing the urban bus program within 12 months of enactment of this section.

The second program requires that a specified number of passenger cars and light-duty trucks capable of operating on clean alternative fuel ("clean-fuel vehicles") be sold in the most serious ozone nonattainment areas. Such clean-fuel vehicles are to meet emission standards that will ensure that, when operated on clean alternative fuels, the vehicles emit substantially less ozone-producing hydrocarbon emissions and total air toxic emissions than do conventional gasoline-fueled vehicles meeting applicable emissions standards. So that clean-fuel vehicles are in fact operated on clean alternative fuel, the program also provides that clean alternative fuels be made available in the areas where clean-fuel vehicles are to be sold.

Within 12 months of enactment, the Administrator is to establish performance standards for the clean-fuel vehicle program based on the use of clean alternative fuels formulated to produce maximum reductions in ozone-producing and toxic air emissions. The Administrator is to use these performance standards to judge the adequacy of state and industry plans for opting out of the clean-fuel vehicle program.

Within 18 months of enactment, the Administrator is to promulgate regulations establishing initial requirements, and subsequently may revise such regulations as necessary, for

attainment of the performance standards he establishes for the clean-fuel vehicle program. The regulations are to provide for the manufacture, sale and distribution of clean-fuel vehicles according to the following schedule: 500,000 in model year 1995, 750,000 in model year 1996, and 1,000,000 in each of model years 1997 through 2004. To permit automakers greater flexibility, the Administrator may grant an appropriate amount of transferable credits toward compliance with emission standards or the vehicle sales requirements for selling (1) clean-fuel vehicles that emit less than regulations require, (2) more clean-fuel vehicles than regulations require, and (3) heavy-duty trucks that are capable of operating on clean alternative fuel.

The clean-fuel vehicles are to be sold in areas that are designated ozone nonattainment, have a 1988 ozone design value at or above 0.18 parts per million, and had a 1980 population above 250,000. However, any of these areas may "opt out" of all or part of the clean-fuel vehicle program upon approval by the Administrator if the applicable state implementation plan includes measures different from those otherwise required by the Act that achieve long-term environmental benefits equal to the clean-fuel vehicle program performance standard. Conversely, any other area may "opt into" the clean-fuel vehicle program at the request of the governor of the state in which at the area is located if inclusion of the area in the program is appropriate and would result in progress toward attainment of any NAAQS. Clean-fuel vehicle sales are to allocated among participating areas based on population, vehicle sales, and other relevant factors.

The regulations promulgated by the Administrator must also provide for the availability of clean alternative fuels in the areas in which clean-fuel vehicles are to be sold. The Administrator is to determine the clean alternative fuels to be made available based on automakers' projections of clean-fuel vehicle sales and consultations with affected State and local governments. If the Administrator finds (1) that the sale of clean-fuel vehicles has created a demand for clean alternative fuels outside the areas in which such vehicles are sold or (2) that automakers are prepared to sell on a broad basis vehicles that are designed to operate exclusively on clean alternative fuels, he may also require that clean alternative fuels be made available along major nationwide transportation corridors. In addition, the Administrator is authorized to grant transferable credits for exceeding applicable requirements and to establish specifications for clean alternative fuels to reduce or eliminate any unreasonable risk such fuels may pose to public health, welfare and safety, or to ensure adequate vehicle performance and maintenance.

The Administrator may make adjustments to the programs under specified circumstances. First, if one or more areas opt into or out of the clean-fuel vehicle program, the Administrator is required to revise the total number of required clean-fuel vehicles

sales in proportion to the change in total population covered by the program. Second, the governor of a state containing an area participating in the clean-fuel vehicle program may request that more clean-fuel vehicles be sold in that area than the program would otherwise require. If the request is appropriate and would result in progress toward attainment of any NAAQS, the Administrator is to increase the number of clean-fuel vehicles to be sold in the area by the amount requested. Third, if the Administrator revises the clean-fuel vehicle sales requirement, he is also required to revise as appropriate the clean fuel availability requirements. Fourth, if he finds that delaying the vehicles sales or fuel availability requirements would substantially increase the benefits or lower the costs of the clean-fuel vehicle program, or is appropriate due to the likelihood of a national economic recession, he may postpone the requirements by up to two years and revise the number of clean-fuel vehicles that must be sold as appropriate. Any additional vehicle sales or fuel availability requirements prescribed by the Administrator are to take effect only after such period as he finds necessary for the requisite vehicles or fuels to be made available.

In developing the regulations to implement the bus and clean-fuel vehicle programs, the Administrator is directed to consult with the Secretaries of the Department of Energy and the Department of Transportation. The Administrator is also authorized to obtain information needed to enforce the two programs from manufacturers, distributors and retailers of vehicles and fuels.

Finally, section 202(a)(4) of the current Act is amended to establish that any aspect of vehicle design used to meet requirements prescribed under title II, including new section 212, may not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

This section replaces the former section 212 which had established a low emission vehicle board to promote the development of low emission vehicles. The board was abolished in 1980 by Public Law 96-208, 94 Stat. 98.

Section 202. Emissions of Hydrocarbons, Carbon Monoxide, and Oxides of Nitrogen From Passenger Cars.

This section phases in tighter passenger car emission standards for nonmethane hydrocarbons and oxides of nitrogen and maintains the current standards for total hydrocarbons (as a cap on methane emissions) and carbon monoxide (CO). Forty and 80 percent of each automaker's 1993 and 1994 model year cars respectively and 100 percent of 1995 and later model year cars are required to meet a nonmethane hydrocarbon standard of 0.25 grams per vehicle mile ("gpm") and an NOx standard of 0.70 grams per mile. For total hydrocarbons and CO, the section sets forth the

current numerical standards instead of retaining the percentage requirement language of the current statute.

The Administrator is also directed to revise the regulations to reflect the statutory change of standards within 180 days of the bill's enactment. The section clarifies the Administrator's authority to tighten passenger car standards as needed to protect health and welfare, considering costs.

This section further amends section 202(b)(1) by deleting provisions that specified passenger car standards for model years 1977 through 1980. Since those vehicles are now beyond their statutory useful life (five years or 50,000 miles), the standards are no longer applicable. Also deleted is language referring to the availability of waivers from the 1981 and later model year carbon monoxide standard, since section 202(b)(5) made those waivers available only for 1981 and 1982 model year vehicles. Similarly, the provision permitting the Administrator to relax the 1981 and later model year oxides of nitrogen standard for 1981 and 1982 model year vehicles is deleted.

Section 203. Emissions of Hydrocarbons and Carbon Monoxide From Light-Duty Trucks.

This section phases in tighter hydrocarbon and carbon monoxide emissions standards for light-duty trucks on the basis of loaded vehicle weight. For lighter trucks (3,750 lbs. and under), the standards are 0.41 gpm of total hydrocarbons and 4.20 gpm of carbon monoxide. For heavier trucks (over 3,750 lbs.), the emission standards are 0.50 of total hydrocarbons and 5.50 gpm of carbon monoxide. Fifty percent of each automaker's 1994 light-duty trucks and 100 percent of 1995 and later model year light-duty trucks are required to meet the tighter standards.

Since the current Act does not define light-duty trucks, this section also amends section 216 to include the definition of light-duty trucks promulgated by the Administrator under the Act. In addition, it directs the Administrator to revise the regulations applicable to light-duty trucks within 180 days of the bill's enactment to reflect the statutory change in standards. It also specifies the Administrator's authority to tighten light-duty truck standards as needed to protect public health and welfare, considering costs.

Section 204. Carbon Monoxide Emissions At Cold Temperatures.

This section adds a new subsection (h) to CAA section 202, providing for a reduction in emissions of carbon monoxide (CO) from passenger cars and light-duty trucks when operated at 20 degrees Fahrenheit. As a first step, the section establishes cold

temperature CO emission standards to be met by 1993 and later model year passenger cars and light-duty trucks when tested at 20 degrees Fahrenheit. Specifically, the section directs the Administrator to establish a passenger car cold temperature CO standard of no higher than 10 grams per mile and requires that light-duty trucks meet a standard of comparable stringency.

To provide manufacturers with flexibility in meeting the standards, the section permits the standards to be met on average by each manufacturer's fleet. It also provides for phasing in the standards over the 1993 through 1995 model years; at least 40 percent, 80 percent and 100 percent of 1993, 1994 and 1995 and later model year vehicles, respectively, must meet the standards. Regulations implementing the requirement for cold CO emission reductions must be promulgated within 12 months of the bill's enactment.

For the second step, the Administrator is directed to assess by December 31, 1993, the need for and feasibility of further reductions in cold CO emissions, and is authorized to promulgate regulations applicable to 1998 and later model year vehicles requiring further reductions in cold CO emissions as warranted. In addition, the section authorizes the Administrator to require reductions in cold CO emissions from heavy-duty vehicles, as he deems appropriate.

Section 205. Evaporative Emissions.

This section directs the Administrator to issue regulations within 18 months of the bill's enactment requiring reductions in evaporative emissions from all gasoline-fueled vehicles during operation (running losses) and during sustained periods of nonuse, under summertime conditions conducive to the formation of ozone. The regulations are to require the greatest degree of emissions reduction achievable by means reasonably expected to be available, taking into account cost, safety and energy factors. They are also to take effect as soon as the means for achieving the reductions are available for production.

Section 206. Mobile Source-Related Air Toxics.

Under this section, the Administrator is required to complete within 18 months of the bill's enactment a study of the need for and feasibility of controlling toxic emissions which are currently unregulated under title II and associated with motor vehicles and motor vehicle fuels. The section also authorizes the Administrator to regulate mobile-source related air toxics as he deems appropriate based on the study and other information available to him.

Section 207. Emission Control Diagnostics Systems.

This section authorizes the Administrator to require that motor vehicles be equipped with computer systems capable of diagnosing problems affecting emission-related systems and alerting vehicle owners to the need for repairs to maintain compliance with emission standards. Specifically, the section requires that emission control diagnostics systems be capable of: 1) identifying emission-related systems malfunctions or deterioration; 2) alerting the vehicle operator to the need for maintenance; 3) storing such information; and 4) providing access to such information for maintenance and testing.

To increase the usefulness of emission control diagnostics systems, the section further authorizes the Administrator to require state inspection and maintenance programs to inspect such systems and to require the repair of any identified malfunctions or deterioration. The Administrator may also require manufacturers to provide information needed to make use of the diagnostics systems to any person engaged in the business of repairing or servicing motor vehicles. To ensure that diagnostics systems operate properly in-use, the Administrator may recall vehicles for the purpose of correcting malfunctions or improper operation of the system. In addition, the section amends section 207 of the Act to extend the warranty coverage provided for emission-related systems to include emission control diagnostics systems.

Section 208. Heavy-Duty Trucks.

This section extensively revises section 202(a)(3)(A) to provide the Administrator with greater flexibility in setting emissions standards for heavy-duty vehicles or engines (HDEs). Specifically, the section deletes the statutory standards for HDEs, and instead requires the Administrator to set technology-forcing emission standards, considering cost, energy and safety factors. The window periods for standard-setting and four-year lead time requirement are also deleted. The Administrator may instead tighten standards as he finds appropriate and provide such lead time as he finds necessary to permit the development of the requisite technology (the approach taken by the current Act concerning lead time for all other vehicle emission standards). Section 202(a)(3)(A)(ii) is further revised to clarify that in setting HDE standards EPA may differentiate among HDEs based on the type of fuel used.

Finally, the Administrator is authorized to study the impact of heavy-duty engine rebuilding on engine emissions and, if warranted, to regulate rebuilding practices, including promulgation of standards applicable to engines after their typical useful life.

Section 209. Non-Road Engines and Vehicles.

This section provides the Administrator with authority to regulate vehicles or engines not used primarily on roads and not regulated under either section 202 or section 111 (authorizing the establishment of new source performance standards) of the Act. Specifically, the section authorizes the Administrator to promulgate emissions standards applicable to those types of non-road vehicles or engines that he finds cause or contribute to air pollution that endangers public health or welfare, taking costs into account.

The section also follows current section 202(a)(4) in specifying that no emission control device used on non-road engines or vehicles to meet emission standards may present an unreasonable risk to public health, welfare or safety. It further provides that any emission standard promulgated for non-road engines or vehicles be treated like a section 202 (on-road vehicle or engine) emission standard for purposes of determining compliance with and enforcing such a standard.

This section replaces existing section 213 which required the Administrator and the Secretary of Transportation to conduct a fuel economy improvement study. The study has been completed.

Section 210. Vehicle Certification.

This section amends section 206 to ensure that vehicles that pass the federal test for determining compliance with emission standards can also pass state inspection and maintenance (I/M) tests. The Administrator is directed to revise the regulations governing the certification of vehicles to include test procedures capable of determining whether properly maintained 1993 and later model year passenger cars and light-duty trucks will pass EPA-sanctioned I/M tests under conditions encountered in the conduct of such tests. EPA's revised test is to reflect reasonably likely I/M test conditions as pertains to fuel characteristics, ambient temperature and short waiting periods before tests are conducted. A manufacturer's vehicles must be able to pass the revised test to receive certificates of conformity.

This section also clarifies the Administrator's authority to permit manufacturers to demonstrate compliance with applicable standards through averaging, trading and banking of emission credits. In addition, it limits the small volume manufacturers' exemption from lengthy testing establishing a vehicle's ability to meet applicable standards over its useful life to original equipment manufacturers.

Section 211. In-Use Compliance--Recall.

This section revises section 207 to phase in the passenger car 0.25 gpm nonmethane hydrocarbon standard and the light-duty truck 0.41/0.50 gpm total hydrocarbon standard and 4.20/5.50 gpm carbon monoxide standard as they apply to recall determinations. The phase-in schedule for the passenger car nonmethane hydrocarbon standard is the same as that applicable to cars sold in California, and the phase-in schedule for the light-duty truck standards is similarly patterned after that applicable in California. The section also specifies that the Administrator may require manufacturers to perform recall tests and to audit the effectiveness of repairs performed by dealers pursuant to a recall plan.

Section 212. Compliance Program Fees.

This section provides the Administrator with specific authority to assess manufacturers fees to recover the costs associated with operating the motor vehicle compliance and fuel economy programs, including the development and implementation of related policies, procedures and regulations. It grants the Administrator broad discretion in devising a fee schedule and expressly authorizes a fee schedule based on the number of vehicles produced under a certificate of conformity. It also specifies that any fees collected be deposited in a special fund in the U.S. Treasury for use by EPA in carrying out the programs.

Section 213. Information Collection.

This section amends section 208 to extend the requirement to maintain records and provide information to manufacturers of new motor vehicle or engine parts or components. It also requires manufacturers of vehicles, engines or parts to perform such tests and provide such data as the Administrator may reasonably require to determine compliance with applicable requirements under the Act and to assist in the development of new regulations. Correspondingly, the section broadens the Administrator's inspection authority so that he may observe required testing or obtain required data. In addition, it provides that authorized contractors acting as representatives of the Administrator may conduct inspections or have access to business sensitive information.

Section 214. Fuel Volatility.

This section requires the Administrator to promulgate within six months of the bill's enactment regulations requiring additional reductions in the volatility of gasoline during the high ozone season (approximately the summer months). The section specifies a maximum Reid vapor pressure standard of 9.0 pounds per square

inch and requires the Administrator to establish more stringent Reid vapor pressure standards as needed to generally achieve comparable evaporative emissions (on a per vehicle basis) nationwide, taking into account such factors as enforceability, environmental need and costs. The regulations implementing the volatility requirements are to take effect no later than the 1992 ozone season, and may permit gasoline containing at least 9 but not more than 10 percent ethanol (by volume) to exceed the volatility requirements by up to 1.0 pounds per square inch.

Section 215. Diesel Fuel Sulfur Content.

This section requires a reduction in the sulfur content of diesel fuel that will in turn reduce diesel vehicles' emissions of sulfates and ease compliance with the stringent 1994 particulate matter standard applicable to heavy-duty diesel vehicles. Specifically, the section prohibits as of October 1, 1993, the manufacture, sale or transport of motor vehicle diesel fuel having a sulfur content of greater than 0.05 percent (by weight) or a cetane index below 40. It requires the Administrator to promulgate within 12 months of the bill's enactment regulations to implement and enforce the prohibition. It also specifically authorizes the Administrator to require refiners to dye fuel <u>not</u> subject to the sulfur content limitations in order to segregate it from the regulated fuel.

To reflect the change in diesel sulfur content that will occur over the useful life of 1991 through 1993 heavy-duty diesel engines, the section requires that the sulfur content of fuel used to certify diesel engines for those model years be 0.10 percent (by weight). It further requires that certification fuel used for 1994 and later model year diesel engines comply with the lower sulfur content and cetane index minimum requirements applicable to motor vehicle diesel fuel after October 1, 1993.

Section 216. Non-Road Fuels.

Section 211 of the current Act authorizes the Administrator to regulate motor vehicle fuel and fuel additives as needed to prevent damage to motor vehicle emission controls and to protect public health and welfare. This section expands that authority to include fuel and fuel additives for non-road vehicles and non-road engines, for which section 208 of this bill authorizes the Administrator to establish emission standards.

Section 217. Fuel Waivers.

This section amends section 211(f) to clarify that the requirement to obtain waivers for new fuels and fuel additives not

substantially similar to the fuels used in vehicle certification applies not only to unleaded gasoline but to all other fuels and fuel additives, including leaded gasoline, diesel fuel, and consumer additives.

Section 218. Market-Based Alternative Controls.

Under this section, the Administrator is directed to issue regulations within 12 months of the section's enactment to allow automakers to engage in "emissions trading" and fuel refiners to engage in "fuel pooling" to the maximum extent feasible in ozone nonattainment areas with a 1988 ozone design value at or above 0.18 parts per million and a population above 250,000. The regulations are to establish performance standards for motor vehicles and motor vehicle fuels marketed in those areas based on likely emissions reductions that would be achieved by the control measures for which alternative measures could be substituted. Automakers and fuel refiners could then choose to undertake emission control measures different in type or degree from the prescribed measures they would replace, so long as they demonstrated to the Administrator that the combination of measures they selected would meet the performance standards. Companies could also trade emission reduction credits for use in demonstrating compliance with performance standards. If companies could not demonstrate alternative means of meeting the performance standards, they would be required to comply with the prescribed control measures.

Under this section, the Administration is also authorized to promulgate regulations permitting manufacturers and fuel refiners "trade" and "pool" emissions reductions from nationwide control measures. It replaces existing section 214 which required a study of particulate emissions from motor vehicles and a report to Congress. The study and report have been completed.

Section 219. Preemption of State Fuel Regulation.

This section makes two changes to section 211(c)(4)(A)(ii) regarding the preemption of State fuel regulations by federal rules. First, it clarifies that a federal fuel or fuel additive regulation only preempts a nonidentical State regulation governing the same component or characteristic of the fuel or fuel additive. Second, it further defines the basis on which EPA may approve state implementation plan provisions that regulate motor vehicle fuel or fuel additives in a manner nonidentical with applicable federal regulations. The current Act states that EPA may approve inconsistent State fuel or fuel additive regulations when such regulations are "necessary to achieve" primary national ambient air quality standards. This section defines "necessary to achieve" as meaning that no other reasonable or practicable measures are available to bring about timely attainment.

Section 220. Enforcement.

This section broadens and strengthens the Administrator's enforcement authority in several ways. First, the section amends section 203 to conform to new provisions, including new section 212 (relating to clean-fuel vehicles and buses) and amended section 208 (relating to recordkeeping and reporting).

Second, this section further revises section 203 to extend liability for tampering with emission controls to individual vehicle owners and to manufacturers or sellers of devices used to defeat or impair emission controls.

Third, the amendment revises section 205 to raise from $10,000 (set in 1970) to $25,000 the maximum civil penalty that can be levied for a violation of certain vehicle requirements. The section also provides that violations of recordkeeping or reporting requirements may be calculated on a per day basis (as in Title I of the Act) to provide adequate deterrence.

Fourth, new authority is provided to the Administrator to assess administrative penalties for violations of sections 203, 211 and 212 that total up to $200,000 (unless the Administrator and the Attorney General determine that a case involving a larger penalty amount is appropriate for administrative assessment). Any such assessment can only be made after a hearing before the Administrator, and the amount of the penalty is to be based on the weighing of statutorily prescribed factors.

Fifth, the section revises the section 211(d) penalty provision, which currently provides for a mandatory forfeiture of $10,000 per day for violations of section 211 or fuel regulations issued under that section. It replaces the mandatory forfeiture provision with a provision for a civil penalty of up to $25,000 per day for each violation plus the economic benefit of noncompliance. In addition, the section clarifies that in the case of violations of fuels standards based on a multi-day averaging period (such as exists in the lead phasedown program), each day during the averaging period is intended to constitute a separate day of violation. It also provides injunctive authority to restrain violations of fuels regulations, as is already available for violations of vehicle and stationary source requirements.

Sixth, the section adds a prohibition against misfueling. Any person, including an individual, may be held liable for civil penalties for introducing leaded gasoline into vehicles which are designed to operate exclusively on unleaded gasoline. This section replaces existing section 211(g) which stipulated that prior to October 1, 1982, small refiners may not be required to reduce the lead content of the gasoline they produce to the same extent as

large refiners. Small refiners have been subject to the same lead content limitations as large refiners, since July 1, 1983, so existing section 211(g) has no continuing effect.

Section 221. Technical Amendments.

This section revises various sections of the act to delete outdated provisions and to improve the organization of Title II.

For ease of reference, the definitions that are currently found in section 202 are transferred to section 216 which includes other definitions also applicable to section 202.

The section also deletes the provisions making available waivers from the carbon monoxide standard for 1981 and 1982 model year passenger cars and waivers from the oxides of nitrogen standard for 1981 through 1985 model year cars, since those vehicles are generally past their statutory useful life.
The exemption from the tampering prohibition available for fuel system modifications on vehicles manufactured before the 1974 model year is deleted since any such vehicles are long past their useful lives.

The provision requiring a study of aircraft pollutants is deleted because the study has been completed. The section also deletes the provision for an annual report to Congress on the development of emissions control systems needed to meet the standards established in section 202(b) by the 1977 Clean Air Act Amendments, since those systems have been developed and the standards met. It similarly deletes the provision for a study on the feasibility of specified high altitude requirements, since that study has been completed. In addition, the requirement that manufacturers build prototype research vehicles demonstrating new emission control technologies is deleted. The section also removes the requirement that the Administrator publish certification test results in the Federal Register.

Title III--HAZARDOUS AIR POLLUTANTS

Section 301. Technology-Based Standards for Hazardous Air Pollutants.

General

Title III would replace the existing provisions of section 112 of the Clean Air Act.

A major goal of the bill is to attain a basic level of good control of routine multipollutant emissions by significant sources of hazardous air pollutants. The pollutants to be controlled are listed in section 112. The approach the section takes is to mandate maximum achievable control technology (MACT) based on cost and feasibility considerations for listed source categories.

Another major goal is to increase the role of State and local agencies in implementation and enforcement of air toxics controls. This Title and Title IV provide for implementation of national standards by state and local agencies through an operating permit system supported by permit fees. These agencies would also administer an alternative compliance program under which sources could obtain an exemption from national standards by demonstrating that their emissions cause negligible risk to public health, and could obtain certain credits for voluntary emissions reduction.

New Section 112(a)--Definitions

Major Sources:

A major source is defined as one that emits more than 10 tons per year (tpy) of a single, listed pollutant or 25 tpy of a combination of listed pollutants. For radionuclides, the Administrator will define major sources by regulation, considering radiation dose. For purposes of these definitions, all emissions of listed pollutants are counted from all points within a plant boundary (contiguous property under common ownership). This is to assure that emissions from the facility as a whole are adequately controlled.

EPA has discretion to define major source as one emitting less than 10 tpy or 25 tpy based on the potency or other characteristics such as persistence of an emitted pollutant. Sources could voluntarily reduce their emissions to below the cutoffs to avoid regulation as major sources.

Because there are a variety of methods for measuring and estimating total emissions, EPA would define these methods for regulated source categories. Each source category emission

standard should address this so that all sources have the same expectation about how their status will be defined for regulatory compliance purposes.

Area Sources:

Area sources are small point sources (non-major) that would be regulated by category just as major sources are. They differ in that the basis for regulating them is the adverse effect of their combined emissions rather than the effect of any single source.

New Source:

A new source is a stationary source the construction, including reconstruction, of which is commenced after proposal of a standard under subsection (d) or (f). The interpretation of "reconstruction" would be as current rules provide under section 111(a).

Electric Utility Steam Generating Unit:

A definition is provided for fossil fuel fired units which will be subject to study and a report to Congress. The study and report concern the hazards that may remain after Title V controls and whether they should be regulated. Until the report is made and considered, these units are not regulated under this section.

Other Terms:

"Stationary Source", "owner or operator", and "existing source" have the meaning the terms currently have under section 111(a).

New Section 112(b)--Hazardous Air Pollutant List

The pollutants to be controlled are listed in subsection (b). There are about 191 chemicals and chemical categories.

The Administrator may add or delete a pollutant from the list on the basis of criteria relevant to whether the pollutant is an air pollutant reasonably anticipated to cause certain chronic or acute health effects. The public may petition for additions or deletions. The Administrator must act on such a petition within 18 months of its receipt.

The list is the basis for identifying the source categories to be controlled. The purpose is to identify and regulate source categories according to their emissions of pollutants on the list,.

The Administrator is authorized to use any authority available to him to acquire health effects information when information on

health effects is insufficient for a determination on listing a pollutant.

New Section 112(c)--Source Category List

Sources are to be regulated by category. The categories would be made up of sources that are alike in terms of their commercial product and their operational process. Categories could reflect product groupings such as tire manufacturing or butadiene-styrene rubber production, or service groupings, such as dry cleaning, degreasing, or tank farms. Sources are brought into a category by commonality of product, process, or service. The Agency is authorized to subdivide categories into subcategories or smaller units, based on important factors such as size, process, emissions or other circumstances resulting in sources within a category being dissimilar or not amenable to similar controls.

A list of source categories for which emission standards will be considered will be published within 12 months of enactment. This list will be revised periodically in response to comments and new information. The Agency will hold the list open for comment permanently as a continuing agenda.

The list will contain categories and subcategories of major sources of listed pollutants. It will also contain categories and subcategories of area sources designated as warranting regulation because of their aggregate emissions or potential aggregate emissions.

The Administrator may decide not to list a source category or subcategory because its emissions are already adequately controlled under the Clean Air Act or any other Federal statute or regulation. On the other hand, he may list a category or subcategory previously regulated under section 112. The Administrator may withdraw a category or subcategory from the list if the sources present a negligible risk to public health. For instance, if all sources covered would be able to demonstrate, under procedures of section 112(g), that risks associated with their emissions are negligible, it may be unnecessary to promulgate an emissions standard for them.

New Section 112(d)--Maximum Achievable Control Technology Emission Standards (MACT)

The emission standards promulgated for listed source categories would be performance or work practice standards requiring the maximum achievable degree of reduction in emissions by major sources (and designated area sources). The reduction strategies that may be considered include measures to: reduce volume through process change or substitution of material; enclose systems to reduce or eliminate emissions; collect, capture, or treat emissions; utilize work practices that control emissions; or require facility operator training or certification. Combinations

of the above may be required.

For a new source standard, MACT will be at least as stringent as the best emissions control achieved in practice by a similar source. For an existing source standard, MACT will be at least as stringent as emissions control typical of the best performing similar sources. MACT for area sources may require use of generally available control technologies, if the Administrator elects this level of control. Standards for radionuclides shall be set based on radiation dose.

The considerations for determining what the maximum achievable degree of reduction is for a source category include cost and feasibility of control, other air quality related health and environmental impacts, and energy requirements. Any relevant measure of cost may be considered in deciding what is achievable, including comparisons of the emissions reduction and the cost of the reduction, and whether the controls are affordable for the sources as a group. In order to efficiently issue standards by the required schedule, the Agency may use a system of generic technical standards. These generic standards would cover the kinds of controls that are common to many source categories.

New sources would be required to be in compliance with a MACT standard upon its effective date. Existing sources would be required to be in compliance on a date required by the Administrator within three years of the effective date.

New Section 112(e)--Schedule for Standards

The Agency is directed to promulgate regulations for 1/2 of the initially-listed source categories. The source categories to be regulated that are in the remaining 1/2 of the initial list will be designated within 7 years of enactment, with promulgation to come in two stages. The required schedule for standards will be:

First 1/2 of the initial list:

- o 10 source categories within 2 years of enactment.
- o 25% of initially-listed categories within 4 years of enactment.
- o 50% of initially-listed categories within 7 years of enactment.

Second 1/2 of the initial list:

- o All designated, initially-listed source categories within 10 years of enactment.

Priority of Source Categories For Regulation

The relative priority of the source categories to be regulated mandatorily within 7 years of enactment are to be determined by considering several factors:

1. Quantity and location of emissions.
2. Known or anticipated adverse health effects.
3. Efficiency of grouping categories or subcategories by pollutants emitted or process or technology used.

The administrative efficiency of regulating similar categories at the same time would be taken into account.

New Section 112(f)--Unreasonable Risk Evaluation

Within 7 years after promulgation of a MACT standard, the Administrator will evaluate the risks to the public health remaining after application of the standard.

This evaluation will rely on data maintained about the actual emissions reduction achieved under the MACT standard. The up to 7-year post-promulgation period for performing the evaluation allows time for compliance to occur (up to 5 years for existing sources, if there is a 2-year extension under 112(g)), plus time to measure performance after compliance, and perform the evaluation analysis.

If the Administrator finds that residual risk from a source category or portion thereof presents an unreasonable risk of adverse effects on public health, he is directed to promulgate an additional standard within 2 years of the risk evaluation. The standard would require an additional emissions reduction to protect the public health from the unreasonable risk.

A source that is new after the date of proposal of a standard addressing residual risk must be in compliance with the final standard when it is effective. An existing source must be in compliance on a date no later than 6 years after its effective date as the Administrator requires.

New Section 112(g)--Alternative Emissions Limitations

A State with a program approved under Title IV may issue a permit that authorizes a major source to comply with emissions limitations in lieu of standards under this section if the source demonstrates that complying with these alternative limitations, results in emissions which present a negligible risk to public health.

The Administrator must publish rules within 2 years of enactment establishing criteria for this demonstration. In addition the Administrator must publish guidance and information

on methods for assessing risk and evaluating evidence submitted in support of a demonstration.

A state with an approved program may also authorize alternative limitations in two other cases. The first is when any existing source shows that it has voluntarily achieved a 90% emissions reduction of organics or 95% of particulates within five years prior to proposal of a standard. The emissions limitations resulting from such voluntary action may be permitted in lieu of those required under a section 112 standard.

The second is when a source has installed controls required under certain other numerated Clean Air Act provisions or has voluntarily achieved control equal to those requirements. The permit may authorize the limitations associated with those controls in lieu of compliance with section 112(d) standards, for a period of five years after the compliance date for the 112(d) standards. Provisions to define "voluntary" and conditions for defining the baseline are described. The Administrator must publish rules to carry out these provisions within two years of enactment.

A state with an approved program may also grant an extension of up to 2 years for compliance by existing sources with a section 112(d) standard when additional time is needed to install controls.

If the State in which a source is located does not have a program approved under Title IV, the Administrator may grant any extensions authorized under this subsection for such source.

New Section 112(h)--Pre-construction and Operating Requirements

This subsection conditions construction and operation on compliance with applicable standards.

New Section 112(i)--Technical Assistance

Provisions in this subsection cover technical assistance by the Agency for state and local agencies and research by the Agency.

New Section 112(j)--Presidential Exemption

For reasons of national security the President may exempt any source(s) from requirements of this section for a renewable period of two years.

New Section 112(k)--Savings Provision

This subsection preserves effectiveness of regulations issued under the superceded section 112 language. Regulations under court review on the date of enactment shall be reviewed under the prior language of 112. A standard remanded to the Agency may be considered by the Administrator under terms of either the prior or the amended section.

The subsection states that certain actions are not final agency action for purposes of judicial review.

New Section 112 (l)--Appropriations

This subsection authorizes appropriations to carry out the section.

New Section 112(m)--Electric Utilities

The Administrator is directed to perform an assessment of the hazards to public health which may be associated with emissions listed under this section from certain electric utilities of pollutants after their implementation of emission controls required under Title V of this Act. The Administrator is directed to report the results of this study to the Congress within three years after enactment. The Administrator shall develop and describe in his report to the Congress, alternative control strategies for emissions from affected sources warranting regulation under this section. The Administrator may not regulate such sources under this section unless he finds such regulation appropriate and necessary considering results of the study.

TITLE IV--PERMITS

Section 401. Permits.

This section adds a new title IV to the Clean Air Act to establish a permitting program for certain stationary sources.

New CAA Sec. 401--Definitions

This section defines the central terms used in this title. These include the terms "affected source", "schedule of compliance", and "permitting authority." Other terms are defined by reference to the section of the Act where they are initially used and defined.

New CAA Sec. 402--Permit Programs

In General:

This title requires States or interstate agencies to submit to the Administrator comprehensive permit programs under State law or under interstate compacts for regulating stationary sources that are subject to one or more of the regulatory programs under the Act: State implementation plan (SIP) requirements, new source performance standards, emission standards for hazardous air pollutants, PSD and nonattainment new source review, and acid deposition controls under the new title V. This comprehensive program is patterned generally after the program that now applies to point sources of water pollution under the Clean Water Act. EPA must issue regulations governing the programs, including requirements for adequate State statutory authority and permit fees. The permit fees are required to recoup all direct and indirect costs of administering the air pollution control program related to the permitted sources, including the portion of such costs as emission and ambient monitoring, modelling, and preparation of generally applicable regulations and attainment demonstrations that may be attributed to the permitted sources. A State is required to submit a permit program to the Administrator not later than three years after enactment. If the State fails to submit a completely approvable program, the Administrator has discretionary authority to apply the sanctions that generally apply to failure to submit SIPs, or to promulgate a complete or partial federal permit program for the State. The Administrator may also withdraw approval, or apply sanctions, if a State fails to implement its program.

Partial Programs:

The Administrator may approve partial permit programs covering one of three specific portions of a complete program. Any such partial program must apply all the requirements of that portion.

For example, in order to obtain approval of a partial program to control acid deposition, a State would have to show that it had authority to apply to the affected sources all the requirements of title V, but not that it had authority also to apply all requirements of title I. Similar requirements apply to partial approval of programs applying emission standards under section 112, or programs applying title I requirements other than section 112. Approval of a partial program would not relieve a State of the requirement to submit a fully approvable program.

Interim Approval:

Interim approval, for a period not to exceed two years, would be available for programs that substantially meet the requirements of title IV.

New CAA Sec. 403--Permit Applications

Sources required to obtain a permit must submit a permit application and compliance plan within six months after approval of a permit program that applies to them, or six months after they become subject to a permit requirement as a result of promulgation of applicable standards. The State may set an earlier deadline for applications. Submission of a timely and complete permit application protects a source from enforcement for failure to have a permit required under the applicable program until a permit is issued to the source. Permit applications, permits, and monitoring or compliance reports, must be made available to the public, except that if a permit applicant is required to submit confidential business information entitled to protection as a trade secret, the applicant may submit the information in a confidential supplement to its application, which will be handled under section 114 of the Act.

New CAA Sec. 404--Permit Requirements and Conditions

States with fully approved programs must issue permits that apply, and ensure compliance with, all applicable requirements. Permits must also set forth inspection, entry, monitoring, and reporting requirements to assure compliance with regulatory requirements. The Administrator may prescribe methods for determining compliance and for monitoring and analysis of pollutants. The methods would apply to determining compliance generally under the Act, and in particular, to permits and permit applications. Compliance with a permit constitutes compliance with the regulatory requirements of the Act that are covered by the permit program or partial program, except for standards under section 112 based on eliminating an unreasonable risk, and requirements under Title IV that the Administrator identifies by rule.

General Permits:

The permitting authority may issue general permits for numerous similar sources within a geographical area. This provision is designed to reduce the administrative burden of permitting large numbers of similar sources, which may be small individually, but which in the aggregate require control (for example, as area sources regulated under section 112).

Temporary sources:

Some sources requiring permits do not operate at fixed locations. These might include asbestos demolition contractors and certain asphalt plants. This provision allows the permittee to receive a permit allowing operations, after notification to the permitting authority, at numerous fixed locations without requiring a new permit at each site. Any such permit must assure compliance at all locations of operation with all applicable requirements of the Act, including visibility protection and PSD requirements.

Renewal permit conditions:

In general, renewal permits are required to be at least as stringent as the permits they replace. For example, a source that installed reasonably available control technology (RACT) based controls would not be permitted to remove them, even if EPA subsequently issued guidance suggesting that it would accept as a general matter a lower level of control. There are several exceptions to this general rule. For example, offsets or emissions trades may be used to relax controls in permits; mistakes or new information may justify a less stringent limit; or the permittee may have installed controls that were anticipated to meet the earlier limit, but due to circumstances beyond its control failed to meet those limits. These exceptions are available only to sources that demonstrate compliance with all applicable regulatory requirements in effect at the time of permit reissuance, including ambient standards, progress requirements, and applicable new source and hazardous air pollutant standards.

New CAA Sec. 405--Notification to Administrator and Contiguous States

Except where the Administrator waives review for a permit or class of permits, the permitting State or interstate agency must transmit to the Administrator a copy of each permit proposed to be issued, and must notify each contiguous State of each application for a permit and each proposed action on the application. The Administrator may object to a permit within 90 days after receiving notification if it fails to meet Clean Air Act requirements, including the requirement that emissions from a source in one State not interfere with attainment of standards in another. If the permitting authority fails to respond adequately to the objection, the Administrator may issue or deny the permit. The Administrator

may also require a State to modify a permit for cause.

New CAA Sec. 406--Relation to Other Authority

This section clarifies that State authority to establish additional permitting requirements not inconsistent with this Act is preserved. It also specifies that title IV is not intended to authorize any State or the Administrator to modify or revoke any requirement of title V, including allowances granted under that title.

TITLE V--ACID DEPOSITION DEPOSITION CONTROL

Section 501. Acid Deposition Control.

This section adds a new title V--Acid Deposition Control--to the Clean Air Act, consisting of new sections 501 through 515.

New CAA Sec. 501--Findings and Purposes

This new section contains the findings and purposes of the acid deposition control program. In summary the findings include that emissions of sulfur dioxide (SO_2) and nitrogen oxides (NO_x) are being transformed into acid deposition that represents a threat to natural resources, ecosystems, materials, visibility and health. Given that non-utility emissions of sulfur dioxide will have declined by over 1 million tons between 1980 and 2000, the purpose of this title is to reduce utility emissions of sulfur dioxide sufficiently to achieve a 10 million ton reduction relative to 1980 levels and to reduce NOx emissions by 2 million tons from expected levels. It is also the purpose of title V to encourage energy conservation and pollution prevention as a long range strategy for reducing air pollution and other adverse impacts of energy production and use. Emission reductions will be achieved in two phases -- phase one reductions are required after December 31, 1995 and phase two reductions are required after December 31, 2000.

New CAA Sec. 502--Definitions

This new section contains the definitions and meanings of key terms used in this title.

New CAA Sec. 503--Allowance Program for Existing Units

This new section describes the emission allowance system proposed as the key implementation vehicle for Title V. To ensure that the emissions reductions contemplated by this Title are met, a limited number of emission allowances will be issued to affected sources for each year based on a statutorily prescribed formula. An allowance is a federal authorization to emit a ton of sulfur dioxide or nitrogen oxides in a calendar year. Holders of these allowances are prohibited from emitting SO_2 or NO_x unless they hold an equivalent number of allowances. In phase I, allowances can be transferred among affected sources within a State and within an interstate utility company. In phase II, allowances may be transferred among affected sources within two multistate regions of the county. Allowances may be transferred and banked according to regulations in both phases. Nitrogen oxide allowances may be traded for sulfur dioxide allowances, and vice versa, at an exchange rate of 1.5 pounds of nitrogen oxides for 1 pound of sulfur dioxide. When existing sources shutdown, they are allowed

to keep (and transfer) their allowances. New sources will be required to obtain allowances. EPA will track all emission allowances and transfers.

New CAA Sec. 504--First Phase Sulfur Dioxide Emission Reduction Program

This new section sets forth the first phase SO_2 reduction program. All existing fossil fuel-fired steam electric generating units larger than 100 MWe are required to limit their emissions after December 31, 1995 to the tonnage equivalent of a 2.5 lbs./mmBtu emission rate for SO_2 on an annual average basis. (The tonnage equivalent is determined by multiplying the 2.5 lb/mmBtu rate times the annual average fuel consumption for 1985-1987.)

The phase one reduction requirements may be reassigned to one or more alternative fossil fuel-fired units upon application during the first phase by the owner or operator of the affected units. The Governor of the State where the units are located may prohibit the use of out-of-State coal.

New CAA Sec. 505--Second Phase Sulfur Dioxide Emission Reduction Program

This section sets forth the second phase SO_2 emission reduction program. Fossil fuel-fired steam-electric generating units larger than 75 MWe with emission rates greater than 1.2 lbs/mmBtu will receive SO2 allowances equal to the product of 1.2 lb/mmBtu multiplied by the unit's historic (1985-1987) annual average fuel consumption. Through the trading program established by section 503, allowances can be transferred among affected sources. Units which are currently limited to an emission rate of less than 1.2 lb/mmBtu and generating units smaller than 75 MWe will be required to emit at a rate no higher than their actual 1985 emission rate.

New CAA Sec. 506--Nitrogen Oxides Emission Reduction Program

This new section contains the reduction requirements for NO_x sources. By rule, the Administrator will establish emission standards for existing coal-fired steam-electric generating units that are sufficient to reduce NOx emissions by 2 million tons below projected emissions for calendar year 2000.

New CAA Sec. 507--Permits and Compliance Plans

This new section establishes the permits and planning requirements for the acid deposition control program. Sources subject to title V are required to apply for first and second phase permits. These will contain, among other things, the schedule of compliance the source will follow to meet the requirements of this program and, if applicable, the number of allowances initially

allocated to the source. Permit applications for phase 1 are required no later than 27 months after enactment; phase 2 applications by January 1, 1995. Applicants may submit revisions to their permit applications and compliance plans. Each permit will contain the key enforceable provision that each source is prohibited from emitting sulfur dioxide or nitrogen oxides in excess of the allowances that it holds or rates prescribed for each of those pollutants.

New CAA Sec. 508--Repowered Sources

This new section establishes the availability of a non-renewable three year extension of the stage two compliance date (i.e., until December 31, 2003) for any unit being repowered with clean coal technologies specified in this title. Such repowered sources would be required to meet a hybrid standard based on the rated capacity of the boiler prior to repowering and the new capacity of the boiler once repowered. Such sources would also be exempt from meeting new source performance standards and would be subject to streamlined new source review procedures if their potential emissions are expected to increase.

New CAA Sec. 509--Election for Additional Sources

This new section establishes the terms under which existing utility boilers smaller than 75MWe or with emission rates lower than 1.2 lbs/mmBtu and non-utility sources (e.g., industrial boilers) may elect to participate in the emission allowance transfer system.

New CAA Sec. 510--Excess Emissions

This new section establishes that the owners and operators of sources that emit in excess of their allowances are liable for the payment of an excess emission fee of $2000/excess ton. (This fee is in addition to any penalty liability under other sections of the Act.) The fee is non-discretionary. In addition, units that emitted in excess of their allowances must offset the excess emissions by an equal tonnage amount in the year following the excess.

New CAA Sec. 511--Monitoring, Reporting and Recordkeeping Requirements

This new section establishes the Title V monitoring, reporting, and record keeping requirements. All affected sources will be required to install and operate continuous emissions monitors (CEM) for SO_2, NO_x and opacity or employ a comparably reliable method for continuously monitoring emissions and to keep records and provide reports of emissions. This requirement is necessary for verifying actual emissions performance for purposes of ascertaining compliance, the availability of allowances for

trade, and the amount of any excess emission fee and offset liability.

New CAA Sec. 512--Compliance with Other Provisions

This new section establishes that compliance with Title V does not exempt or exclude sources from their requirements under an other part of the Act, except that affected sources are exempt from stack height requirements under section 123.

New CAA Sec. 513--Enforcement

This new section establishes the enforceability of the various provisions of the Title.

New CAA Sec. 514--Report to Congress

This new section requires the Administrator to report to Congress on the environmental effects of the emission reductions required under this Title.

New CAA Sec. 515--Clean Coal Technology Regulatory Incentives

This new section provides regulatory incentives to encourage the use of clean coal technologies. The Federal Energy Regulatory Commission (FERC) is required to adopt regulations for a 5-year demonstration program that would include establishment of an incentive rate of return and a 10 to 20 year amortization period for innovative emission control technologies. FERC is also required to develop a process to negotiate a prudent level of investment for clean coal and other innovative technology projects. This section also exempts temporary and permanent clean coal technology demonstration projects from new source review requirements under section 111 and Parts C and D of the Clean Air Act so long as the demonstration project does not increase the original facility's potential to emit for any pollutant regulated under the Act. Finally, States are encouraged to provide additional utility regulatory incentives for the promotion of clean coal technologies.

TITLE VI--PROVISIONS RELATING TO ENFORCEMENT

Section 601. Section 113 Enforcement

This section amends existing Clean Air Act (CAA) section 113 to accomplish several important goals:

Clarification of 30-day Notice Provisions

Section 113 is amended to clarify and confirm that the 30-day notice period is not a shield to protect sources. Subsection 113(a)(1) is amended to clarify and confirm that the 30-day notice provision is intended solely to allow the states an opportunity to exercise their civil enforcement prerogatives before Federal enforcement action is initiated. Subsection 113(b)(2) is likewise amended to clarify and confirm that a source is liable for penalties for all violations of a SIP, even if the violations pre-date the Notice of Violation. Amendments to subsection 113(a) clarify and confirm that the 30-day notice provision for civil and administrative SIP actions is inapplicable to criminal actions. Furthermore, the amendment clarifies and confirms that, as with all other environmental statutes, the option of proceeding criminally is not excluded by the bringing of an administrative or civil action.

Expanded Administrative Compliance Order Authority

Subsection 113(a)(4) is amended to authorize EPA to issue administrative orders with non-renewable compliance schedules of up to 12 months' duration. This provides EPA with the ability to expeditiously resolve violations administratively, while still protecting against extensions of applicable compliance deadlines. EPA will retain authority to pursue civil penalty actions, contractor listing and other appropriate remedies until compliance is achieved, and the issuance of an order will not insulate a source from criminal prosecution.

Ensuring Full Enforceability of Stationary Source Statutory Requirements

Section 113 is amended to ensure that administrative, civil judicial, and criminal sanctions may be imposed for any violation of any requirement of titles I, III, IV or V of the Act, including any rule, order, waiver, permit, plan or fee requirement promulgated or approved under the Act. This amendment ensures enforceability of new requirements proposed elsewhere in the Administration's bill.

Enhanced Criminal Sanctions Authority

Subsection 113(c), which currently authorizes only misdemeanor-level criminal sanctions for violations of the Act, is amended to authorize felony-level sanctions for certain knowing violations and misdemeanor-level sanctions for certain negligent violations.

The paragraphs in subsection 113(c) are also reordered and recodified). New paragraphs 113(c)(1) and (c)(2) authorize misdemeanor-level criminal sanctions against anyone who knowingly fails to pay a fee owed the government or who negligently violates amended section 112 and thereby places another person in imminent danger of death or serious bodily injury. New paragraph 113(c)(5) authorizes felony-level sanctions against anyone who knowingly violates amended section 112 or releases of certain specified extremely hazardous substances and toxic chemicals and who knows at the time that another person is thereby placed in imminent danger of death or serious bodily injury.

Existing CAA paragraph 113(c)(2) (new paragraph 113(c)(4)), which establishes criminal liability for knowing false statements and falsification or tampering with monitoring devices, is amended to include liability for: knowing failures to act; knowing omissions of material information; the knowing destruction, alteration, concealment, or failure to maintain documents necessary for CAA compliance; and knowing failures to install necessary monitoring devices. It also increases the maximum term of imprisonment for this category of violation from six months to two years, and the $10,000 penalty cap with a reference to title 18 U.S.C., which provides for maximum fines of $250,000 for individuals and $500,000 for organizations.

Administrative Penalty Authority

The CAA is amended to authorize the EPA to issue administrative penalty orders. This amendment sets a presumptive cap of $200,000 on administrative penalties, and provides that EPA and the Department of Justice may agree to increase the penalty limit for certain cases or categories of cases by entering into memoranda of understanding. These agreements would be especially appropriate for categories of cases which routinely involve multiple violations, each of which may have minor penalties but which total more than $200,000.

The CAA is also amended to authorize EPA to issue "field citations" for minor violations discovered during the course of an inspection and for violations of routine reporting and record-keeping requirements. The particular categories of cases which may be addressed by field citations will be specified by the Administrator, from time to time, through a memorandum of understanding between the Administrator and Attorney General and

will be promulgated in regulations. Civil penalties assessed in a field citation will not exceed $5,000 and the payment of a civil penalty assessed pursuant to a field citation shall not be a defense to further enforcement and penalty liability for violations occurring before or after the date of the violation(s) addressed in the citation. Sources against whom field citations are issued may either pay the civil penalty to an EPA official other than the inspector who issued the citation or request an informal hearing as provided for in regulations. The hearing would not be a formal adjudicatory hearing and would not be subject to 5 U.S.C. sections 554 and 556.

Assessment of civil penalties under either of these new administrative penalty authorities are subject to judicial review in the appropriate United States District Court. Assessments are also enforceable by suit brought by the Attorney General in the appropriate U.S. District Court. The provisions for judicial review and collection of penalties are intended to operate like the comparable provisions for administrative penalties in the Clean Water Act, 33 U.S.C. § 1319(g) (8) and (9).

Current subsection 113(d), which allows states and EPA to grant "delayed compliance orders" of SIP requirements past the attainment deadlines, is prospectively repealed. That authority is no longer necessary or appropriate in light of the amendments proposed to subsection 113(a) authorizing 12-month compliance orders, and the revised planning procedures and deadlines proposed in Title I of the Administration Bill. Any delayed compliance orders in effect prior to the repeal of section 113(d) shall, however, remain in effect until expiration or termination as provided therein, and shall not be affected by this amendment.

Penalty Assessment Criteria

A new subsection 113(e) clarifies the criteria to be applied in assessing penalties, and clarifies and confirms that the maximum statutory penalty may be assessed for each day of each violation, including each day of a multi-day averaging period.

Subsection 113(e) also clarifies and confirms that once EPA establishes evidence of a violation using a formal test method, EPA can use other credible evidence to prove additional violations, or that a violation has continued. In addition, subsection 113(e) clarifies and confirms that once EPA has made a prima facie case that establishes a period of violation, the burden of proving any intervening days of compliance rests with the source. Sources may then rebut this presumption by proving by a preponderance of the evidence that there were intervening days with no violation or that the violation was not continuous in nature.

Finally, new subsection 113(e) explicitly identifies the factors both a court and the Administrator shall consider in determining the amount of any civil penalty assessed under section

113 or section 304(a)(1) or (3).

Current subsection 113(e), which extended compliance deadlines for certain steel plants up until the end of 1985, is prospectively repealed. That authority is no longer necessary or appropriate in light of the expiration of the deadlines and the very limited number of extensions that were sought by the steel industry.

Informant Rewards

Subsection 113(f) authorizes the Administrator to offer rewards of up to $10,000 to individuals who provide information concerning violations of the Act which lead to criminal convictions or civil or administrative judgments of liability. Funding for rewards would come from general appropriations or from appropriations from the separate fund provided for in section 304 as amended.

Section 602. Reviewability of Administrative Orders.

This section amends subsection 307(b)(2) of the CAA to clarify and confirm that orders or notices issued by the Administrator under sections 113(a), 167 and 303, administrative subpoenas under section 307(a), and actions under sections 114, 206(c) and 208 of the Act are not final agency action for purposes of judicial review. This section further provides that such orders, notices, subpoenas and actions are not judicially reviewable until an enforcement proceeding is brought under sections 113, 120, 204, 205 or 304 of the Act. This amendment does not alter the provision of subsection 307(b)(2) that precludes challenges in enforcement proceedings to actions that could have been directly reviewed under subsection 307(b)(1). The ability of a violator to contest the validity of an administrative order, notice, subpoena, or investigatory action is preserved as defendants will have the opportunity to challenge the same in the district court enforcement action.

Section 603. Compliance Certification

This amendment clarifies and confirms that EPA has the authority under subsection 114(a) to require enhanced monitoring and submission of compliance certifications, and to require such monitoring and compliance certifications by major stationary sources.

Section 604. Contractor Inspections.

This section amends CAA section 114 to clarify and confirm that, as in other environmental statues, EPA has discretionary

authority to use contractors to conduct CAA inspections. The section includes a reference to 18 U.S.C. § 1905 providing that contractors are subject to that provision's criminal sanctions for illegal disclosures.

Section 605. Administrative Enforcement Subpoenas

This section amends CAA subsection 307(a) to give EPA express authority to issue administrative subpoenas in support of its enforcement activities under the Act. This expands existing authority to issue subpoenas in support of rulemaking activities. This authority corresponds to the increased administrative enforcement mechanisms proposed in these amendments, and conforms the CAA to other environmental statutes.

Section 606. Enforcement of Administrative Orders.

Current subsection 303(b) provides for civil penalties of $5,000 for each day of "willful" violation of an emergency order issued by the Administrator under subsection 303(a), and no criminal penalties. This amendment deletes subsection 303(b) and makes section 303 orders enforceable under the Act's other enforcement authorities, e.g. sections 113, 120, 304(a)(1), and 306. The maximum civil penalty for an emergency order violation is thereby raised to $25,000 per day of violation and the requirement of proving "willfulness" for civil actions is eliminated. In addition, criminal sanctions are made available under subsection 113(c) for knowing violations of emergency orders and for knowing endangerment.

Section 607. Scope of Emergency Powers.

Section 303 is also amended to authorize injunctive actions and emergency orders for episodes threatening to the environment, in addition to its current authority to safeguard human health. In addition, both the 24- or 48-hour time limitations on the duration of emergency orders, and the prohibition against judicial enforcement of emergency orders unless state and local authorities have not acted, are eliminated. This will allow the Agency to effectively order necessary emergency action and to enforce any order issued without delay, and conforms the CAA to other environmental laws. This amendment preserves the existing section 303 requirement that the Administrator consult with state and local authorities before taking any action.

Section 608. Contractor Listings.

Section 306 of the Act is amended to enable the Administrator to exclude from Federal government contracts, grants, or loans any facility owned or operated by a person criminally convicted under

subsection 113(c). This expands current authority, which limits the contractor listing action to the particular violating facility. The Administrator is given discretion to limit the scope of the exclusion to the particular violating facility or to a subdivision of the legal entity which owns or operates the facility, as appropriate.

The mandatory listing requirement of subsection 306(a) is expanded to include any violation criminally actionable under subsection 113(c) of the Act, as well as mobile source violations under sections 205(d), 211(d)(3) and 212(e). The amendment also clarifies and confirms that following a conviction under paragraph 113(c)(2) (i.e., false statements, omissions, etc.), not only must the false statement be corrected, but additionally any substantive violation underlying the false statement (e.g., a source in violation of the NSPS for which the defendant falsely submitted complying monitoring information) must be certified as in actual substantive compliance by the Administrator in order for the defendant to be removed from the list.

This section is also ensures that the new criminal sanctions for knowing endangerment, negligent violations, and knowing omissions and failures to act result in mandatory listing under section 306.

Section 609. Judicial Review Pending Reconsideration of Regulation.

This amendment clarifies and confirms that under subsection 307(b), as under subsection 307(d)(7)(B), a petition for agency reconsideration does not render agency action non-final for purposes of judicial review and does not toll the 60-day time period for seeking judicial review.

Section 610. Citizen Suits.

Section 304 is amended to authorize the assessment of civil penalties in citizen suit actions as in the Clean Water Act and the Resource Conservation and Recovery Act. The section provides further for the deposit of citizen suit penalties into a special fund in the U.S. Treasury. The monies would be available for appropriation to EPA for use in air compliance and enforcement activities.

In addition, section 304 is amended to require that copies of complaints and proposed settlements in citizen suit cases be served on the Administrator and the Attorney General, as in the Clean Water Act. The amendment provides specifically that no citizen suit settlement can be entered unless the government is given 45 days notice and an opportunity to comment or intervene in the

action. This amendment allows the government to substitute itself as plaintiff with respect to a citizen claim for civil penalties, and clarifies and confirms that the federal government is not bound by a citizen enforcement action to which it is not a party.

Section 611. Enhanced Implementation and Enforcement of New Source Review Requirements.

This section clarifies and confirms that operation, as well as construction and modification, of major sources not meeting new source review requirements is prohibited, and that section 167 administrative orders regarding new sources can be directly enforced both civilly and criminally under section 113.

Section 612. Movable Stationary Sources.

The definition in section 302 of the Act of the term "stationary source" is amended to clarify and confirm that emissions from movable stationary sources such as mobile asphalt batch mixing trailers and ships at port are subject to the Act's stationary source requirements.

Section 613. Enforcement of New Titles of the Act.

This provision expands availability of the section 120 remedy allowing recovery of the economic benefit of noncompliance to cover violations of the new proposed Title IV governing permit programs and Title V regarding acid precipitation.

Title VII--MISCELLANEOUS PROVISIONS

Section 701. Grants for Support of Air Pollution Planning and Control Programs.

Amends Sec. 105 to allow the Administrator to make grants to air pollution control agencies in amounts up to three-fifths of the cost of implementation. Agencies contributing less than the required two-fifths minimum have three years to attain this minimum funding level.

Requires that, in most cases, no air pollution control agency shall receive a grant during any fiscal year if its current expenditures of non-Federal funds for recurrent expenditures for air pollution control programs is less than expenditures in the preceding year. The Administrator shall also revise the current regulations defining applicable nonrecurrent and recurrent expenditures.

Section 702. Annual Report Repeal

Repeals section 313 of the Clean Air Act.

Section 703. NOx and VOC Study.

Within two years of enactment, EPA, in conjunction with the National Academy of Sciences, shall study and report to Congress, the role of ozone precursors in tropospheric ozone formation and control and specifically examine the roles of NOX and VOC emission reductions.

Section 704. Review and Revision of Criteria and Standards.

Amends sections 108 and 109 by revising the procedures for periodic review and revision of national ambient air quality standards and the air quality criteria on which they are based. In general, it requires the Administrator to determine every five years whether revision of existing standards is appropriate and, if so, to complete appropriate revisions within three years. The section also provides for issuance of criteria and promulgation of standards for pollutants newly listed under section 108 and makes technical and conforming changes.

Section 705. Air Pollutant Release Investigation Board.

Establishes within EPA an Air Pollutant Release Investigation

Board for the purpose of investigating potentially dangerous accidental releases of air pollutants. The Board would consist of the Secretary of Labor or his designate and four members appointed and convened by the Administrator following a major life-threatening release of an air pollutant or pollutants to investigate the release and report to Congress.