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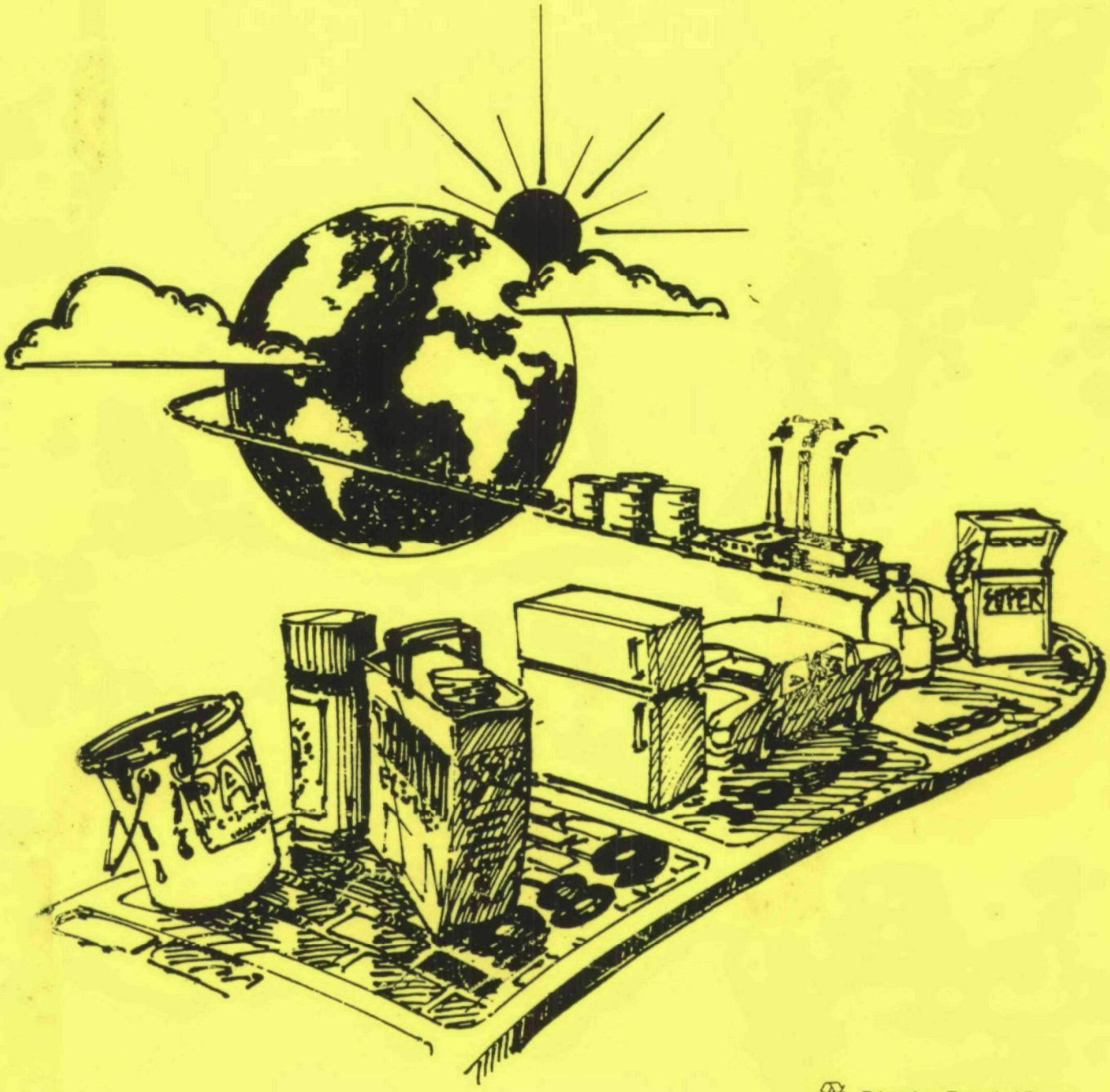
Outline Of Key Provisions: Titles I, III, IV, V, And VII



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TITLE I: PROVISIONS FOR ATTAINMENT AND MAINTENANCE OF NATIONAL AMBIENT AIR QUALITY STANDARDS

SUMMARY: Title I focuses on the urban air pollution problems of ozone (smog), carbon monoxide (CO), and particulate matter (PM-10). It allows EPA to define the boundaries of "nonattainment" areas (geographical areas whose air quality does not meet federal standards) and classify them according to the severity of the area's air pollution problem. For ozone levels, these classifications are: marginal, moderate, serious, severe, and extreme. For carbon monoxide and particulate matter, only "moderate" and "serious" ratings are used. Depending on its classification, the area is required to use different control measures to reduce the pollution level.

I. OVERVIEW OF MAJOR SUBSTANTIVE REQUIREMENTS

Notes

A. Air Quality Designations

1. GENERAL DESIGNATION SCHEME FOR NEW OR REVISED NATIONAL AMBIENT AIR QUALITY STANDARDS (NAAQS)

   The Amendments revise the process for designating areas when EPA issues or revises a NAAQS [Section 107(d)(1)]:

   a. As soon as 120 days, and no later than one year, after a NAAQS is issued or revised, the Governor submits a list of areas designating them as nonattainment, attainment, or unclassifiable [Section 107(d)(1)(A) definitions of areas found in Section 107(d)(1)(A)(i)-(iii)].

   b. Within two years after it issues or revises a NAAQS, EPA must promulgate area designations. A one-year extension is available if information is judged insufficient [Section 107(d)(1)(B)(i)].

EPA is authorized to revise the Governor's list (including making boundary revisions). However, if EPA intends to revise the list, EPA must notify the state at least 120 days prior to the proposed revision. If the state fails to submit its own list, EPA must promulgate the list [Section 107(d)(1)(B)(ii)].

c. The designation remains in effect until the area is redesignated [Section 107(d)(1)(B)(iv)].

2. INITIAL DESIGNATIONS UNDER CURRENT NAAQS

a. Designations As of Date of Enactment

Areas designated prior to enactment as nonattainment, attainment, or unclassifiable retain that designation upon enactment [Section 107(d)(1)(C)].

b. Designations After Date of Enactment for Ozone and Carbon Monoxide (CO) Areas

o General Procedure

- Within 120 days after enactment, each state must submit to EPA a list designating all areas as attainment, nonattainment, or unclassifiable for ozone and CO [Section 107(d)(4)(A)(i)].

- Within 120 days after the date that states submit their lists, EPA must adopt final lists. EPA is authorized to modify a state's list, but must notify the state of the

proposed modifications at least 60 days before EPA adopts the list. If the state does not submit a list, EPA prepares the list for that state [Section 107(d)(4)(A)(ii)].

- No nonattainment area may be redesignated as an attainment area under this procedure [Section 107(d)(4)(A)(iii)].

o MSA/CMSA Boundary-Setting Procedure

- Unless the state submits, within 45 days of the time when a CO or ozone area is classified as serious or higher, a letter indicating that the state wishes to further evaluate the boundaries, the boundary will be revised to include the MSA or CMSA. If the state submits such a letter, the boundary will be revised to MSA or CMSA 8 months after classification or 14 months after enactment (whichever is later), unless EPA concurs with a state finding that the boundaries should include a smaller area [Section 107(d)(4)(A)(iv)].

- The basis for narrowing boundaries to an area smaller than MSA/CMSA would be that sources in a portion of the MSA/CMSA do not contribute significantly to NAAQS violations. In making this determination, the state and EPA must consider population density, traffic congestion,

and other factors [Section 107(d)(4)(A)(v)].

c. Designations for PM-10 Areas

o Designations At Date of Enactment

- Areas meeting one of the following qualifications were designated nonattainment by operation of law at enactment [Section 107(d)(4)(B)]:

  Any area identified as a Group I area [Section 107(d)(4)(B)(i)].

  Any area measuring a violation of the NAAQS before January 1, 1989 [Section 107(d)(4)(B)(ii)].

  On October 31, 1990 (55 Fed. Reg. 45799) EPA published a notice listing these areas and clarifying their boundaries.

- All other areas are designated "unclassifiable" [Section 107(d)(4)(B)(iii)].

o Designations After Enactment

- EPA may redesignate an unclassifiable area under the provisions for redesignation [Section 107(d)(3)].

3. INITIAL CLASSIFICATION OF NONATTAINMENT AREAS

   a. Ozone nonattainment areas are classified marginal, moderate, serious, severe, or extreme. [Section 181(a)(1), (table 1)].

   b. CO nonattainment areas are classified moderate or serious. [Section 186(a)(1), (table 1)].

   c. PM-10 nonattainment areas are initially classified as moderate [Section 188(a)].

4. REDESIGNATION

   a. EPA may at any time notify the state that the designation of an area should be revised. EPA may base its recommendation on air quality data, planning or control considerations, or any other air quality-related considerations EPA deems appropriate [Section 107(d)(3)(A)].

   b. A procedure and timetable is specified for a state to submit the redesignation requested by EPA and for EPA to act on it. (EPA has authority to make modifications) [Section 107(d)(3)(B)-(C)].

   c. A separate procedure and timetable is given for the state, on its own motion, to submit redesignation request [Section 107(d)(3)(D)].

   d. Criteria for redesignating an area as an attainment area are specified. These include, among other things, attainment of

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NAAQS, EPA's determination that attainment is due to permanent emission reductions, and an approved maintenance plan [Section 107(d)(3)(E)].

5. DESIGNATION FOR LEAD

a. EPA may require a state to designate areas for current lead NAAQS. This designation would generally be consistent with procedures for designating areas after promulgation or revision of NAAQS [Section 107(d)(5)].

6. PROCEDURE FOR PUBLISHING DESIGNATIONS

a. EPA must publish specified designations and redesignations in the Federal Register. However, only redesignations are subject to notice and comment rulemaking [Section 107(d)(2)].

B. Required State Submittals

1. OZONE

a. Classification and Attainment Dates

o General Requirements

- Based on design value (a measurement of pollutant concentration in parts per million), each nonattainment area is classified at the time of its designation (the date of enactment for some areas, 240 days later for others). Attainment dates are keyed to classification

[Section 181(a)(1), and Table 1]. A special attainment date is set for certain severe areas [Section 181(a)(2)].

- EPA is required to publish a notice in the Federal Register for certain classifications; however, notice-and-comment is not required and judicial review is not authorized [Section 181(a)(3)].

- EPA may adjust the classification upward or downward if the area's design value is within 5% of the design value of the next higher or lower classification [Section 181(a)(4)].

- EPA may extend the attainment date for up to two one-year periods, if certain requirements are met [Section 181(a)(5)].

o New Designations

- Areas initially designated attainment or unclassifiable, and subsequently redesignated as nonattainment areas are to be classified and subject to the same requirements as if they were initially designated nonattainment, except that certain deadlines are extended [Section 181(b)(1)].

o Failure to Attain

- Any marginal, moderate, or serious area that fails to

attain the applicable standard will be reclassified upward in accordance with a specified procedure and timetables [Section 181(b)(2)].

- Areas that are reclassified upward for nonattainment will be subject to all applicable requirements for their new classification with the exception that certain deadlines may be adjusted [Section 182(i)].

- Any severe area that fails to attain the standard is subject to special requirements which vary depending on whether the design value is above 0.140 [Section 181(b)(4)].

- In severe and extreme areas that fail to attain the standard, major stationary sources are subject to a penalty of $5,000 (adjusted for inflation) for each ton of emissions in excess of a specified baseline amount [Section 185(a)-(b)]. EPA may collect this penalty if the state fails to do so [Section 185(d)].

- Exemptions are included for certain small areas [Section 185(e)].

b. New Source Review Requirements

The Amendments contain a "grab bag" of provisions that alter NSR coverage on a pollutant- and classification-specific basis by lowering tonnage thresholds for

new and modified sources, setting minimum offset ratios, and changing the definition of major source and modification. These provisions are outlined below. (Except where noted otherwise, provisions stated for one classification also apply to all higher classifications.)

o Marginal Areas

- Offset Ratio: 1.1 to 1 [Section 182(a)(4)].

o Moderate Areas

- Offset Ratio: 1.15 to 1 [Section 182(b)(5)].

o Serious Areas

- Definition of Major Source: any stationary source or group of sources located within a contiguous area and under common control (i.e., includes fugitive emissions) [Section 182(c)].

- Tonnage Threshold: 50 tons per year (TPY) [Section 182(c)].

- Offset Ratio: 1.2 to 1 [Section 182(c)(10)].

- Special Modification Provisions:

  De Minimis Rule: A New Source Review (NSR) of modifications at existing sources will be triggered by a 25 TPY net emissions increase, aggregated over five years [Section 182(c)(6)].

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Sources Emitting Less than 100 TPY: The owner can avoid a NSR by netting (i.e., obtaining internal offsets) at a ratio of 1.3 to 1. Otherwise, NSR is triggered, except that the Best Available Control Technology (BACT) applies rather than the Lowest Achievable Emission Rate (LAER) [Section 182(c)(7)].

Sources Emitting More than 100 TPY: A New Source Review applies to increases greater than de minimis (as defined above) caused by any discrete pollutant-emitting activity, except that LAER will not apply if the owner obtains internal offsets of at least 1.3 to 1 [Section 182(c)(8)].

o Severe Areas

- Tonnage Threshold: 25 TPY [Section 182(d)].

- Offset Ratio: 1.3 to 1, or 1.2 to 1 if the BACT for volatile organic compounds (VOC's) required at all existing major sources [Section 182(d)(2)].

o Extreme Areas

- Tonnage Threshold: 10 TPY [Section 182(e)].

- Offset Ratio: 1.5 to 1, or 1.2 to 1 if BACT for VOC's is required at all existing major sources [Section 182(d)(2)].

- Special Rule for Modifications: For purposes of determining compliance with offset requirements, an emissions increase is not considered to be a modification if the owner obtains 1.3 to 1 internal offsets. Offset requirements do not apply to modifications consisting of installation of equipment to meet requirements of the Act [Section 182(e)(2)].

o Submission Dates

- For all ozone nonattainment areas, State Implementation Plans (SIP's) or revisions that meet Part D NSR permit requirements, are due within two years of the enactment of the Amendments [Section 182(a)(2)(C)].

c. Marginal Areas--SIP Submission Requirements

o All ozone nonattainment areas --moderate to extreme -- must make the submissions applicable to lower-classified areas, unless specifically exempted [Section 182(b) (introductory language)]; [Section 182(c) (introductory language)]; [Section 182(d) (introductory language)]; [Section 182(e) (introductory language)].

o Within two years after enactment, an inventory of actual emissions from all sources is due from each state containing all or part of a marginal area [Section 182(a)(1)].

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- o Corrections applying Reasonably Available Control Technology (RACT) for these areas are due 6 months after enactment [Section 182(a)(2)(A)]. States with existing ozone nonattainment areas have to submit SIP revisions within six months of enactment to correct or add requirements concerning RACT that were mandated under section 172(b) of the CAA before the new Amendments. EPA has issued guidance concerning the RACT requirements of the prior law in several documents, principally:

  - Control Technique Guidance (CTG's).

  - Interpretations on applicability of CTG's and RACT by type of nonattainment area as summarized in 52 Fed. Reg. 45044 (November 24, 1987), note especially pp. 45068-69.

  - EPA 1988 and 1990 SIP calls, and the Bluebook referred to in the SIP calls.

- o Immediately upon enactment, all areas that already contain, or were required by the 1977 Act to have contained, a basic inspection/maintenance (I/M) program, must either upgrade the program to meet all of EPA's previous guidance on basic I/M programs or retain the program now in the plan, if the existing one is the more stringent [Section 182(a)(2)(B)].

- o A periodic inventory of emissions is due after each 3-year period until the area is redesignated to attainment [Section 182(a)(3)(A)].

- o Revisions of SIP's requiring emissions statements are due two years after enactment. Annual emissions statements are due from specified sources beginning three years after enactment. A procedure is specified for a state to waive the emissions statement requirement for smaller sources [Section 182(a)(3)(B)].

- o Marginal areas are not subject to the requirement of attainment demonstration or contingency measures [Section 182(a)].

d. Moderate Areas: Additional SIP Submission Requirements

- o 15% Reduction Requirement

  - Within three years of enactment, states must submit a SIP revision to provide for 15% VOC reductions [Section 182(b)(1)(A)(i)].

  - Annual reductions of VOC and Nitrogen Oxides (NO_x) as necessary to attain standard are also required, except that NO_x reductions can be waived [Section 182(b)(1)(A)(i)].

  - A waiver from 15% amount allowed under certain circumstances [Section 182(b)(1)(A)(ii)].

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- The 15% reduction must be computed from a specified baseline figure [Section 182(b)(1)(B)].

- All emission reductions are creditable towards the 15% amount, except for certain specifically exempted reductions [Section 182(b)(1)(C)-(D)].

o Reasonably Available Control Technology (RACT)

- SIP revisions requiring RACT for all sources covered by a pre-enactment CTG (even if the CTG had not previously applied in that type of nonattainment area) must be completed within two years of enactment [Section 182(b)(2)(B)].

- SIP revisions must be completed within two years of enactment to require RACT for all major sources (even if the sources are not covered by a CTG) [Section 182(b)(2)(C)].

- A SIP revision must be completed to apply RACT to sources covered by any new CTG's that EPA issues after enactment of the 1990 Amendments within the time period set forth when the CTG is issued [Section 182(b)(2)(A)].

- Definition of major source: 100 TPY under Section 302(j).

o Stage II

- A SIP revision is due within two years after enactment to incorporate Stage II requirements. Special rules determine applicability and effective date of Stage II requirements [Section 182(b)(3)].

- For areas classified as moderate, the Stage II provisions will not apply once EPA adopts standards requiring manufacturers to equip vehicles with onboard systems for gasoline vapor recovery [Section 202(a)(6)].

- EPA may waive or revise Stage II requirements for serious, severe, and extreme areas once the agency determines that onboard controls are in widespread use in vehicles in those areas [Section 202(a)(6)].

o Inspection and Maintenance (I/M)

- All areas must adopt basic I/M programs immediately upon enactment, whether or not they were required to do so under the 1977 Act. For areas newly subject to adopting I/M programs, EPA will immediately require only <u>schedules</u> for implementation [Section 182(b)(4)].

e. <u>Serious Areas: Additional SIP Submission Requirements</u>

o Attainment Demonstration and 3% Progress Requirement

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- Within four years after enactment, the state must submit SIP measures and attainment demonstration based on photochemical modeling [Section 182(c)(2)(A)].

- Within four years after enactment, the state must submit SIP measures and demonstration to show that the plan will lead to 3% progress each year, averaged over three-year periods beginning six years after enactment [Section 182(c)(2)(B)].

  A waiver from the 3% rule described above is available under certain circumstances [Section 182(c)(2)(B)].

  NO_x control may be substituted for VOC control [Section 182(c)(2)(C)].

o Vehicular Requirements

- Within two years of enactment, all urbanized areas with a 1980 population of 200,000 or more must adopt enhanced I/M programs consistent with EPA guidance. These programs must include computerized emission analyzers, certain waiver restrictions, enforcement through vehicle registration denial, and generally, annual centralized testing and inspection [Section 182(c)(3)].

- Specified serious ozone areas are required to adopt SIP

provisions implementing the clean fuels vehicle program prescribed in Title II [Section 182(c)(4)]. However, the program prescribed in Title II was significantly altered in the conference committee without corresponding changes being made to Title I. Based on the legislative history, it is clear from the level of attention paid to the respective provisions that the requirements in Title II should prevail. Therefore, EPA will require states to make the submissions required by Title II with respect to clean fuel vehicles.

- All areas with a 1980 population of 250,000 or more must adopt clean-fuel vehicle fleet programs within 42 months of enactment. These programs must require that a statutorily mandated percentage of fleet vehicles be clean-fuel vehicles and operate on clean fuels within the area, begining with vehicle models for the year 1998. Light-duty fleet vehicles must also meet the Title II clean-fuel vehicle standards for model year 2001, if available. The programs must require fuel providers to make clean fuels available. The programs must provide for trading and banking of compliance credits, and must provide for the waiver of certain transportation control measures [Sections 182(c)(4) and 246)].

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- Within two years of enactment, California must require that sufficient clean alternative fuel be produced and distributed within the state to support the Title II mandatory clean-fuel vehicle pilot program. Begining in model year 1996, the state must provide for sufficent fuel to allow all clean-fuel vehicles required by the pilot program to operate, to the maximum extent possible, on clean alternative fuels within the state. The state can provide for trading of compliance credits and can prescribe health and safety and vehicle performance specifications [Section 182(c)(4) and 249(c)].

- Any area may opt-in to the California clean-fuel vehicle pilot program by providing incentives for the sale and use of clean-fuel vehicles and clean alternative fuels. The incentives may include a registration fee on non-clean-fuel vehicles, provisions to exempt clean-fuel vehicles from certain transportation controls, or preferential parking for clean-fuel vehicles. Incentives may <u>not</u> include any production or sales mandate for clean-fuel vehicles or clean alternative fuels, and may not apply to fleet vehicles covered by the clean-fuel vehicle fleet program [Sections 182(c)(4) and 249(f)].

- All areas must submit triennial demonstrations to show that vehicle miles travelled, vehicle emissions, and congestion levels are consistent with those projected in the SIP. The first such demonstration is due six years after enactment. If levels are not consistent, the state must develop a transportation control program to reduce emission levels to those consistent with the attainment demonstration within eighteen months. These programs must consist, at a minimum, of measures selected from section 108(f), must ensure adequate access to areas of high concentration without relocating emissions and congestion, and must be developed in accordance with the guidance of the Administrator. Guidance is to be issued within six months of enactment [Section 182(c)(5)].

o Other Requirements

- A "Major" source is defined as one emitting 50 TPY or higher. (See discussion above for general RACT and new-source review requirements for major sources) [Section 182(c) (introductory language)].

- EPA must publish rules for <u>enhanced monitoring</u>; states must then implement a program based on those rules [Section 182(c)(1)].

Notes

- Contingency provisions [Section 182(c)(9)].

f. Severe Areas: Additional SIP Submission Requirements

o Vehicular Requirements

- All areas must adopt enforceable transportation control measures within two years of enactment to offset any growth in vehicle miles traveled and numbers of vehicle trips, and to achieve reductions in mobile source emissions as necessary to comply with the periodic emission reduction requirements of the Act. States should choose from measures listed in Section 108(f) and should ensure adequate access to areas of high population. The state should avoid measures that increase or relocate, rather than reduce, emissions and congestion [Section 182(d)(1)(A)].

- Areas rated severe must adopt employer trip reduction programs to reduce work-related travel. Under the area program, employers of 100 or more employees must implement programs to increase average passenger occupancy per commuting vehicle during rush hours by at least 25% above the average vehicle occupancy rate in the area. Programs must be consistent with EPA guidance, which may specify average occupancy rates for

various locations. States must revise their implementation plans to include these programs within two years of enactment. The revision must require subject employers to submit compliance plans within two years that demonstrate that the employer will be in compliance within an additional two years [Section 182(d)(1)(B)].

o Other Requirements

- A "major" source is defined as one emitting 25 TPY or more. (See discussion above for RACT and new source review requirements applicable to major sources.) [Section 182(d) (introductory language)].

- By December 31, 2000, the state must submit a SIP revision containing provisions for a $5,000 per ton emission penalty [Section 182(d)(3)].

g. Extreme Areas: Additional SIP Submission Requirements

o No waivers are allowed from the 15% or 3% progress requirements [Section 182(e) (introductory language)].

o A "major" source is defined as 10 TPY or more. (See discussion above for RACT and new source review requirements applicable to major sources.) [Section 182(e) (introductory language)].

Notes

- o Electric utility and industrial and commercial boilers that emit 25 TPY of NO_x will be required to use clean fuel or advanced control technology eight years after enactment of the amendments [Section 182(e)(3)].

- o SIP's are authorized to establish traffic control measures to reduce the use of high polluting vehicles during heavy traffic hours [Section 182(e)(4)].

- o Under certain circumstances and in accordance with a specified schedule, EPA is authorized to approve a state attainment demonstration that is based on anticipated new technologies [Section 182(e)(5)].

h. NO_x Requirements

- o SIP requirements for major VOC sources (RACT and NSR) also apply to major NO_x sources [Section 182(f)(1)].

- o SIP requirements for NO_x sources (RACT and NSR) are not applicable if EPA determines that the air quality benefits would be greater in the absence of the NO_x reductions, if the reductions do not contribute to attainment of the ozone standard or, in an ozone transport region, if the reduction would not produce net benefits [Section 182(f)(1) and (2)].

- o EPA, in conjunction with the National Academy of Sciences, will do a study examining the roles of NO_x and VOC emission

reductions, and the extent to which NO_x reductions may be counterproductive in attaining required ozone levels in different areas. The report is due within one year [Section 185B].

- o Petition procedure for EPA to determine non-applicability of NO_x requirements after final EPA study submitted to Congress [Section 182(f)(1)-(3)].

i. Milestones

- o For serious, severe, and extreme areas, beginning six years after enactment and each three years thereafter, the state must determine whether the 15% and 3% progress requirement (milestone) was met [Section 182(g)(1)].

- o The state must demonstrate whether the milestone was met and EPA is to review this demonstration [Section 182(g)(2)].

- o Serious and severe areas that fail to meet milestone may "bump up" to the next classification, implement contingency measures, or adopt an economic incentive program [Section 182(g)(3)].

- o An economic incentive program must be consistent with rules published by EPA and must be sufficient to meet the next milestone [Section 182(g)(4)].

- o An extreme area that fails to meet a milestone must adopt an economic incentive program [Section 182(g)(5)].

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j. Rural Transport Areas

Rural transport areas are defined and subject to marginal area requirements [Section 182(h)].

k. Multi-State Ozone Nonattainment Areas

- o States that share a nonattainment area are required to coordinate SIP's and use photochemical modeling [Section 182(j)(1)].

- o A state that shows that its failure to reach attainment stemmed from actions by another state may be exempt from sanctions [Section 182(j)(2)].

l. Transitional Areas

- o Ozone nonattainment areas that have not violated the NAAQS during 1987-89 are not subject to the requirements of part D until the end of 1991. These areas either become redesignated to attainment, or subject to part D, by 1992, depending on whether air quality has stayed in attainment or has worsened [Section 185A].

m. Ozone Transport

- o On the date of enactment, a northeast ozone transport region was established consisting of eleven states and the District of Columbia. A Commission established as a result of the transport regions reactions shall convene six months after enactment [Section 184(a)].

- o Each state in an ozone transport region must submit a SIP revision that requires the following:

  - Enhanced I & M for MSA's greater than 100,000 [Section 184(b)(1)(A)].

  - RACT on all VOC CTG sources [Section 184(b)(1)(B)].

- o All areas not subject to Stage II under any other provisions are subject to Stage II requirements or their equivalent. EPA must complete a study within three years of enactment to determine control measures capable of achieving reductions comparable to those achieved through Stage II. Within one year of this study's completion, each state within an ozone transport region must revise its SIP to provide for Stage II reductions or comparable measures for marginal and attainment areas [Section 184(b)(2)].

- o The ozone transport commission is authorized to recommend additional control measures. EPA will then take appropriate action, including issuing a SIP call, to require additional control measures [Section 184(c)].

- o EPA is required to set criteria to determine contribution of sources in one area to ozone concentrations in a nonattainment area [Section 184(d)].

Notes

2. CARBON MONOXIDE

a. Classification and Attainment Dates

o General Requirements

- Each nonattainment area is classified at the time of designation (the date of enactment for some areas, 240 days later for others), based on the design value. Attainment dates are keyed to this classification [Section 186(a)(1) and table 1)].

- EPA is required to publish notice in the Federal Register for certain classifications; notice-and-comment procedures are not required and judicial reviews not authorized [Section 186(a)(2)].

- EPA may adjust the classification upward or downward if the area's design value is within 5% of the design value of next higher or lower classification. The adjustment will be used to determine whether the design value should be treated as above 12.7 ppm at the time of classification [Section 186(a)(3)].

- EPA may extend the attainment date for up to two 1-year periods, if certain requirements are met [Section 186(a)(4)].

o New Designations

- Areas initially designated attainment or unclassifiable,

and subsequently redesignated as nonattainment, will be classified and made subject to the same requirements as if they had been initially designated as nonattainment, except that certain deadlines will be extended [Section 186(b)(1)].

o Failure to Attain

- Any moderate area that fails to attain will be reclassified to serious, in accordance with a specified procedure and timetables [Section 186(b)(2)].

- Any moderate area that is reclassified to serious must meet the same requirements as other serious areas, except that submittal deadlines may be adjusted [Section 187(f)].

- Any serious area that fails to attain must implement an economic incentive program and must reduce emissions by at least 5% per year [Section 187(g)].

b. <u>SIP Submittal Requirements: Moderate Areas</u>

o All Moderate Areas

- The state must complete an inventory due two years after enactment [Section 187(a)(1)].

- A periodic inventory is required [Section 187(a)(5)].

- Immediately upon enactment, all areas that already contain, or were required by

Notes

the 1977 Act to have contained, a basic inspection/maintenance (I/M) program must either upgrade this program to meet all of EPA's previous guidance on basic I/M programs, or retain the program now in the plan, if the one in the plan is more stringent [Section 187(a)(4)].

- An attainment demonstration not required [Section 187(a) (flush language at end)].

o Moderate Areas With Design Value Above 12.7 ppm

- Begining two years after enactment, each area with a design value above 12.7 ppm must forecast vehicle miles traveled ("VMT") for each year until the projected attainment date. These forecasts must be updated annually and include estimates of actual VMT in each past year. In addition, plans for these areas must contain contingency measures to take effect automatically if actual VMT levels or updated projections exceed the previously projected levels [Section 187(a)(2)(A) and (3)].

- Denver, Colorado must adopt the transportation offset measures required by Section 182(d)(1)(A) for severe ozone areas. The plan must explain why any measure listed in Section 108(f) was not adopted, what emission reduction measures provide comparable reductions, or why

such reductions are not necessary to attain the CO NAAQS [Section 187(a)(2)(B)].

- All urban areas with a design value greater than 12.7 ppm and with 1980 population of 200,000 or more must adopt enhanced I/M programs consistent with EPA guidance within two years of enactment. These programs must include computerized emission analyzers, certain waiver restrictions, enforcement through vehicle registration denial, and annual centralized testing and inspection [Section 187(a)(6)].

- Within two years of enactment, an attainment demonstration must be submitted, including specific annual reductions as necessary to reach attainment. [Section 187(a)(7)].

c. SIP Submittal Requirements: Serious Areas

o States must make submissions for moderate areas with design value greater than 12.7 ppm [Section 187(b)(2)].

o All areas must adopt the transportation offset measures required by Section 187(a)(2)(B) for Denver, Colorado except that only those areas covered by the clean-fuel vehicle fleet program (with the exception of New York) need to make the required explanations

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with respect to Section 108(f) measures [Section 187(b)(2)].

- When the Administrator determines that any serious area has failed to meet the CO standard by the applicable attainment date, the state must submit a revision to its oxygenated fuels program (described below) within nine months of such determination. The required oxygen content shall be 3.1 percent by weight unless a waiver is obtained [Sections 187(b)(3) and 211(m)].

d. Areas with Significant Stationary Source Emissions

- In any serious area in which stationary sources contribute significantly to CO levels, a state must submit a SIP revision defining "major" stationary source to include all sources emitting more than 50 tons per year [Section 187(c)(1)].

- Any CO area may apply to the Administrator for case-by-case waivers of any requirements pertaining to transportation controls, I/M or oxygenated fuels, where the Administrator determines that mobile sources of CO do not contribute significantly to CO levels [Section 187(c)(2)].

- EPA is required to issue rules determining whether stationary sources contribute significantly to CO levels in an area [Section 187(c)(3)].

e. Fuel Requirements

- o Section 187(b)(3) contains certain requirements for specified serious CO areas. These areas must adopt SIP provisions regulating the oxygen content of gasoline in accordance with the program prescribed in Title II. However, the program prescribed in Title II was significantly altered in conference committee without corresponding changes being made to Title I. Based on the legislative history, it is clear from the level of attention paid to the respective provisions that the requirements in Title II should prevail. Therefore, EPA will require states to make the submissions required by Title II with respect to oxygenated fuels.

- o All areas with a design value of 9.5 ppm or above must submit, within eighteen months, revisions which require that all gasoline sold within the CMSA (or MSA if the area is not located in a CMSA) contain at least 2.7 percent oxygen by weight during that portion of the year in which the area is prone to high CO concentrations. The relevant period during which the program must apply will be determined by the Administrator, and must be at least four months unless the state demonstrates that a shorter period will ensure that no CO exceedances occur outside of that period. For areas subject to this requirement as of enactment, these programs must take effect by November 1,

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1992 [Section 211(m)(1) & (2)].

- The Administrator must waive these requirements in whole or in part if the state demonstrates that such a program would interfere with attainment of any other NAAQS, or if mobile sources do not contribute significantly to CO levels in the area. The Administrator may also delay the effective date of these requirements for one or, if extended, two years, if it is determined (in response to a petition) that there is an inadequate domestic supply or distribution capacity for oxygenated fuels [Section 211(m)(3)].

- Finally, the Administrator will issue guidelines within nine months of enactment to allow the use of marketable credits from the use of gasoline with <u>higher</u> than the required oxygen content to offset use of gasoline with <u>lower</u> than required oxygen content within the same nonattainment area [Section 211(m)(5)].

- All areas with a design value of 16.0 ppm or higher (excluding areas where mobile sources do not contribute significantly to CO exceedances), and with a 1980 population of 250,000 or more, must adopt the clean-fuel vehicle fleet program required by Section 182(c)(4) and Title II for serious ozone areas [Section 244)].

f. CO Milestone

- o Serious areas must demonstrate, by March 31, 1996, that they achieved the annual emissions reductions required by December 31, 1995 (milestone) [Section 187(d)(1)].

- o Procedures are specified for determining milestone [Section 137(d)(2)].

- o If the state fails to meet a milestone, it must adopt are economic incentive program [Section 187(d)(3)].

h. Multi-state CO Nonattainment Areas

- o States that share a CO nonattainment area must coordinate their SIP revisions. If one state fails to demonstrate attainment, it can avoid sanctions if it shows that its failure was attributable to actions of another state [Section 137(3)].

3. PM-10

a. Moderate Areas

- o As discussed above, the areas designated nonattainment at enactment are classified as Moderate areas [Section 188(a)].

  The planning requirements and attainment dates applicable to Moderate areas vary depending on whether the area was designated nonattainment at enactment or sometime thereafter. The focus here

Notes

will be on the requirements applicable to those areas designated nonattainment at enactment.

- o Planning Requirements [Section 189(a), (e)]

  - New Source Review (NSR) Permit Program. A construction/ modification permit program is required for major stationary sources of PM-10 and PM-10 precursors (except where, with respect to the sources of precursors, the sources do not "contribute significantly" to PM-10 levels which exceed the NAAQS [see Section 189(e)]. Note the special definition for "major source" and "major stationary source" that applies in the NSR permit program for Serious areas [Section 189(a)(1)(A)]. See below.

  - States must demonstrate attainment by December 31, 1994, or show that attainment by that date is impracticable [Section 189(a)(1)(B)].

  - The plan must include provisions to ensure RACM, including RACT, is implemented no later than December 10, 1993 [Sections 189(a)(1)(C), 172(c)(1)].

- o Submittal Deadlines, [Section 189(a)(2)(A)]

  - All planning submissions are due by November 15, 1991.

  - Exception: States must submit SIP revisions

containing a Part D NSR Permit Program by no later than June 30, 1992. (For areas designated nonattainment after enactment, SIP revisions including a permit program are due eighteen months after designation [Section 189(a)(2)].

o Attainment Dates

- Dates must be set "as expeditiously as practicable", but no later than December 31, 1994, for Moderate areas designated nonattainment at enactment [Section 188(c)(1)].

- An area is eligible for a maximum of two one-year extensions if it meets the applicable criteria [Section 188(d)].

o Reclassification to Serious

- A Moderate area may be reclassified as serious if either of the following is true:

  EPA determines the area cannot "practicably" attain the NAAQS by the applicable attainment date. (Note that for areas designated nonattainment at enactment, EPA must propose reclassification by June 30, 1991 and go final by December 31, 1991 [Section 188(b)(1).]

  EPA determines the area has failed to attain the

Notes

NAAQS by the applicable attainment date [Section 188(b)(2)].

b. Serious Areas

The planning requirements and attainment dates applicable to Serious areas vary somewhat depending upon whether the area was initially designated nonattainment at enactment or sometime thereafter. The focus here will be on the requirements applicable to those areas designated nonattainment at enactment.

o Planning Requirements

Serious areas must submit SIP's meeting the requirements of Moderate areas as well as each of the following:

- Must demonstrate attainment by December 31, 1991 or show that attainment by that date is impracticable [Section 189(b)(1)(A)].

- Must have provisions to ensure Best Available Control Measures ("BACM") are implemented no later than four years after area is classified as Serious [Section 189(b)(1)(B)].

- Must contain quantitative milestones to be achieved every three years that demonstrate "reasonable further progress" towards attainment, including provisions for demonstrating milestones met. NOTE: While technically this applies to

Moderate areas as well, in the case of Moderate areas designated nonattainment at enactment, the attainment demonstration will satisfy this requirement [Section 189(c)].

o Submittal Deadlines

- An attainment demonstration is due four years after the area is reclassified to Serious. Exception: if the area is reclassified because it failed to attain, then the demonstration is due eighteen months after reclassification [Section 189(b)(2)].

- BACM provisions are due 18 months after the area is reclassified to Serious [Section 189(b)(2)].

o NSR Requirements [Sections 189(b)(3), and 709]

- A special definition of "major source" and "major stationary source" for Serious areas is provided [Section 189(b)(3)]. Thus, the NSR Permit Program for Serious areas includes "any stationary source or group of stationary sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 70 tons per year of PM-10." Section 709 defines stationary source as any source other than motor vehicle internal combustion engines. Taken together these provisions apparently

Notes

subject prescribed burns over 70 TPY to NSR.

o Attainment Dates, [Section 188(c)(2)]

- Dates must be set "as expeditiously as practicable," but no later than December 31, 1991, for areas designated nonattainment at enactment.

- An area is eligible for a maximum of one five-year extension. In order to qualify for an extension, a state must meet all of the criteria set forth in Section 188(e), including a demonstration that "the plan for that area includes the most stringent measures that are included in the implementation plan of any state or are achieved in practice in any state...." The provision lists a number of factors that EPA may consider in deciding whether to grant an extension.

o Failure to Attain

- If a Serious area fails to attain by the applicable date, the state must provide for annual 5% reductions in emissions of PM-10 or PM-10 precursors [Section 189(d)].

c. Waivers

o Any requirement applicable to a Serious area where anthropogenic sources (those associated with human activities) do not "contribute

significantly" to the violation of the NAAQS may be waived. The provision specifically allows for the waiver of a particular attainment date [Section 188(f)].

d. Guidance [Section 190]

o EPA is required to issue guidance on BACM for the following sources:

- Urban fugitive dust
- Emissions from residential wood combustion, and
- Prescribed silvicultural (forest-related) and agricultural burning

As discussed above, RACM is the control standard applicable to Moderate areas and BACM is that applicable to Serious areas. EPA must issue this guidance within 18 months of enactment. In addition, within three years of enactment, EPA must determine whether RACM and BACM guidance will be issued for other source categories.

SPECIAL NOTE: Because RACM guidance is due May 15, 1992, but Moderate areas must submit their SIPs containing RACM by November 15, 1991, EPA will need to issue RACM guidance well before the May 1992 deadline. EPA must provide timely guidance to the states in order to facilitate the states' compliance with the November 1991 deadline for SIP submittal.

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e. Increments [Section 190(f)]

o The Amendments expressly authorize EPA to issue increments for PM-10. Such increments must be of "equal stringency" as those particulate-matter increments currently in effect. Until EPA issues these increments, the existing particulate-matter increments will remain in effect.

C. Required EPA Measures and Guidance--Ozone

1. NEW CONTROL TECHNIQUE GUIDELINES (CTGs)

EPA is to issue eleven new Control Technique Guidelines (CTG's) within three years of enactment [Section 183(a)]. In issuing these guidelines, priority is to be given to those categories which the Administrator considers to make the most significant contribution to ozone in nonattainment areas. As discussed above, states with ozone nonattainment areas classified as moderate, serious, severe or extreme must revise their SIP's to apply RACT requirements to sources covered by the new CTG's by the date EPA specifies for submittal in issuing the new CTG's [Section 182(b)(2)].

2. AEROSPACE, SHIP BUILDING SHIP REPAIR

EPA is to issue CTG's providing for best available control measures for VOC emissions from aerospace coatings and solvents, and VOC and Particular Matter (PM-10) emissions from shipbuilding and ship repair coatings and solvents [Section 183(b)(3) and (4)].

3. ALTERNATIVE CONTROL TECHNIQUES

Within three years of enactment, EPA must issue alternative control techniques documents for VOC's and NO_x sources emitting more than 25 TPY [Section 183(c)].

4. COST-EFFECTIVENESS GUIDANCE

Within one year of enactment, EPA must provide guidance to the states on how to evaluate the cost-effectiveness of controls on stationary sources that contribute to ozone [Section 183(d)].

5. CONSUMER AND COMMERCIAL PRODUCTS

a. Study of Products to Regulate and Timing.

Within three years of enactment, EPA must complete a study of VOC emissions from consumer and commercial products in order to determine their potential to contribute to ozone levels which violate the NAAQS standard. The study will also establish criteria and priorities for regulating the products, based on factors such as the benefits and commercial demand for the products, health or safety functions, emission of highly reactive VOCs, products subject to the most cost-effective controls, and the availability of alternatives of comparable cost. Based on the study, EPA is to regulate products that account for 80% of VOC emissions in ozone nonattainment areas. The products are to be divided into four groups and a group is to be regulated every two years

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following the study [Section 183(e)(2)].

b. Best Available Control Requirements and Economic Incentives.

The regulations require the use of best available controls (BAC) for such products [Section 183(e)(4)(3)(a)]. The BAC controls are the reductions that EPA determines on the basis of technological and economic feasibility, environmental impact and other factors to be achievable through the application of the most effective equipment or other measures. Appropriate measures include reformulation, product substitution, directions for use, consumption and disposal [Section 183(e)(1)(A)].

To carry out this section, EPA may also issue regulations to control or prohibit any activity, including the manufacture and sale of any consumer or commercial product, which results in the emission of VOC's [Section 183(e)(3)(A)].

The regulations may include registration, labeling requirements, self-reporting, limitations and economic incentives, including marketable permits and auction rights [Section 183(e)(5)]. The regulations may exempt health use products for which there is no suitable substitute [183(e)(3)(A).

c. State Role

- o State Regulation: Any state which seeks to propose regulations other than the federal ones is to consult with EPA on whether other states or localities are issuing regulations on the products to be covered. EPA is to establish a clearinghouse of regulations and studies on consumer and commercial products and disseminate the information on request to states and localities [Section 182(e)(9)].

- o State Enforcement: States may develop procedures for implementing and enforcing EPA regulations, and if adequate, EPA is to approve the procedure. This state administration does not preclude federal enforcement of the regulations [Section 183(e)(7)].

- o CTG's. EPA may also issue CTG's in lieu of federal regulations if EPA determines the CTGs will be substantially as effective [Section 183(e)(3)(C)].

6. TANK VESSEL STANDARDS

Within two years of enactment, EPA shall issue RACT standards for emissions from loading and unloading tank vessels. The statute provides for setting the effective date of standards; for the Coast Guard to issue safety regulations; and for preemption of state rules [Section 183(f)].

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7. OZONE DESIGN VALUE STUDY

EPA must study ozone design value methodology [Section 183(g)].

8. NO_x AND VOC STUDY

EPA must study the role of ozone precursors in the formation and control of tropospheric ozone [Section 185B]. After the study is submitted to Congress, petitions for determination of non-applicability of NO_x requirements may be made under Section 182(f).

9. EXISTING CTG's AND CLEARINGHOUSE

EPA is to update existing CTGs, if necessary, within three years [Section 183(b)(1))], and establish a central database to serve as a clearinghouse on control technology [Section 108(h)].

D. New General Requirements

1. REQUIREMENTS FOR ALL AREAS

The Amendments revise section 110(a)(2), which sets out the substantive requirements that all SIP's must include. The following sketches the principal requirements of paragraphs (A) through (M) of the revised Section 110(a)(2):

(A) Include emission limitations and other measures (including economic incentives) necessary to meet the applicable requirements of the Act.

(B) Provide for monitoring and compiling ambient air data.

(C) Provide for enforcement of SIP measures and regulation of modification and construction of stationary sources.

(D) Contain provisions prohibiting sources from interfering with attainment, maintenance, or the PSD program in another state.

(E) Provide assurances that the state has adequate funds and authority to carry out the SIP.

(F) Require the means to monitor, report, and correlate data on emissions from stationary sources.

(G) Provide for authority comparable to Section 303.

(H) Provide for revision of the SIP, when necessary, to account for NAAQS revisions or if EPA issues a SIP call.

(I) Meet the requirements of part D, as applicable.

(J) Meet other specified requirements including part C.

(K) Provide for required modeling.

(L) Require permit fees.

(M) Provide for consultation by local political subdivisions.

2. REQUIREMENTS FOR ALL NONATTAINMENT AREAS

The Amendments add a new subpart 1 of part D which includes requirements generally applicable to all nonattainment areas. This new subpart one includes many of the

requirements currently found in Sections 172 and 173.

a. Definitions

- o The definition of "reasonable further progress" is revised [Section 171(1)].

- o The definition of "nonattainment area" is revised [Section 171(2)].

b. Nonattainment Plan Provisions In General

- o After designating an area as nonattainment, EPA is authorized to classify the area according to specified procedures. However, this provision does not apply to ozone, CO, and PM-10 areas classified under other parts of the Act [Section 172(a)(1)].

- o Attainment dates for primary NAAQS nonattainment areas are to be no later than five years from the date of designation. EPA has authority to extend the attainment date for up to five years. Attainment dates for secondary NAAQS nonattainment areas are to be set as expeditiously as practicable. EPA may grant up to two one-year extensions of the attainment date under certain circumstances. This provision does not apply to nonattainment areas for which attainment dates are assigned under other provisions of subpart D [Section 172(a)(2)].

- o EPA is authorized to set a schedule for required SIP submissions [Section 172(b)].

- o Nonattainment plan provisions must include the following, which are contained in paragraphs (1) to (9) of Section 172(c)):

  - Reasonably available control measures, including RACT, and attainment of the primary NAAQS.

  - RFP.

  - Inventory.

  - Identification and quantification of emissions allowed from construction and operation of new or modified stationary sources.

  - Permits for new and modified major stationary sources.

  - Emission limitations and other measures (including economic incentives) necessary to provide for attainment.

  - Compliance with applicable requirements of Section 110(a)(2).

  - Equivalent modeling, emission inventory, or planning procedures (if authorized by EPA).

  - Contingency measures.

- o SIP revisions submitted in response to a SIP call must

include requirements of 110 and part D [Section 172(d)].

- o Preclusion of relaxation of controls if EPA relaxes a NAAQS [Section 172(e)].

c. Permit Requirements.

- o The offset baseline must be in accordance with EPA regulations, i.e., consistent with assumptions underlying attainment demonstration in SIP [Section 173(a)(1)]. This change endorses current EPA regulations calling for actual emissions baseline where SIP is based on the growth allowance [See 40 CFR 51.165(a)(3)(i)(A).]

- o Use of "old" growth allowances in lieu of source-specific offsets, i.e., those in effect prior to 1990 Amendments, is prohibited in any area under a SIP call [Section 173(b)].

- o New growth allowances are prohibited except in HUD economic development zones [Section 173(a)(1)(B)].

- o Offsets may be obtained from other nonattainment areas of equal or higher classification if emissions from such area contribute to NAAQS violations in the area of the new source [Section 173(c)(1)].

- o Emissions reductions otherwise required under the Act are not creditable as offsets [Section 173(c)(2)].

- o States must submit control technology information from NSR permits to EPA for use in the RACT/BACT/LAER clearinghouse [Section 173(d)].

- o Testing of rocket engines is subject to special alternative offset or emissions fee requirements wherever regular offsets are not available [Section 173(e)].

- o In general, when EPA designates an area as nonattainment, it must establish a schedule for submission of SIP or SIP revisions. The Administrator may give states up to three years to make the necessary submission [Section 172(b)].

d. Planning Procedures

- o Within two years of enactment, all areas must update SIP planning procedures as necessary to identify the designated SIP planning agency and the roles of the various state and local jurisdictions in SIP planning [Section 174(a)].

- o Within two years of enactment, all areas must adopt criteria and procedures, consistent with EPA criteria and procedures defining conformity, to assess whether activities subject to federal support or approval, or Metropolitan Planning Organization approval conform to the SIP [Section 176(c)(5)].

Notes

3. MAINTENANCE PLANS

   a. Maintenance plans, which are required for redesignation to attainment, must provide for maintenance for at least ten years after the redesignation [Section 175A(a)].

   b. Nonattainment area requirements apply until an area is redesignated attainment [Section 175A(c)].

   c. Maintenance plan provisions must contain contingency measures [Section 175A(d)].

E. Transport

1. EPA has authority to establish a transport region if it believes interstate transport from a state contributes significantly to NAAQS violations in another state. Procedures are given for adding and removing states from an established transport region [Section 176A(a)].

2. EPA has authority to establish a transport commission for each transport region. Minimum membership is specified [Section 176A(b)(1)].

3. Procedures for forming and operating such a transport commission are stated [Section 176A(b)(1)(2), 176A(c)].

F. Miscellaneous Requirements

1. Sulfur Dioxide (SO_2), NO_x, LEAD

   a. New SIP submission requirements and attainment dates are given for areas designated

nonattainment for SO_2, NO_x, and lead, including areas designated nonattainment as of the date of enactment [Sections 191 and 192)].

b. For newly designated SO_2, NO_x and lead non-attainment areas, SIP plans or revisions incorporating all Part D NSR permit requirements must be submitted within eighteen months of the designation [Section 191(a)]. States with nonattainment areas for these pollutants that do not have fully approved SIPs must submit SIPs which include the provisions regarding these pollutants within eighteen months of enactment [Section 191(b)].

2. INDIANS

EPA must issue rules within 18 months of enactment stating conditions under which Indian tribes will be treated as states [New Section 301(d)]. The statute sets forth prerequisites for such treatment and specifically authorizes establishment of procedures for approving tribal implementation plans.

3. OTHER

a. Savings Clause.

All rules in effect prior to enactment remain in effect unless specifically revised. No control requirements in effect, or required to be adopted by orders or plans in effect prior to enactment in nonattainment areas, may be modified unless such a modification would ensure

equivalent or greater emission reductions [Section 193].

b. Federal facilities.

Federal facilities are subject to tighter requirements for payment of state penalties and fees [Section 118(a)].

II. EPA ACTION ON SIPS, SANCTIONS, AND FIPS

A. Rulemaking on State Submittals

1. The amended Act revises the procedures for EPA processing of SIP revisions [Section 110(k)].

a. Completeness Review

- o EPA is to issue minimum criteria that SIP submissions must meet before EPA is required to act on them. Criteria are due within nine months of enactment [Section 110(k)(1)(A)].

- o EPA must subsequently determine whether any SIP submission is complete with respect to these criteria within 60 days of its submission. However, in the case of a required submission, this determination must be made no later than six months of the submission due date (regardless of the actual date of submission). Finally, SIP submissions are deemed to be complete six months after submission if EPA fails to make any completeness determination by that date [Section 110(k)(1)(B)].

- o If a SIP submittal is incomplete, the state is treated as having failed to make the required submission for purposes of the sanction provisions of the Act [Section 110(k)(1)(C)].

2. APPROVAL/DISAPPROVAL

   a. If a SIP submittal is complete, EPA must act on the SIP revision within twelve months of the completeness determination [Section 110(k)(2)].

   b. EPA is authorized to approve plans in whole or in part [Section 110(k)(3)], to initiate corrections to prior approvals without a subsequent submission [Section 110(k)(6)], and to conditionally approve SIP revisions based upon the state's commitment to adopt enforceable measures within one year [Section 110(k)(4)]. Such approvals become disapprovals if the commitments are subsequently not met.

3. ACTION ON SIP REVISIONS

   a. Whenever EPA finds that any plan is substantially inadequate to attain or maintain the relevant standard, to adequately mitigate interstate pollutant transport,or to comply with any requirement of the Act, EPA shall require the state to revise the plan to correct such inadequacies. EPA must notify the state and may set reasonable deadlines for state responses up to eighteen months from notification. To the extent EPA determines appropriate, such

SIP calls may subject the area to the requirements that were applicable at the time of original plan submission, with adjusted dates (except for attainment dates), unless the dates have already elapsed [Section 110(k)(5)].

b. EPA may not approve SIP revisions that would interfere with any applicable requirement concerning attainment or reasonable further progress, or any other applicable requirement of the Act [Section 110(l)].

B. Sanctions

1. The Amendments impose two types of sanctions:

   a. Highway sanctions limit projects or grants under Title 23 of the U.S. Code, subject to a decision by the Secretary of Transportation that the principal purpose of project or grant is not improvement in safety to resolve a demonstrated safety problem. Eight other exceptions are provided, including grants for public transportation, high occupancy vehicle lanes or roads, and programs that would help improve air quality [Section 179(b)(1)].

   b. New or modified sources must offset their increased emissions by a ratio of 2 to 1 [Section 179(b)(2)].

2. Sanctions are imposed on nonattainment areas if the state:

   - fails to submit part or all of a Part D SIP, Part D SIP

revision, or response to a finding of SIP inadequacy under Section 110(k)(5);

- fails to implement a Part D SIP; or

- fails to receive EPA approval of a Part D SIP submission or a submission required in response to a SIP call [Section 179(a)(1)-(4)].

3. If the state does not correct the problem within eighteen months after it is notified of the inadequacy, EPA must impose one sanction (both if lack of good faith at eighteen months). If the problem is not corrected within six months (i.e., twenty four-month mark), both sanctions will apply. The sanction(s) apply until EPA determines the state has cured the inadequacy. In addition to the above sanctions, EPA may withhold all or part of the grants issued for support of state air programs under Section 105 [Section 179(a)].

4. Sanctions may be imposed on any nonattainment or attainment area at any time EPA determines that any plan or plan item does not meet the requirements of the Act. Under criteria to be developed by EPA, for the first twenty-four months the sanctions may apply only to the political subdivision(s) that are principally responsible for the problem [Section 110(m)].

5. New subsection 110(n)(3) retains any <u>construction ban</u> on stationary sources in effect at the time of enactment due to a state's failure to adopt (1) a NSR permit program under Section 172(b)(6), or (2)

Notes

provisions regarding the attainment of the primary NAAQS for SOx.

C. Federal Implementation Plans (FIPS)

1. EPA must issue a Federal Implementation Plan (FIP) within two years after finding that a state has failed to make any required submission, determining that any submission is incomplete, or disapproving any submission in whole or in part, unless the state submits a plan, and EPA approves it, before the FIP is issued [Section 110(c)(1)].

2. A FIP can fill all or a portion of a gap in a SIP and correct all or a portion of a SIP deficiency. A FIP must include enforceable emission limitations or other control techniques to provide, in conjunction with other SIP measures, for attainment of the relevant NAAQS [Section 302(y)].

SELECTED SIP-RELATED PROVISIONS IN OTHER TITLES

I. VISIBILITY PROVISIONS, SECTION 169B (TITLE VIII)

The 1977 Clean Air Act Amendments established as a national goal the remedying of any existing, and the prevention of any future, visibility impairment in Federal Class I areas [Section 169A(a)(1)]. EPA was required to issue regulations assuring "reasonable progress" towards these goals [Section 169A(a)(4)]. EPA's visibility protection program to date has focused on the impacts of impairment readily attributable to single sources. However, this so-called "plume blight" is only a relatively minor problem. The new provisions are intended to improve EPA's regional modeling tools regarding "regional haze," i.e., impairment from multiple sources that degrades visibility over large areas. The end result of the new Amendments may be that regional haze regulations are issued within several years.

A. Studies, Section 169B(a)

EPA, in conjunction with the National Park Service and other federal agencies, is required to conduct research to identify sources and source regions where visibility is impaired, as well as regions providing clean air for Class I areas.

1. Eight million dollars per year for five years is authorized to conduct the research.

2. Interim findings about sources of visibility impairment and clean air for Class I areas are due three years after enactment.

Notes

B. Impacts of Other Provisions, 169B(b)

1. EPA is required to assess visibility improvements in Class I areas likely to result from implementation of other provisions of the Amendments. This is due within two years of enactment.

2. EPA must assess actual visibility improvements from other provisions every five years thereafter.

C. Establishment of Transport Regions and Commissions, Section 169B(c)

1. TRANSPORT REGIONS [SECTION 169B(c)(1)]

   a. The Administrator may establish a visibility transport region if he or she has reason to believe that interstate transport of air pollutants from one state may "contribute significantly" to visibility impairment in Class I areas or in other "affected" states.

   b. The Administrator may establish such a region on EPA's own initiative or upon petition from at least two affected states.

   c. The Transport Region must include the contributing and affected states. Provision is made for adding or removing states.

2. TRANSPORT COMMISSION [SECTION 169B(c)(2)]

   a. EPA is required to establish a visibility transport commission to correspond with each transport region.

   b. Membership includes the Governor of each state in the region, the

Administrator, and the representative of the federal land manager for each Class I area in the region.

o Duties of the Commissions [Section 169B(d)]

- To assess information about adverse visibility impacts from potential emissions in the transport region.

- To issue a report to EPA within four years recommending remedial measures. This report must, at a minimum, address:

  Establishment of "clean air corridors" (areas subject to additional restrictions on emission increases in order to protect visibility in affected Class I areas).

  Imposition of part D requirements (affecting siting and construction of new or modification of existing stationary sources).

  Promulgation of regulations setting forth long range strategies to address regional haze.

o EPA's Regulatory Responsibilities [Section 169B(e)]

- Within 18 months of receiving the report from the visibility transport commission, EPA shall, considering the visibility source studies (above) and the commission's report, "carry out" the "regulatory

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responsibilities under section 169A" (the pre-existing provisions pertaining to visibility protection). Affected states must comply with such regulations by revising their implementation plans within 12 months.

3. GRAND CANYON VISIBILITY TRANSPORT COMMISSION [SECTION 169(f)]

Within one year of enactment, EPA is required to establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park.

II. SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRON-MENTAL COMPLIANCE ASSISTANCE PROGRAM (TITLE V --SECTION 507)

A. SIP Revisions

States are to revise their SIP's within two years to provide for a small business assistance program to collect information on compliance methods to aid in determining applicable requirements and to provide for other measures as required under Section 507.

B. Ombudsman and Compliance Advisory Panel

The state is to provide for a Small Business Ombudsman and establish a Compliance Advisory Panel with members selected by the Governor, the legislature, and state agency responsible for air pollution permits.

C. EPA Activities

EPA is to establish a small business assistance program and provide guidance to the states within nine months. EPA is to consider the size, type, and technical capabilities of small business sources in developing CTG's [Section 507(h)].

TITLE III: HAZARDOUS AIR POLLUTANTS

SUMMARY: Title III amends Section 112 of the Clean Air Act to require that 189 listed hazardous air pollutants be regulated over the next ten years. EPA must create a list of all source categories emitting certain levels of these pollutants, then devise technology-based standards for each source category in phases over the next ten years. Eight years after each standard is published, EPA must assess the remaining level of risk for that source category and impose additional requirements, if risk remains unacceptable. Title III also creates a system for prevention of accidental releases and requires control of emissions from minicipal waste combusters.

Notes

I. GENERAL PROVISIONS

A. Definitions

The statute includes definitions of "major" and "area" sources, and what constitutes a "new" or "modified" source [Section 112(a)].

B. Lists

1. POLLUTANT LIST

The statute provides an initial list of 189 pollutants, all of which must be regulated within ten years. EPA must periodically review and revise this list. Beginning six months after enactment, any person may petition EPA to modify the list. EPA must respond to such petitions within eighteen months [Section 112(b)].

2. SOURCE CATEGORY LIST

Within twelve months of enactment EPA must publish a list of all categories of major sources (a stationary source that emits ten tons per year of a single listed pollutant or 25 tons per year of pollutants in any combination) and area sources (other stationary sources). The list must be revised

at least every eight years. Within five years after enactment, EPA must ensure that the list includes area sources that account for 90% of emissions of the 30 pollutants judged to present the greatest urban health threat [Section 112(c)].

II. EMISSION STANDARDS

A. "MACT" Standards

Maximum Achievable Control Technology (MACT) standards are applicable to both new and existing sources within the category to which the standard applies. Emission standards must require the maximum degree of reduction (or elimination) possible, using applicable technologies or procedures, while also considering cost, energy requirements, and "nonair" health and environmental impacts [Section 112(d)(2)].

1. NEW SOURCES

   Standards for new sources must be no less stringent than the level of emission control already achieved in practice by the best controlled similar source [Section 112(d)(3)].

2. EXISTING SOURCES

   Standards must be no less stringent than those for the best performing 12% of existing sources (excluding LAER) in the category (best performing 5 sources in categories with fewer than 30 sources) [Section 112(d)(3)].

3. AREA SOURCES

   These sources may be regulated with Generally Available Control Technology (GACT) in lieu of Maximum Achievable Control Technology (MACT) [Section 112(d)(5)].

Notes

4. COKE OVENS

Standards for coke ovens must be established by December 31, 1992 and must be at least as stringent as the minimum levels already set by statute [Section 112(d)(8)].

5. SCHEDULE

Within two years, at least forty categories must be regulated. Coke oven emission standards must be set by December 31, 1992. Within four years, 25% of categories must be regulated; 50% within seven years; and 100% within ten years [Section 112(e)].

6. REVISION OF STANDARDS

The standards must be reviewed and revised as necessary every eight years [Section 112(d)(6)].

B. Health-Based Standards

If Congress takes no further action, EPA must promulgate health-based standards within eight years after each MACT standard is set, whenever standards are needed to protect public health with an ample margin of safety or to prevent adverse environmental effect. Cost, energy, and other relevant factors must be considered. [Section 112(f)].

1. If MACT standards for carcinogens do not reduce the lifetime excess cancer risk for the most exposed individual to less than 10^{-6}, EPA must promulgate health-based standards.

2. Standards are considered effective upon publication with a 90-day grace period before compliance for existing sources. If needed, the

Administrator may grant an existing source a two year waiver required for installation of controls [Section 112(f)(3) and (4)].

3. Health based standards are not required for area sources applying GACT [Section 112(f)(5)].

III. MODIFICATIONS

A. Offsets

1. If a major source makes a physical or operational change that results in more than "de minimis" increase in emissions of a Hazardous Air Pollutant (HAP), this is not considered a modification if the increase is offset by an equal or greater decrease in a more hazardous HAP [Section 112(g)(1)].

2. EPA is to issue guidance identifying the relative hazard of the listed HAP's [Section 112(g)(1)(B)].

B. Modification

After the effective date of a Title V state permit program, a major source may not be modified unless it will meet the applicable MACT for existing sources. If there is no MACT standard, the determination is to be made on a case-by-case basis [Section 112(g)(2)].

C. Construction, Reconstruction

After the effective date of a Title V state permit program, a major source may not be constructed or reconstructed unless the new source MACT will be met. If there is no MACT the determination will be made case-by-case [Section 112(g)(2)].

Notes

IV. WORK PRACTICE STANDARDS

A. In General

If EPA judges that it is not feasible to prescribe or enforce an emission standard for a HAP, EPA may require a specified design, equipment, work practice, or operational standard (or some combination) [Section 112(h)(1)].

B. Infeasibility

If an HAP cannot be emitted through the intended collection device, or if emission measurement is not practicable, a numerical emission standard is deemed infeasible [Section 112(h)(2)].

C. Alternative Standard

EPA may permit use of alternative methods if emission reductions are shown to be at least equivalent to those achieved by work practice standards [Section 112(h)(3)].

V. COMPLIANCE SCHEDULE

A. New Sources

1. MACT standards and health-based standards must be complied with immediately [Section 112(i)(1)].

2. New sources which began construction in the interval between the proposal of a standard and the adoption of a more stringent one, are not required to comply with the final standard until three years after promulgation provided that in the intervening three year period the source complies with the proposed standard [Section 112(i)(2)].

B. Existing Sources

Compliance is required within three years of the date of the applicable standard [Section 112(i)(3)].

The Administrator or State may grant a one year extension for installation of controls and an additional three years to cover mining waste [Section 112(i)(3)(B)].

For health-based standards, compliance must be achieved within ninety days, with a possible two year waiver [Section 112(f)(4)].

(Note - this appears inconsistent with 112(i)(3) which was to cover both 112(d) and 112(f)).

C. Exceptions

1. EARLY REDUCTION

   An existing source achieving 90% HAP reduction may receive a six year extension of the MACT compliance deadline [Section 112(i)(5)].

2. BACT, LAER

   An existing source that installed BACT or technology required to meet LAER prior to promulgation of a standard shall not have to comply with the standard until five years after such installation or reduction [Section 112(i)(6)].

D. New Source Extension

New sources commencing construction after proposal of MACT standards, but before proposal of health-based standards, shall not have to comply with the health-based standards until

ten years after construction commenced [Section 112(i)(7)].

E. Presidential Exemption

The President may grant exemption from any standard for two years, if the President determines that necessary technology is unavailable or that national security interests warrant this action. The exemption is renewable [Section 112(i)(4)].

G. Coke Ovens

Ovens meeting specific requirements will be granted an extension from health-based standards until January 1, 2020 [Section 112(i)(8)].

VI. PERMITS

A. Applicability

The terms of this subsection, "Equivalent Emission Limitation by Permit," apply in each state beginning on the effective date of the state permit program, (State permit programs are described in Title V) [Section 112(j)(1)].

B. Failure to Set MACT Standard

1. If EPA fails to promulgate a MACT standard on schedule, major sources in that category must apply for permits, beginning eighteen months after the date when the standard was due. These applications will be reviewed under Title V [Section 112(j)(2), and (3)].

2. Permits issued in the absence of an MACT standard must contain emission limits determined on a case-by-case basis to be equivalent to what MACT

would have been [Section 112(j)(5)].

3. If an MACT standard is set <u>before</u> the permit is issued, the permit must reflect the MACT standard [Section 112(j)(6)].

VII. AREA SOURCES

A. Purpose

The purpose of the Area Source Program is to achieve sufficient emission reductions from area sources to result in a 75% reduction in the incidence of cancer caused by these sources [Section 112(k)(1)].

B. Research

EPA is required to conduct a research program focusing on the sources of hazardous air pollution in urban areas.

C. National Strategy

1. Within five years of enactment, EPA must submit to Congress a strategy for controlling urban air toxic emissions [Section 112(k)(3)].

2. This strategy will identify at least the 30 HAP's held to present the greatest urban health threat. It must also identify source categories that emit these pollutants that are subject to regulation. EPA must ensure that the sources that account for 90% of the aggregate emissions of these 30 HAP's are subject to standards.

3. The strategy must be implemented within nine years of enactment of this legislation.

Notes

VIII. STATE PROGRAMS

A. Requirements

States may seek delegation of authority to implement and enforce HAP control requirements and accidental release provisions. Any delegated program must be at least as stringent as the federal requirements [Section 112(l)(1)].

B. Guidance

EPA must issue guidance to help states develop their own programs within twelve months of enactment [Section 112(l)(2)].

C. Standard Enforcement

EPA retains the authority to enforce any applicable emission standard under this section [Section 112(l)(7)].

D. Clearinghouse

EPA must maintain a clearinghouse for technical assistance to state and local agencies (and others on a cost recovery basis) [Section 112(l)(3)].

E. Grants

EPA may make grants to states to assist them in implementing their control programs [Section 112(l)(4)].

F. Withdrawing Approval

EPA must approve or disapprove a state program within 180 days from the time the program plan is submitted. If a hearing shows that the state program is not being administered in accordance with the guidance, EPA is to withdraw its approval [Section 112(l)(5) and (6)].

IX. GREAT LAKES AND COASTAL WATERS

A. Assess HAP Deposition

1. EPA (in cooperation with the Department of Commerce) is required to assess atmospheric deposition of HAP's into the Great Lakes, Chesapeake Bay, Lake Champlain, and coastal waters [Section 112(m)(1)].

2. Monitoring is to be conducted in the above listed areas [Section 112(m)(2)-(4)].

B. Reporting

Within three years of enactment, then biannually thereafter, EPA must report the results of monitoring and studies to Congress [Section 112(m)(5)].

C. Other Regulations

Within five years of enactment, EPA must have in place any further regulations needed to prevent serious adverse human health effects and serious or widespread environmental effects [Section 112(m)(6)].

X. REPORTS AND STUDIES

A. Electric Utilities

EPA must report to Congress within three years on health hazards from HAP emissions. If this study shows regulation of HAP emissions from utilities is warranted, EPA is required to set the necessary standards [Section 112(n)(1)].

B. Mercury

1. Within four years of enactment, EPA must report to Congress on the results of a study of mercury

Notes

emissions from electric utilities, MWC's and other sources.

2. Within three years, NIEHS is to report to Congress on the recommended threshold level for mercury.

C. Coke Ovens

EPA and DOE must conduct a six year study to assess and assist in development of controls. EPA and DOE may fund up to 50% of programs to develop new technologies [Section 112(n)(2)].

D. Publicly Owned Treatment Works (POTW's)

EPA may conduct studies with POTW operators to identify HAP's and control measures [Section 112(n)(3)].

E. Oil and Gas Wells

Emissions are not to be aggregated in making the "major source" determination, and can only be listed as area sources in urban areas with populations of one million or more, where they present more than a negligible risk [Section 112(n)(4)].

F. Hydrogen Sulfide

EPA must assess the public health and environmental hazard of hydrogen sulfide from extraction of oil and natural gas, and report to Congress within twenty-four months of enactment [Section 112(n)(5)].

G. Hydrofluoric Acid

EPA must study the hazards of hydrofluric acid and report to Congress in two years [Section 112(n)(6)].

H. National Academy of Sciences (NAS) Study

NAS will conduct a study of risk assessment methodology. EPA is to assist in data collection. NAS is required to report results to EPA and Congress within thirty months [Section 112(o)].

EPA must consider the NAS study in revising the Guidelines for Carcinogenic Risk Assessment (which must be done before health-based standards are set) [Section 112(o)(7)].

X. REPORT TO CONGRESS

By January 15, 1993, then every three years, EPA must report to Congress on its progress in implementing Section 112 [Section 112(s)].

XI. SAVINGS PROVISION

A. Pre-Existing Standards

1. Standards in effect before enactment remain in effect unless they are amended by procedures described in this section. These pre-existing standards are subject to review within ten years [Section 112(q)].

2. If a petition for review was filed before November 15, 1990, the existing standard should be upheld, if it complies with old Section 112.

B. Radionuclide Emissions

No standards shall be issued for radionuclide emissions from elemental phosphorous plants, phosphogypsum stacks, or grate calcination elemental phosphorous plants under the amendments. Section 112, as in effect

prior to amendment shall continue to apply to these emissions [Section 112(q)].

XII. PREVENTION OF ACCIDENTAL RELEASES

A. List of Substances

1. Within two years, EPA must issue an initial list of 100 substances of particular concern in regard to accidental release. Sixteen statistically listed pollutants must be included in this list. The list must be revised at least every five years [Section 112(r)(3)].

2. EPA must establish threshold quantities for listed substances [Section 112(r)(5)].

B. Research

EPA must establish a long-term research program on hazard assessment.

C. Chemical Safety Board

1. An independent five-member board is to be appointed by the President. The Chemical Safety Board will investigate accidental releases, report to Congress, and establish regulations for reporting accidental releases [Section 112(r)(6)].

2. The Board must coordinate its activities with OSHA and the NTSB.

3. Within eighteen months, the Board must submit a report to EPA on the use of hazard assessments and recommend a list of extremely hazardous substances for which hazard assessments would be appropriate [Section 112(r)(6)(H)].

4. The President has stated that he believes that the Board's rulemaking and enforcement authority (which are Executive branch authorities) and the restrictions on the President's right to remove Board members are unconstitutional. The President is asking that curative legislation be introduced next year.

D. Risk Management Plans

1. REPORT TO EPA AND THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA)

   Within two years, the Chemical Safety Board must report to EPA and OSHA recommending regulations for preparation of risk management plans, and for prevention and mitigation of accidental releases. EPA is directed to consider these recommendations before issuing accidental release regulations [Section 112(r)(6)(K)].

2. REPORT TO CONGRESS AND THE PRESIDENT

   The Board must report annually to Congress and the President.

E. Accident Prevention

1. Within three years, EPA must issue regulations and guidance to prevent accidental releases from stationary sources. Regulations become applicable three years after they are promulgated [Section 112(r)(7)].

2. The regulations must require stationary sources to implement risk management plans, including hazard assessments and accidental release prevention. EPA must issue guidance on how to develop risk management plans and establish an auditing system [Section 112(r)(7)].

Notes

3. After the effective date of the regulations, it will be unlawful to operate a stationary source subject to the regulations in violation of the regulations [Section 112(r)(7)(E)].

F. Order Authority

If EPA determines that an actual or threatened accidental release poses an "imminent and substantial" endangerment to human health or welfare, or the environment, EPA may seek federal court relief. EPA may also issue orders necessary to protect human health [Section 112(r)(9)].

G. Chemical Process Safety Management

1. Within one year of enactment, DOL (in coordination with EPA) must issue a standard to protect employees from hazards associated with accidental releases.

2. The standard must include a list of highly hazardous chemicals [Section 304 of the Amendments].

XIII. RISK ASSESSMENT AND MANAGEMENT COMMISSION

A ten-member commission will be appointed by the President and Congress. This Risk Assessment and Management Commission will begin proceedings within eighteen months of enactment. The Commission will publish a report for public comment within thrity-six months, and submit a final report to Congress and the President within forty-two months of enactment [Section 303 of the Amendments].

XIV. SOLID WASTE COMBUSTION

A. New Source Performance Standards

EPA must establish performance standards for solid waste incinerations units (including guidelines).

1. Standards must be issued for municipal units greater than 250 tons/day within one year. Smaller municipal units must be regulated within two years. Commercial and industrial units must be regulated within four years. A schedule for regulating other units must be published within eighteen months [Section 129(a)(1)].

2. These standards must reflect the maximum degree of emission reduction for eleven specified pollutants considered achievable by EPA, considering costs [Section 129(a)(2) and (4)].

3. What EPA determines to be achievable for new units must not be less stringent than controls achieved in practice by best controlled similar unit. For existing units, what is deemed achievable may be less stringent than for new units, but the standard must be no less stringent than the average emissions limitations achieved by the best performing 12% of units (excluding LAER) [Section 129(a)(2)].

4. The standards must be reviewed within five years of promulgation, and every five years thereafter [Section 129(a)(5)].

B. Existing Solid Waste Incinerator Units

1. The NSPS shall include guidelines.

Notes

2. States must submit implementation plans within one year, and provide for compliance within three years of approval of the state plan (but not later than five years after the guideline is issued) [Section 129(b)].

3. If a state does not submit an implementation plan, EPA must implement and enforce a federal one. Federal plans must assure compliance within five years after guidance is issued [Section 129(b)(3)].

C. Other Requirements

1. EPA must issue regulations requiring monitoring of solid waste incinerator emissions [Section 129(c)].

2. Within twenty-four months of enactment, EPA must establish a Model State Training and Certification Program. Beginning thirty-six months after performance standards and guidelines are set, it will become unlawful to operate a unit if the person who controls emissions has not completed an acceptable training program [Section 129(d)].

D. Permits

1. Thirty-six months after promulgation of the performance standard or the effective date of a permit program under Title V, whichever is later, all solid waste incineration units must have permits under Title V.

2. Permits for MWC's are to be issued for up to twelve years, and must be reviewed every five years [Section 129(e)].

E. Effective Date for Performance Standards

Performance standards for new solid waste incineration units become effective six months after they are promulgated. Performance standards for existing units shall be effective as expeditiously as practicable following approval of a state plan, but in no event later than three years after state plan approval, or five years after guidelines are issued (whichever is earlier).

F. Ash Management

For two years after enactment, ash from solid waste incineration units burning municipal waste will not be regulated by EPA under the Solid Waste Disposal Act [Section 306 of the Amendments].

TITLE IV: ACID RAIN

SUMMARY: Through a system of allowances for sulfur dioxide emissions for utilities, as well as requirements intended to reduce nitrous oxide emissions from boilers, Title IV is designed to achieve the following:

1. A 10 million ton reduction in SO_2 emissions from 1980 levels, primarily from utilities.

2. A cap on annual utility SO_2 emissions at approximately 8.9 million tons by 2000 [Section 403(a)].

3. A reduction in NO_x emissions by approximately two million tons from 1980 levels.

Notes

I. OVERALL STRUCTURE OF TITLE

A. General Provisions

Title IV sets forth the following programs and procedures to achieve the goals cited above:

1. A market-based system of allowances for SO_2 emissions [Section 403].

2. Incentives for the use of clean coal technology [Section 409, 415].

3. Incentives to encourage energy conservation measures and increased use of renewable energy sources [Section 404(f)].

4. Enforcement through a permit system [Section 408].

5. Penalties and offset requirements for noncompliance [Section 411].

6. NO_x emissions limitations based on low-burner technology.

B. Entities Covered

Existing utility units greater than 25 MW [Section 402(8)], new units [Section 403(e)], some cogenerators [Section 402(17)], and other units or process sources that elect into the system [Section 410].

C. Phases I & II

SO_2 emission reductions are achieved in two phases:

1. In Phase I, beginning in 1995, the 110 biggest and dirtiest utilities must reduce SO_2 emissions down to 2.5 lb/mmBtu times their average annual 1985 - 1987 energy usage (baseline) [Section 404].

2. In Phase II, beginning in the year 2000, all existing units greater than 25MW must reduce SO_2 emissions to 1.2 lb/mmBtu times their baseline [Section 405].

D. Reports and Studies

A number of reports and studies on acid deposition are required in other sections of Title IV [separate Sections 404-6, 408-11].

II. DETAILED DESCRIPTION

A. Allowances [Section 403]

1. Each allowance permits the holder to emit one ton of SO_2 [Section 402(3)].

2. All accounting is done at the end of the year [Section 403(d)(2)].

Notes

3. An allowance is not a property right [Section 403(f)].

4. Allowances are freely marketable [Section 403(b)].

5. An allowance tracking system is established to issue, record, and track allowances for trading and compliance purposes [Section 403(d)].

6. Allowances will be allocated to existing utility units in two phases based on prescribed emission rates and the utility's baseline fuel consumption [Sections 404 and 405].

7. Reserves are created to provide bonuses and incentives to different groups of utility units [Sections 404 & 405].

8. New units are not allocated allowances, but must buy into the system beginning in 2000 [Section 403(e)].

9. Entities not covered by Title IV may elect into the allowance system [Section 410].

B. Phase I [Section 404]

1. Allowances will be issued to 110 units (100MW or greater, and with emission rates greater than 2.5 lb/mmBtu), as listed in Table A. (Table A lists specific plant names and their phase I allowances; it is found on H13161-2 of the Congressional Record.)

2. Requirements must be met by 1995, unless a unit qualifies for an extension (discussed below). A

reserve of up to 3.5 million allowances is established [Section 404(a)].

3. An extra 200,000 allowances will be allocated each year for each unit listed in Table A that is located in Illinois, Indiana or Ohio [Section 404(a)(3)].

C. Phase II [Section 405]

1. Beginning in 2000, all existing utility units greater than 25 MW will be allocated allowances based on an emission rate of 1.2 lb/mmBtu times the unit's baseline fuel consumption.

   Lists of basic Phase II allowance allocations are to be published well in advance of Phase II [Section 403(a)].

2. Cleaner plants may be allocated 20% more allowances than would result from this formula [Section 406].

3. In addition, many categories of special allowances are described. (A reserve is to be established of 5.3 million allowances). These are listed in Subsections 405(b) - (j).

4. Fifty thousand bonus allowances will be allocated annually to plants that made reductions pursuant to Table A and that are located in ten midwestern, Appalachian and southern states [Section 405(a)(3)].

D. Incentive Programs

Under these programs, additional allowances and/or extensions of

compliance dates are awarded for the following:

1. Phase I units employing qualifying Phase I technology receive a 2-year extension plus bonus allowances. To qualify, a unit must have a continuous emission reduction system achieving a 90% reduction in SO_2 emissions compared to emissions from untreated fuels [Section 404(d)].

2. Utilities that use energy conservation measures and renewable energy in Phase I may receive one allowance for each ton of SO_2 avoided [Section 404(f)&(g)].

3. For repowering with qualifying clean coal technology, utilities may receive a 4-year extension [Section 409]. Technologies are listed in Section 402(12).

4. In addition, certain clean coal technology demonstration projects, defined in Section 415(a), may receive exemptions from various new source review and nonattainment requirements [Section 415].

E. Auctions and Sales [Section 416]

1. SALES

   a. Advance sales begin in 1993 and spot sales in 2000 [Section 416(c)].

   b. A special reserve of allowances is established [Section 416(b)].

   c. The price is $1,500 per allowance, adjusted for inflation [Section 416(c)].

d. IPP's may receive a written guarantee of the availability of allowances through direct sales, and may purchase allowances first [Section 416(c)(3)-(5)].

e. Proceeds are distributed pro-rata to owners or operators of affected units from which allowances were withheld. Leftover allowances will be transferred to an account for auction [Section 416(6)(b)].

f. If less than 20% of allowances available for sale will be actually sold in two consecutive years, sales are terminated [Section 416(c)(7)].

2. AUCTIONS

a. Advance and spot auctions begin in 1993. Spot auction allowances for use begin in 1995 [Section 416(d)]. A special reserve of allowances will be established [Section 416(b)].

b. Proceeds will be distributed on a pro-rata basis, along with leftover allowances [Section 416(d)(3)].

c. The Administrator is to record the results of each auction [Section 416(d)(5)].

d. The Administrator may terminate auctions if less than 20% of allowances are sold in three consecutive years after 2002 [Section 416(f)].

e. The Administrator may, by rulemaking, decrease the number of allowances withheld to be

Notes

offered sold at auctions or sales [Section 416(e)].

F. NO_x Program [Section 407]

1. The nitrous oxide program uses a strategy based on emission limitations, not allowances [Section 407(b)].

2. Rates are established based, in part, on the availability of low NO_x burner technology and, in part, on the level of reduction achievable through retrofit application of the best system of continuous emission reduction [Section 407(b)].

3. Emissions reduction occurs in two stages corresponding to Phase I & II [Section 407(b)].

4. EPA is also required to establish a new NO_x NSPS for utility boilers [Section 407(c)].

G. Permits and Compliance [Section 408]

1. During Phase I, a separate federal permitting system is established [Section 408(c)].

2. During Phase II, state permitting systems are to be established under Title V [Section 408(d)].

3. Sources must submit compliance plans with their permit applications [Section 408(c)]. Plans will vary in detail depending on strategy of compliance.

4. Excess emissions will incur a penalty of $2000 per ton. For SO_2, an emissions offset requirement also applies [Section 411].

H. Reports and Studies

Several reports and studies are required. These include:

1. A report on the feasibility and effectiveness of acid deposition standard, due within three years [Section 404].

2. The creation of a National Acid Lakes Registry within one year [Section 405].

3. An inventory of SO_2 emissions from industrial sources and likely trends, by January 1, 1995, and every five years thereafter [Section 406]. (Note that a 5.6 million ton cap is set for SO_2 emissions).

4. Reports on the acid rain program in Canada, by January 1, 1994, January 1, 1999, and January 1, 1995 [Section 408].

5. A report on clean coal technologies export programs, due within 1 year [Section 409].

6. Acid rain studies to be conducted by the Fish and Wildlife Service [Sections 410 and 411].

7. A study on interpollutant (SO_2/NO_x) trading, due by January 1, 1994 [Section 403(c)].

III. IMPLEMENTATION ISSUES

A. Deadlines for Regulations and Reports/Studies

Note: the majority of regulations are due in eighteen months.

Notes

B. Calculation and Issuance of Allowances

C. Tracking of Allowances

D. Review of Compliance Plans

E. Coordination with Permit System and with States

F. Continuous Emission Monitoring

TITLE V: OPERATING PERMITS

SUMMARY: The purpose of the operating permits program is to ensure compliance with all applicable requirements of the Clean Air Act and to enhance EPA's ability to enforce the Act. Air pollution sources subject to the program must obtain an operating permit; states must develop and implement the program; and EPA must issue permit program regulations, review each state's proposed program, and oversee the state's efforts to implement any approved program. EPA must also develop and implement a federal permit program when a state fails to adopt and implement its own program.

I. GENERAL PROVISIONS

Notes

States are to develop the permitting program with EPA oversight. See Sections 501(4), 502(d)(1) and 302(b).

A. EPA Permit Program Regulations

Within one year of enactment of the Clean Air Act Amendments of 1990 ("CAAA"), EPA must publish regulations establishing the minimum elements of a permit program [Section 502(b)].

B. State Program Development

Within three years of enactment of the CAAA (two years after EPA is obligated to issue its permit program regulations), the Governor of each state shall submit to EPA a permit program and an attorney's opinion on the program's eligibility [Section 502(d)(1)].

C. EPA Review of Program Submittals

Within one year after receiving the state's program, EPA shall approve or disapprove it, in whole or in part. If EPA disapproves the program, or any part of it, the state then has 180 days from the notice of disapproval to

revise and resubmit the program [Section 502(d)(1)].

D. Partial Permit Programs

EPA may not approve a partial permit program unless, at a minimum, it assures compliance with certain stated provisions in the Act. See Section 502(f).

E. Interim Approval

EPA may grant interim approval for up to two years to a program or partial program that is not fully approvable but that "substantially meets" the requirements of Title V [Section 502(g) and (d)(2)-(3)].

F. EPA Sanctions and Federal Programs

1. FAILURE TO SUBMIT AN APPROVAL PROGRAM

   EPA must apply sanctions to a state where the Governor has not submitted a program within eighteen months after the deadline for submittal, or where eighteen months have passed since EPA disapproved the program in whole or in part [Section 502(d)(2)(B)]. The sanctions are the same as those in Title I [See Section 179(b)].

   If the state has no approved program two years after the date required for submission of the program, EPA must establish, administer, and enforce a Federal permit program [Section 502(d)(3)].

2. FAILURE TO IMPLEMENT A PROGRAM

   If EPA determines that a state has failed to administer and enforce its program eighteen months after notice

to the state, EPA must apply the same sanctions as required for a failure to submit an approvable program [Section 502(i)(2)]. EPA must establish, administer, and enforce a Federal permit program within two years after the notice to the state [Section 502(i)(4)].

II. PERMIT PROGRAM CONTENT

A. Program Coverage

Under section 502(a), permitting programs must cover the following sources:

1. Affected sources included under the acid deposition provisions of Title IV;

2. Major sources, defined as follows [see Section 501(2)]:

   a. Air toxic sources included under Section 112 with the potential to emit 10 tons per year (TPY) of any hazardous air pollutant or 25 TPY of any combination of hazardous air pollutants [see Section 112(a)(1)];

   b. Sources of air pollutants (as defined in Section 302 of the Act) with the potential to emit 100 TPY of any pollutant [see Section 302(j)]; and

   c. Sources subject to the nonattainment area provisions of Title I, part D, which are in the type of nonattainment area shown in the following list and which have the potential to emit the following amount of pollutants: <u>Ozone</u> [see Sections 182(c)-(e) and 184(b)(2))

Notes

Serious and transport	50 TPY
Severe	25 TPY
Extreme	10 TPY

Carbon Monoxide [see Section 187(c)(1)]

Serious (due to stationary sources)	50 TPY

PM-10 [see Section 189(b)(3)]

Serious	70 TPY

3. Any other source, including an area source, subject to an hazardous air pollutant standard under Section 112;

4. Any source subject to performance standards for new sources under Section 111;

5. Any source required to have a preconstruction review permit under the program to prevent "significant deterioration" established under Title I, part C, or the review program for new sources in nonattainment areas established under Title I, part D; and

6. Any other stationary source in a category EPA designates in whole or in part by regulation, after notice and comment.

B. Exemptions from Program Coverage

Section 502(a) also authorizes EPA to exempt one or more source categories (in whole or in part) from the requirement to have a permit. EPA must determine that a permit program for that source category is impracticable, infeasible, or unnecessarily burdensome.

EPA may not, however, exempt any major source from the permitting requirements (See paragraph II.A.2 above).

C. Permit Program Requirements

Permit programs that met Title V requirements include the following elements.

1. Permit applications, including standard applications forms and criteria for determining the completeness of applications [Section 502(b)(1)].

2. Monitoring and reporting requirements [Section 502(b)(2)).

3. A permit fee system [Section 502(b)(3)]; see below for more detail.

4. Provisions for adequate personnel and funding to administer the program [Section 502(b)(4)].

5. Authority to issue permits and assure that each permitted source complies with applicable requirements under the Act [Section 502(b)(5)(A)].

6. Authority to terminate, modify, or revoke and reissue permits "for cause," [Section 502(b)(5)(D)], and a requirement to reopen permits in certain circumstances (see paragraph IV. B., below).

7. Authority to enforce permits, permit fee requirements, and require permits; authority to recover civil penalties in a maximum amount of not less than $10,000 per day, and "appropriate criminal penalties" [Section 502(b)(5)(E)].

Notes

8. Authority to assure that no permit will be issued if EPA states a timely objection to its issuance [Section 502(b)(5)(F)].

9. "Adequate, streamlined, and reasonable" procedures for processing applications and giving public notice of this process. These include offering an opportunity for public comment, conducting a hearing on applications, and providing an opportunity for state court review (see paragraph III.F.1, below) [Section 502(b)(6)].

10. Authority and procedures to ensure that if the permitting authority fails to act on a permit or renewal application within the deadlines specified in the Act, the failure will be treated as a final permit action in order to allow judicial review by the applicant, or to allow anyone else who participated in the public comment process to compel action on the application [Section 502(b)(7)].

11. Authority and procedures to make available to the public any permit application, compliance plan, permit, emissions or monitoring report, and compliance report or certification subject to the confidentiality provisions of Section 114(c) of the Act [Section 502(b)(8)]. However, the contents of the permit itself are not entitled to confidentiality [Section 503(e)].

12. Provisions to allow operational flexibility at the permitted facility (see paragraph IV. C., below) [Section 502(b)(10)].

D. Required Permit Provisions

1. A fixed term, not to exceed five years [Section 502(b)(5)(B)].

2. Limits and conditions to assure compliance with all applicable requirements under the Act, including requirements of the State Implementation Plan (SIP) [Section 504(a)].

3. A schedule of compliance [Section 504(a) and 501(3)].

4. Inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Requirements must be consistent with any monitoring regulations EPA establishes under Section 504(b) [Section 504(c)].

E. Permit Fees

An approvable permit program must require permittees to pay a fee periodically that is sufficient to cover all "reasonable (direct and indirect) costs" required to develop and administer the permit program. [Section 502(b)(3)(A)] and [Section 502(b)(3)(A)(i)-(vi)]. All fees collected by a permitting authority must be used solely to support the permit program [Section 502(b)(3)(C)(iii)].

The program is expected to collect funds from all sources equal to at least $25 per ton of each regulated pollutant (not including carbon monoxide [Section 502(b)(3)(B)(i) and (ii)]. However, the program need not collect this amount if it can demonstrate that a lesser amount will support the direct and indirect costs

of the program [Section 502(b)(3)(B)(iv)].

Where states fail to do so, EPA may collect reasonable fees from permittees [Section 502(b)(3)(C)(i)]. Sources failing to pay a fee assessed by EPA must pay a penalty of 50 percent of the fee amount, plus interest [Section 502(b)(3)(C)(ii)].

F. Multi-Source Facility, Temporary Facility, and General Permits

1. MULTI-SOURCE FACILITY

A permitting authority may issue one permit for a facility with multiple sources [Section 502(c)].

2. TEMPORARY FACILITY

The authority may also issue one permit authorizing emissions from similar operations at multiple temporary locations, provided the permit assures that each location will comply with the Act [Section 504(e)].

3. GENERAL PERMIT

The authority may issue a general permit covering numerous similar sources. Sources covered by a general permit must still file applications [Section 504(d)].

III. THE PERMITTING PROCESS

A. Permit Applications and State Action on Applications

1. PERMIT OBLIGATION

Title V provides that no source shall violate Section 502(a) for

failure to have a permit before the date or which the source is required to submit an application [Section 503(d)]. Therefore, it is the application date, not the program effectiveness date, which triggers a source's obligation to have a permit.

2. APPLICATION SUBMISSION AND DUE DATE

Covered sources must submit an application within twelve months after the date EPA approves a state program or establishes a Federal program applicable to that source [Section 503(c)].

3. STATE ACTION ON INITIAL APPLICATIONS

For the initial round of permit applications, the permitting authority must establish a phased schedule for acting on at least one-third of the initial applications each year over a period not to exceed three years after approval of the program [Section 503(c)].

4. STATE ACTION ON SUBSEQUENT APPLICATIONS

Once the state has acted on the initial applications, it is required to act on a completed application within 18 months after it is submitted [Section 503(c)].

B. Application Protection

With the exception of new sources subject to preconstruction review to meet permitting requirements, a source which files a timely and complete application for a permit or a renewal will not be held liable for failure to have a permit if the permitting

authority delays in issuing the permit [Section 503(d)].

C. Priority for New Construction Permits

The permitting authority must grant priority to permits for new construction or modifications [Section 503(c)].

D. Neighboring State Review of Permits

The permitting authority is required to notify certain neighboring states of each permit application or proposed permit submitted to EPA for review. (See next paragraph for EPA review.) The permitting authority must give those states an opportunity to submit written recommendations for the permit and must respond to those comments [Section 505(a)(2)].

E. EPA Review and State Response

The permitting authority must submit to EPA a copy of the following:

1. The application for any permit, renewal, or modification including the compliance plan or any portion EPA determines it needs to review the application and permit effectively; and

2. Each permit it proposes to issue as a final permit [Section 505(a)(1)].

EPA must object to any permit that is not in compliance with the applicable requirements of the Act, including the applicable implementation plan. If EPA objects within 45 days after receiving either the proposed permit or the notice that the permitting authority has refused to adopt a neighboring

state's recommendations for the permit, the permitting authority must respond in writing. EPA must provide the permitting authority and permit applicant a statement of reasons for the objection [Section 505(b)(1)].

The permitting authority may not issue the permit if EPA objects, unless it revises the permit to meet EPA's objections. If the authority has already issued the permit, EPA must modify, terminate, or revoke the permit and the permitting authority must reissue it to meet EPA's objection [Section 505(b)(3)]. The permitting authority has 90 days after EPA's objection to revise the permit. If the permitting authority fails to do so, EPA must issue or deny the permit [Section 505(c)].

EPA may waive its own and neighboring states' review of permits for any category of sources, except major sources, either when approving an individual program or in a regulation applicable to all programs. EPA may also waive its own review, but maintain the requirement that the state must notify neighboring states of the permit's terms [Section 505(d)].

F. Judicial Review

1. STATE COURT REVIEW

An approvable program must provide for judicial review of the permit action in state court. Judicial review may be initiated by the applicant or by anyone who participated in the public comment process [Section 502(b)(6)].

Notes

2. FEDERAL COURT REVIEW

a. EPA's Failure to Veto

Within 60 days after the expiration of the 45-day EPA review period, any person may petition the Administrator to veto a permit, if EPA fails to object. If the Administrator denies the petition, the denial is subject to review in the Federal Court of Appeals under Section 307 [Section 505(b)(2)].

b. EPA's Issuance of a Permit

If EPA objects to a permit and the state fails to meet EPA's objection, EPA must then decide whether to issue or deny the permit. The Federal Court of Appeals may review EPA's final action in issuing or denying the permit under Section 307. Title V provides that EPA's objection to a permit is not subject to judicial review until EPA takes final action on the permit [Section 505(c)].

IV. EFFECT OF VALID PERMIT

A. Permit Shield

In general, if a source complies with its permit, the source is held to be in compliance with the Clean Air Act, provided that either the following is true: (1) the permit includes the applicable requirements of the Act, or (2) the permitting authority made an explicit determination, referred to in the permit, that other provisions do not apply to this source. EPA may issue a rule that limits the scope of

this permit compliance protection [Section 504(f)].

B. Permit Reopening

1. AUTOMATIC REOPENING

Any approvable program must require that the permitting authority will revise all permits with terms of three or more years to incorporate any applicable requirements under the Act that take effect after the permit is issued [Section 502(b)(9)].

2. REOPENING FOR CAUSE

Any approvable program must require that the permitting authority may terminate, modify, or revoke permits "for cause" [Section 502(b)(5)(D)]. EPA may require that a permit be reopened for cause [Section 505(e)].

C. Operational Flexibility

An approvable program must provide for changes within a permitted facility, if they are not subject to new source review without requiring a permit revision [Section 502(b)(10)].

V. MISCELLANEOUS

A. Saving Clause [Section 506(a)].

B. Relation to Acid Rain Permits [Section 506(b)].

C. Small Business Provisions [Section 507].

TITLE VII: PROVISIONS FOR ENFORCEMENT

SUMMARY: Title VII modernizes Clean Air Act enforcement mechanisms by incorporating features of other environmental statutes that have been revised since the last comprehensive revision of the Clean Air Act, such as the Clean Water Act (CWA), the Toxic Substances Control Act (TSCA), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Notes

I. GENERAL PROVISIONS

Title VII enhances enforcement in four principal ways:

A. Expands EPA's enforcement options, thereby allowing EPA to use enforcement responses more tailored to each noncompliance situation.

B. Adds new sanctions and increases the stringency of existing sanctions for noncompliance.

C. Clarifies and thereby strengthens EPA's enforcement authority under existing provisions of the Act.

D. Enhances enforceability by providing clear statements as to which standards are applicable in a given situation, and by providing a number of tools that can be used to obtain more information on compliance with standards.

II. EXISTING ENFORCEMENT ACTIONS PRESERVED

Enforcement efforts should continue under present guidelines until revised regulations are issued [Section 711].

III. NEW OR ENHANCED CIVIL AUTHORITIES

A. Enforcement Responses

EPA stationary source enforcement formerly consisted almost exclusively of civil judicial actions in Federal district courts. The Title VII Amendments allow for a mix of enforcement responses by increasing the variety of possible administrative actions.

B. Compliance Orders

Under the Amendments, EPA can issue compliance orders with schedules of up to one year [Subsection 113(a)(4)]. Orders were previously effectively limited to a 30-day duration in most circumstances.

C. Penalty Orders

EPA has been given new administrative authority to assess sanctions for noncompliance. EPA can issue penalty orders of up to $200,000, subject to a hearing in accordance with the Administrative Procedures Act [5 U.S.C. 554 and 556]. The penalty cap can be raised by agreement of the Administrator and the Attorney General [Subsection 113(d)(1)(C)]. Under the 1977 Act, EPA's administrative penalty authority was limited to Section 120 noncompliance penalties, which recoup the economic benefit of noncompliance prospectively from the issuance of a Notice of Noncompliance.

D. Criteria for Penalty Assessment

The Amendments allow EPA to assess penalties for past violations. Criteria such as the seriousness of the violation, in addition to economic benefit, are applied to determine the

amount of the penalty [Subsection 113(d)].

E. Field Citations

EPA is authorized to issue field citations, subject to an informal hearing, in amounts up to $5,000 per day [Subsection 113(d)(3)]. These citations will be similar to "traffic tickets"; detailed guidelines on issuance and penalty schedules will be prepared in conjunction with the Department of Justice.

F. Emergency Powers

1. CIVIL ACTIONS

EPA's power to deal with pollution emergencies has been enhanced by Section 704 (revising Section 303) which provides that EPA may file civil actions and, in appropriate cases, issue administrative orders whenever there is evidence of an imminent and substantial endangerment to "the public health or welfare, or the environment". EPA must first consult with state and local authorities.

2. EFFECTIVE PERIOD OF ORDERS

The effective period of orders issued by EPA has been expanded to 60 days.

3. FINES AND PENALTIES

Violators of such EPA orders now may be fined up to $25,000 per day of violation (compared to $5,000 under the 1977 Act). A criminal penalty of up to five years of imprisonment has been added for knowing violation

of any EPA emergency order [Subsection 113(c)(1)].

G. New Source Requirements

Subsection 113(a)(5) clarifies EPA authority to issue orders and bring civil actions against source owners when a state is not acting in compliance with requirements relating to construction of new sources or modification of existing sources.

H. Citizen Enforcement Authorities

1. Section 707 (revising Section 304) authorizes citizens to sue for penalties, as well as to seek relief through injunctions. Generally, these penalties would go to a special penalty fund in the U.S. Treasury for exclusive use by EPA to finance its air compliance and enforcement activities. However, amended Subsection 304(g)(2) also allows a federal court, in lieu of such payment, to order that the money be used for an environmentally beneficial mitigation project. The court must obtain EPA's comments before selecting such a project and the penalty amount allocated to the project may not exceed $100,000.

2. EPA has the right to intervene in any citizen lawsuit. No consent agreement may be entered in any such suit until EPA has been provided with 45 days' notice and an opportunity to comment [Section 707(c)].

3. Citizens are not permitted to sue for violations of the acid deposition title unless those requirements or prohibitions appear

in the unit's operating permit [Section 707(e) (amending Section 304(f))].

I. Awards

Subsection 113(f) authorizes awards up to $10,000 to citizens who provide information leading to criminal convictions or civil penalties for violations of the Act. Certain state and Federal employees are ineligible for the awards.

J. Polluters Barred from Receiving Government Benefits

1. Section 705 (amending Section 306) expands EPA's contractor listing authority - i.e., the authority to place a company on the list of those ineligible for Federal contracts, grants, or loans. Under the 1977 law, this authority extended only to the facility or facilities at which violations occurred. Under the Amendments, EPA can now list the violating company as a whole.

2. Section 705 expands mandatory listing requirements to include any violation that is criminally actionable under Subsection 113(c). Listing is now required for the following criminal convictions: knowing endangerment, negligent violations, knowing omissions, and failures to act.

K. Restrictive Definition

"Operator," a term relevant to civil cases, is defined in Subsection 113(h) to include any person who is a "senior management personnel or a corporate officer". Except for knowing and willful violations, it does not include "any person who is a stationary

engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer". This may limit civil actions against individuals, but it will not affect the civil liability of corporations and other organizations.

IV. NEW OR ENHANCED CRIMINAL SANCTIONS

A. Felonies

Subsection 113(c) authorizes felony-level sanctions for a first offense of imprisonment up to five years (rather than the present penalty of up to one year) for offenses previously actionable under the Act.

Punishment for subsequent offenses is doubled for virtually all criminal conduct.

B. Restrictive Definitions

The Subsection 113(h) definition of "person" for general criminal cases excludes, except for knowing and willful violations, an employee who is "carrying out his normal activities and who is acting under orders from the employer". For negligent endangerment cases, the definition excludes, except for knowing and willful violations, an employee who is "carrying out his normal activities and who is not a part of senior management personnel or a corporate officer". This may limit criminal liability of individuals, but it will not affect the liability of corporations and other organizations.

Notes

C. New Crimes

1. ENDANGERMENT

Subsection 113(c)(5)(A) creates a new crime: a knowing release of hazardous air pollutants which cause imminent danger of death or serious bodily injury to persons. The penalty is imprisonment for up to fifteen years and a fine of up to $1,000,000 for a violator which is an "organization" [defined in Subsection 113(c)(5)(E)]. Negligent releases are treated as misdemeanors under the new Subsection 113(c)(4), with imprisonment of up to one year for a first offense.

2. FAILURE TO PAY FEES

Subsection 113(c)(3) provides for misdemeanor-level criminal sanctions against anyone who knowingly violates any fee requirement under the Act. Note the conflict with Subsection 113(c)(1) which makes the same offense a felony.

3. REPORTING AND MONITORING

Subsection 113(c)(2) provides for criminal liability for knowing omissions of material information; knowing destruction, alteration, concealment, or failure to maintain documents necessary for compliance; and knowing failures to install, or knowing tampering with, necessary monitoring devices. The maximum prison term is increased from six months to two years for such offenses.

V. CLARIFICATIONS OF EXISTING AUTHORITY

A. Notices of Violation

Subsection 113(a)(1) changes the requirement that, in cases involving SIP's, a violation must continue beyond a 30 day-period after notification by EPA. The notification requirement remains, but now there is no requirement that the violation last more than one day. Note that Subsection 113(c) was not changed for SIP cases. Thus, criminal prosecutions for SIP violations can occur only when the SIP is violated more than 30 days after notice is given to the violator.

B. Penalty Computation

Subsection 113(b) now states clearly that the maximum statutory penalties apply per day for <u>each</u> violation. Note, however, that this clarification was not made for penalty orders under Subsection 113(d).

C. Burden of Proof

Subsection 113(e) permits EPA to establish the duration of violations with any credible evidence, including evidence other than the applicable test method. Upon an appropriate showing by EPA, the number of days of violation will be <u>presumed</u> to include the day EPA notifies the source of the violation and <u>all subsequent days</u> until the violator establishes that continuous compliance has been achieved (except where the violator demonstrates that violations did <u>not</u> occur on one or more of the intervening days). The burden of coming forward with evidence is now shifted to the violator, providing EPA with a significant tactical advantage in enforcement actions which is available for our immediate use.

Notes

D. New Source Requirements

Title VII amends the Act to clarify that Section 167 administrative orders regarding new or modified sources can be civilly and criminally enforced under Section 113.

E. "Movable" Stationary Sources

Section 709 amends the definition of "stationary source" (in Section 302) to cover all sources of air pollutants other than motor vehicles and non-road engines regulated under Section 216. This clarifies that emissions from movable stationary sources, such as asphalt batch mixing trailers and ships at port, are subject to stationary source requirements.

VI. OTHER ENHANCEMENTS TO ENFORCEMENT

A. Broader Enforceability

Section 113 provides for the enforceability of every requirement in the other Titles of the Act (except for Title II, which has its own enforcement provisions), along with the requirements of applicable state implementation plans, and requirements of any rule, order, waiver, plan, or permit promulgated under the Act. It also provides for civil suits to collect all fees owed to the United States under the Act.

B. Information Gathering

1. Section 702 (amending Section 114) clarifies that EPA may require information to be generated and submitted on a periodic and ongoing bases. Under amended Subsection 114(a)(3), the Administrator can require owners or operators of

sources to identify the standards to which they are subject and to provide certifications regarding compliance with the standards.

2. Section 703 (amending Section 307) makes administrative subpoenas applicable to compliance information.

VII. MISCELLANEOUS MATTERS

A. Contractor Inspections

The Amendments did not clarify EPA's authority to use contractors as "authorized representatives" for inspections under Section 114. Accordingly, the split in Federal Circuits remains: the Tenth and Sixth Circuits have held EPA may not use contract inspectors, United States v. Stauffer Chemical Co., 511 F. Supp. 744 (M.D. Tenn. 1981), aff'd, 684 F.2d 1174 (6th Cir. 1982), aff'd on other grounds, 464 U.S. 165 (1984), and Stauffer Chemical Co. v. EPA, 647 F.2d 1075 (10th Cir. 1981), while the Ninth Circuit and one district court in the Fourth Circuit have held that EPA may use contract inspectors, Bunker Hill Co. Lead and Zinc Smelter v. EPA, 658 F.2d 1280 (9th Cir. 1981), and Aluminum Co. of America v. EPA, 663 F.2d 499 (4th Cir. 1981). Note, however, that legislative history exists that calls into question the continued use of contractors. Clean Air Act Amendments of 1990: Report of the Committee on Energy and Commerce, H.R. Rep. No. 490, 101st Cong., 2d Sess. 395-96 (1990); 136 Cong. Rec. E3,714 (daily ed. Nov. 2, 1990) (extension of remarks made on Oct. 26, 1990 by Cong. Dingell).

Regions should consult with the Office of Enforcement before using contractors in the future.

B. Pre-enforcement Review of NOV's and Compliance Orders

1. Nothing in the amendments changes the holdings in several cases which indicate that the issuance of a compliance order or NOV under Subsection 113(a) is not subject to pre-enforcement review. Pacific Corp. v. Thomas, 883 F.2d 661 (9th Cir. 1988); Union Electric Co. v. EPA, 593 F.2d 299 (8th Cir. 1979); Lloyd A. Fry Roofing Co. v. EPA, 554 F.2d 885 (8th Cir. 1975); see also Hoffman Group, Inc. v. EPA, 902 F.2d 567 (7th Cir. 1990) and Southern Pines Associates, By Goldmeier v. EPA, 912 F.2d 713 (3rd Cir. 1990) (CWA cases citing with approval CAA cases). Thus, it appears compliance orders and NOV's may only be challenged in district court proceedings brought by the U.S. to enforce the order or violation. Indeed, legislative history confirms this. See 136 Cong. Rec. S16,950-51 (daily edition Oct. 27, 1990) (Chaffee-Baucus Statement of Senate Managers).

2. An administrative penalty order under Subsection 113(d) may be appealed to a district court. Likewise, a recipient of a field citation penalty may request a hearing before EPA and may thereafter seek review in a district court. The order or penalty shall not be set aside unless it is not supported by substantial evidence or constitutes an abuse of discretion [Subsection 113(d)(4)].

C. Points in Legislative History

1. DE MINIMIS OR TECHNICAL VIOLATIONS

The House and Senate managers of the Amendments on October 26, 1990 stated that it "is the conferees' intention to provide the Administrator with prosecutorial discretion to decide not to seek sanctions under Section 113 for de minimis or technical violations in civil and criminal matters." This legislative history resulted from the deletion of a proposed statutory provision that would have prohibited the Administrator from seeking sanctions for de minimis and technical violations as the Administrator defined those terms.

2. COMPLIANCE CERTIFICATIONS AND SELF-AUDITS

The House and Senate managers also stated that the enforcement provisions of Section 113 are not intended to "discourage owners or operators . . . from conducting self-evaluations or self-audits and acting to correct any problems identified. . . . The <u>criminal</u> penalties available under subsection 113(c) should not be applied in a situation where a person, acting in good faith, promptly reports the results of an audit and promptly acts to correct any deviation" (emphasis added).