2008—Subsec. (g). Pub. L. 110–181 substituted ''October 28, 2012'' for ''on the date that is 3 years after October 28, 2004''.

CONSTRUCTION

Pub. L. 111–84, div. C, title XXXI, § 3142(b), Oct. 28, 2009, 123 Stat. 2716, provided that: ''Except as specifically provided in subsection (g) of section 3686 of the Energy Employees Occupational Illness Compensation Program Act of 2000 [42 U.S.C. 7385s–15(g)], as amended by subsection (a) of this section, nothing in the amendments made by such subsection (a) shall be construed to alter or affect the duties and functions of the individual employed by the National Institute for Occupational Safety and Health to serve as an ombudsman to individuals making claims under subtitle B of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384*l* et seq.).''

SUBCHAPTER XVII—[Repealed]

AMENDMENTS

2003—Pub. L. 108–136, div. C, title XXXI, § 3141(m)(1), Nov. 24, 2003, 117 Stat. 1787, struck out heading for subchapter XVII ''Department of Energy National Security Authorizations General Provisions''.

§§ 7386 to 7386k. Transferred

CODIFICATION

Sections 7386 to 7386k, Pub. L. 107–314, div. C, title XXXVI, §§ 3620–3631, Dec. 2, 2002, 116 Stat. 2756–2762, were renumbered sections 4701 to 4712, respectively, of Pub. L. 107–314, the Bob Stump National Defense Authorization Act for Fiscal Year 2003, by Pub. L. 108–136, div. C, title XXXI, § 3141(j)(2)(A)–(C), Nov. 24, 2003, 117 Stat. 1781, and are classified to sections 2741 to 2752, respectively, of Title 50, War and National Defense.

Section 7386 related to definitions for purposes of former sections 7386 to 7386k of this title.

Section 7386a related to reprogramming of amounts appropriated pursuant to a Department of Energy national security authorization.

Section 7386b related to minor construction projects.

Section 7386c related to limits on construction projects.

Section 7386d related to fund transfer authority.

Section 7386e related to conceptual and construction design.

Section 7386f related to authority for emergency planning, design, and construction activities.

Section 7386g related to scope of authority to carry out plant projects.

Section 7386h related to availability of funds.

Section 7386i related to transfer of defense environmental management funds.

Section 7386j related to transfer of weapons activities funds.

Section 7386k related to funds available for all national security programs of the Department of Energy.

CHAPTER 85—AIR POLLUTION PREVENTION AND CONTROL

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CODIFICATION

Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, known as the Clean Air Act, which was formerly classified to chapter 15B (§ 1857 et seq.) of this title, was completely revised by Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 685, and was reclassified to this chapter.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

PART A—AIR QUALITY AND EMISSION LIMITATIONS

AMENDMENTS

1977—Pub. L. 95–95, title I, § 117(a), Aug. 7, 1977, 91 Stat. 712, designated sections 7401 to 7428 of this title as part A.

§ 7401. Congressional findings and declaration of purpose

(a) Findings

The Congress finds—

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

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

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

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

(b) Declaration

The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

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

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

(4) to encourage and assist the development and operation of regional air pollution prevention and control programs.

(c) Pollution prevention

A primary goal of this chapter is to encourage or otherwise promote reasonable Federal, State, and local governmental actions, consistent with the provisions of this chapter, for pollution prevention.

(July 14, 1955, ch. 360, title I, § 101, formerly § 1, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 392; renumbered § 101 and amended Pub. L. 89–272, title I, § 101(2), (3), Oct. 20, 1965, 79 Stat. 992; Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 101–549, title I, § 108(k), Nov. 15, 1990, 104 Stat. 2468.)

CODIFICATION

Section was formerly classified to section 1857 of this title.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in a prior section 1857 of this title, act of July 14, 1955, ch. 360, § 1, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(3). Pub. L. 101–549, § 108(k)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows: "that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and".

Subsec. (b)(4). Pub. L. 101–549, § 108(k)(2), inserted "prevention and" after "pollution".

Subsec. (c). Pub. L. 101–549, § 108(k)(3), added subsec. (c).

1967—Subsec. (b)(1). Pub. L. 90–148 inserted "and enhance the quality of" after "to protect".

1965—Subsec. (b). Pub. L. 89–272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter".

EFFECTIVE DATE OF 1990 AMENDMENT

Section 711(b) of Pub. L. 101–549 provided that:

"(1) Except as otherwise expressly provided, the amendments made by this Act [see Tables for classification] shall be effective on the date of enactment of this Act [Nov. 15, 1990].

"(2) The Administrator's authority to assess civil penalties under section 205(c) of the Clean Air Act [42 U.S.C. 7524(c)], as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act. Civil penalties for violations that occur prior to such date and do not continue after such date shall be assessed in accordance with the provisions of the Clean Air Act [42 U.S.C. 7401 et seq.] in effect immediately prior to the date of enactment of this Act.

"(3) The civil penalties prescribed under sections 205(a) and 211(d)(1) of the Clean Air Act [42 U.S.C. 7524(a), 7545(d)(1)], as amended by this Act, shall apply to violations that occur on or after the date of enactment of this Act. Violations that occur prior to such date shall be subject to the civil penalty provisions prescribed in sections 205(a) and 211(d) of the Clean Air Act in effect immediately prior to the enactment of this Act. The injunctive authority prescribed under section 211(d)(2) of the Clean Air Act, as amended by this Act, shall apply to violations that occur or continue on or after the date of enactment of this Act.

''(4) For purposes of paragraphs (2) and (3), where the date of a violation cannot be determined it will be assumed to be the date on which the violation is discovered.''

EFFECTIVE DATE OF 1977 AMENDMENT; PENDING ACTIONS; CONTINUATION OF RULES, CONTRACTS, AUTHORIZATIONS, ETC.; IMPLEMENTATION PLANS

Section 406 of Pub. L. 95–95, as amended by Pub. L. 95–190, §14(b)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

''(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Amendment note below]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

''(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Amendment note below].

''(c) Nothing in this Act [see Short Title of 1977 Amendment note below] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Amendment note below].

''(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Amendment note below] shall be effective on date of enactment [Aug. 7, 1977].

''(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Amendment note below] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

''(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

''(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act which are necessary for the approval of such plan revision.''

SHORT TITLE OF 1999 AMENDMENT

Pub. L. 106–40, §1, Aug. 5, 1999, 113 Stat. 207, provided that: ''This Act [amending section 7412 of this title and enacting provisions set out as notes under section 7412 of this title] may be cited as the 'Chemical Safety Information, Site Security and Fuels Regulatory Relief Act'.''

SHORT TITLE OF 1998 AMENDMENT

Pub. L. 105–286, §1, Oct. 27, 1998, 112 Stat. 2773, provided that: ''This Act [amending section 7511b of this title and enacting provisions set out as a note under section 7511b of this title] may be cited as the 'Border Smog Reduction Act of 1998'.''

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, is popularly known as the ''Clean Air Act Amendments of 1990''. See Tables for classification.

SHORT TITLE OF 1981 AMENDMENT

Pub. L. 97–23, §1, July 17, 1981, 95 Stat. 139, provided: ''That this Act [amending sections 7410 and 7413 of this title] may be cited as the 'Steel Industry Compliance Extension Act of 1981'.''

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95–95, §1, Aug. 7, 1977, 91 Stat. 685, provided that: ''This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551, 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541, 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c–10 of this title, and enacting provisions set out as notes under this section, sections 7403, 7422, 7470, 7479, 7502, 7521, 7548, and 7621 of this title, and section 792 of Title 15, Commerce and Trade] may be cited as the 'Clean Air Act Amendments of 1977'.''

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91–604, §1, Dec. 31, 1970, 84 Stat. 1676, provided: ''That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'.''

SHORT TITLE OF 1967 AMENDMENT

Section 1 of Pub. L. 90–148 provided: ''That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'.''

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89–675, §1, Oct. 15, 1966, 80 Stat. 954, provided: ''That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f–8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'.''

SHORT TITLE

Section 317, formerly section 14, of act July 14, 1955, as added by section 1 of Pub. L. 88–206, renumbered section 307 by section 101(4) of Pub. L. 89–272, renumbered section 310 by section 2 of Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, §12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: ''This Act [enacting this chapter] may be cited as the 'Clean Air Act'.''

Section 201 of title II of act July 14, 1955, as added by Pub. L. 89–272, title I, §101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub. L. 90–148, §2, Nov. 21, 1967, 81 Stat. 499, provided that: ''This title [enacting subchapter II of this chapter] may be cited as the 'National Emission Standards Act'.'' Prior to its amendment by Pub. L. 90–148, title II of act June 14, 1955, was known as the ''Motor Vehicle Air Pollution Control Act''.

Section 401 of title IV of act July 14, 1955, as added Dec. 31, 1970, Pub. L. 91–604, §14, 84 Stat. 1709, provided that: ''This title [enacting subchapter IV of this chapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'.''

SAVINGS PROVISION

Section 711(a) of Pub. L. 101–549 provided that: ''Except as otherwise expressly provided in this Act [see Tables for classification], no suit, action, or other proceeding lawfully commenced by the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [42 U.S.C. 7401 et seq.], as in effect immediately prior to the date of enactment of this Act [Nov. 15, 1990], shall abate by reason of the taking effect of the amendments made by this Act.''

TRANSFER OF FUNCTIONS

Reorg. Plan No. 3 of 1970, § 2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to Administrator of Environmental Protection Agency functions vested by law in Secretary of Health, Education, and Welfare or in Department of Health, Education, and Welfare which are administered through Environmental Health Service, including functions exercised by National Air Pollution Control Administration, and Environmental Control Administration's Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as functions carried out by Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in healing arts, and occupational exposure to radiation.

IMPACT ON SMALL COMMUNITIES

Section 810 of Pub. L. 101–549 provided that: ''Before implementing a provision of this Act [see Tables for classification], the Administrator of the Environmental Protection Agency shall consult with the Small Communities Coordinator of the Environmental Protection Agency to determine the impact of such provision on small communities, including the estimated cost of compliance with such provision.''

RADON ASSESSMENT AND MITIGATION

Pub. L. 99–499, title I, § 118(k), Oct. 17, 1986, 100 Stat. 1659, as amended by Pub. L. 105–362, title V, § 501(i), Nov. 10, 1998, 112 Stat. 3284, provided that:

''(1) NATIONAL ASSESSMENT OF RADON GAS.—No later than one year after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a report which shall, to the extent possible—

''(A) identify the locations in the United States where radon is found in structures where people normally live or work, including educational institutions;

''(B) assess the levels of radon gas that are present in such structures;

''(C) determine the level of radon gas and radon daughters which poses a threat to human health and assess for each location identified under subparagraph (A) the extent of the threat to human health;

''(D) determine methods of reducing or eliminating the threat to human health of radon gas and radon daughters; and

''(E) include guidance and public information materials based on the findings or research of mitigating radon.

''(2) RADON MITIGATION DEMONSTRATION PROGRAM.—

''(A) DEMONSTRATION PROGRAM.—The Administrator shall conduct a demonstration program to test methods and technologies of reducing or eliminating radon gas and radon daughters where it poses a threat to human health. The Administrator shall take into consideration any demonstration program underway in the Reading Prong of Pennsylvania, New Jersey, and New York and at other sites prior to enactment. The demonstration program under this section shall be conducted in the Reading Prong, and at such other sites as the Administrator considers appropriate.

''(B) LIABILITY.—Liability, if any, for persons undertaking activities pursuant to the radon mitigation demonstration program authorized under this subsection shall be determined under principles of existing law.

''(3) CONSTRUCTION OF SECTION.—Nothing in this subsection shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this subsection. Nothing in paragraph (1) or (2) shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.''

SPILL CONTROL TECHNOLOGY

Pub. L. 99–499, title I, § 118(n), Oct. 17, 1986, 100 Stat. 1660, provided that:

''(1) ESTABLISHMENT OF PROGRAM.—Within 180 days of enactment of this subsection [Oct. 17, 1986], the Secretary of the United States Department of Energy is directed to carry out a program of testing and evaluation of technologies which may be utilized in responding to liquefied gaseous and other hazardous substance spills at the Liquefied Gaseous Fuels Spill Test Facility that threaten public health or the environment.

''(2) TECHNOLOGY TRANSFER.—In carrying out the program established under this subsection, the Secretary shall conduct a technology transfer program that, at a minimum—

''(A) documents and archives spill control technology;

''(B) investigates and analyzes significant hazardous spill incidents;

''(C) develops and provides generic emergency action plans;

''(D) documents and archives spill test results;

''(E) develops emergency action plans to respond to spills;

''(F) conducts training of spill response personnel; and

''(G) establishes safety standards for personnel engaged in spill response activities.

''(3) CONTRACTS AND GRANTS.—The Secretary is directed to enter into contracts and grants with a nonprofit organization in Albany County, Wyoming, that is capable of providing the necessary technical support and which is involved in environmental activities related to such hazardous substance related emergencies.

''(4) USE OF SITE.—The Secretary shall arrange for the use of the Liquefied Gaseous Fuels Spill Test Facility to carry out the provisions of this subsection.''

RADON GAS AND INDOOR AIR QUALITY RESEARCH

Pub. L. 99–499, title IV, Oct. 17, 1986, 100 Stat. 1758, provided that:

''SEC. 401. SHORT TITLE.

''This title may be cited as the 'Radon Gas and Indoor Air Quality Research Act of 1986'.

''SEC. 402. FINDINGS.

''The Congress finds that:

''(1) High levels of radon gas pose a serious health threat in structures in certain areas of the country.

''(2) Various scientific studies have suggested that exposure to radon, including exposure to naturally occurring radon and indoor air pollutants, poses a public health risk.

''(3) Existing Federal radon and indoor air pollutant research programs are fragmented and underfunded.

''(4) An adequate information base concerning exposure to radon and indoor air pollutants should be developed by the appropriate Federal agencies.

''SEC. 403. RADON GAS AND INDOOR AIR QUALITY RESEARCH PROGRAM.

''(a) DESIGN OF PROGRAM.—The Administrator of the Environmental Protection Agency shall establish a research program with respect to radon gas and indoor air quality. Such program shall be designed to—

''(1) gather data and information on all aspects of indoor air quality in order to contribute to the understanding of health problems associated with the existence of air pollutants in the indoor environment;

''(2) coordinate Federal, State, local, and private research and development efforts relating to the improvement of indoor air quality; and

''(3) assess appropriate Federal Government actions to mitigate the environmental and health risks associated with indoor air quality problems.

''(b) PROGRAM REQUIREMENTS.—The research program required under this section shall include—

''(1) research and development concerning the identification, characterization, and monitoring of the sources and levels of indoor air pollution, including radon, which includes research and development relating to—

''(A) the measurement of various pollutant concentrations and their strengths and sources,

''(B) high-risk building types, and

''(C) instruments for indoor air quality data collection;

''(2) research relating to the effects of indoor air pollution and radon on human health;

''(3) research and development relating to control technologies or other mitigation measures to prevent or abate indoor air pollution (including the development, evaluation, and testing of individual and generic control devices and systems);

''(4) demonstration of methods for reducing or eliminating indoor air pollution and radon, including sealing, venting, and other methods that the Administrator determines may be effective;

''(5) research, to be carried out in conjunction with the Secretary of Housing and Urban Development, for the purpose of developing—

''(A) methods for assessing the potential for radon contamination of new construction, including (but not limited to) consideration of the moisture content of soil, porosity of soil, and radon content of soil; and

''(B) design measures to avoid indoor air pollution; and

''(6) the dissemination of information to assure the public availability of the findings of the activities under this section.

''(c) ADVISORY COMMITTEES.—The Administrator shall establish a committee comprised of individuals representing Federal agencies concerned with various aspects of indoor air quality and an advisory group comprised of individuals representing the States, the scientific community, industry, and public interest organizations to assist him in carrying out the research program for radon gas and indoor air quality.

''(d) IMPLEMENTATION PLAN.—Not later than 90 days after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to the Congress a plan for implementation of the research program under this section. Such plan shall also be submitted to the EPA Science Advisory Board, which shall, within a reasonable period of time, submit its comments on such plan to Congress.

''(e) REPORT.—Not later than 2 years after the enactment of this Act [Oct. 17, 1986], the Administrator shall submit to Congress a report respecting his activities under this section and making such recommendations as appropriate.

''SEC. 404. CONSTRUCTION OF TITLE.

''Nothing in this title shall be construed to authorize the Administrator to carry out any regulatory program or any activity other than research, development, and related reporting, information dissemination, and coordination activities specified in this title. Nothing in this title shall be construed to limit the authority of the Administrator or of any other agency or instrumentality of the United States under any other authority of law.

''SEC. 405. AUTHORIZATIONS.

''There are authorized to be appropriated to carry out the activities under this title and under section 118(k) of the Superfund Amendments and Reauthorization Act of 1986 (relating to radon gas assessment and demonstration program) [section 118(k) of Pub. L. 99–499, set out as a note above] not to exceed $5,000,000 for each of the fiscal years 1987, 1988, and 1989. Of such sums appropriated in fiscal years 1987 and 1988, two-fifths shall be reserved for the implementation of section 118(k)(2).''

STUDY OF ODORS AND ODOROUS EMISSIONS

Pub. L. 95–95, title IV, § 403(b), Aug. 7, 1977, 91 Stat. 792, directed Administrator of Environmental Protection Agency to conduct a study and report to Congress not later than Jan. 1, 1979, on effects on public health and welfare of odors and odorous emissions, source of such emissions, technology or other measures available for control of such emissions and costs of such technology or measures, and costs and benefits of alternative measures or strategies to abate such emissions.

LIST OF CHEMICAL CONTAMINANTS FROM ENVIRONMENTAL POLLUTION FOUND IN HUMAN TISSUE

Pub. L. 95–95, title IV, § 403(c), Aug. 7, 1977, 91 Stat. 792, directed Administrator of EPA, not later than twelve months after Aug. 7, 1977, to publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue, such list to be prepared for the United States and to indicate approximate number of cases, range of levels found, and mean levels found, directed Administrator, not later than eighteen months after Aug. 7, 1977, to publish in same manner an explanation of what is known about the manner in which chemicals entered the environment and thereafter human tissue, and directed Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, to, if feasible, conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue, such study to be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas, and the results of such study to be reported, as soon as practicable, to appropriate committee of Congress.

STUDY ON REGIONAL AIR QUALITY

Pub. L. 95–95, title IV, § 403(d), Aug. 7, 1977, 91 Stat. 793, directed Administrator of EPA to conduct a study of air quality in various areas throughout the country including the gulf coast region, such study to include analysis of liquid and solid aerosols and other fine particulate matter and contribution of such substances to visibility and public health problems in such areas, with Administrator to use environmental health experts from the National Institutes of Health and other outside agencies and organizations.

RAILROAD EMISSION STUDY

Pub. L. 95–95, title IV, § 404, Aug. 7, 1977, 91 Stat. 793, as amended by H. Res. 549, Mar. 25, 1980, directed Administrator of EPA to conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine extent to which such emissions affect air quality in air quality control regions throughout the United States, technological feasibility and current state of technology for controlling such emissions, and status and effect of current and proposed State and local regulations affecting such emissions, and within one hundred and eighty days after commencing such study and investigation, Administrator to submit a report of such study and investigation, together with recommendations for appropriate legislation, to Senate Committee on Environment and Public Works and House Committee on Energy and Commerce.

STUDY AND REPORT CONCERNING ECONOMIC APPROACHES TO CONTROLLING AIR POLLUTION

Pub. L. 95–95, title IV, § 405, Aug. 7, 1977, 91 Stat. 794, directed Administrator, in conjunction with Council of Economic Advisors, to undertake a study and assessment of economic measures for control of air pollution which could strengthen effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution greater than that required by Clean Air Act, and serve as primary incentive for controlling air pollution problems not addressed by Clean Air Act,

and directed that not later than 2 years after Aug. 7, 1977, Administrator and Council conclude study and submit a report to President and Congress.

NATIONAL INDUSTRIAL POLLUTION CONTROL COUNCIL

For provisions relating to establishment of National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to responsibility of head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

EXECUTIVE ORDER NO. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, formerly set out under section 7418 of this title.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

§ 7402. Cooperative activities

(a) Interstate cooperation; uniform State laws; State compacts

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation

The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

(July 14, 1955, ch. 360, title I, § 102, formerly § 2, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 393; renumbered § 102, Pub. L. 89–272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 485; Pub. L. 91–604, § 15(c)(2), Dec. 31, 1970, 84 Stat. 1713.)

CODIFICATION

Section was formerly classified to section 1857a of this title.

PRIOR PROVISIONS

Provisions similar to those in the first clause of subsec. (a) of this section were contained in subsec. (b)(1) of a prior section 1857a, of this title, act July 14, 1955, ch. 360, § 2, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91–604 substituted ''Administrator'' for ''Secretary'' wherever appearing.

1967—Subsec. (c). Pub. L. 90–148 inserted declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

§ 7403. Research, investigation, training, and other activities

(a) Research and development program for prevention and control of air pollution

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

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

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research; and

(5) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

(b) Authorized activities of Administrator in establishing research and development program

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41;

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof;

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution; and

(8) construct facilities, provide equipment, and employ staff as necessary to carry out this chapter.

In carrying out the provisions of subsection (a) of this section, the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5) of this section. Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

(c) Air pollutant monitoring, analysis, modeling, and inventory research

In carrying out subsection (a) of this section, the Administrator shall conduct a program of research, testing, and development of methods for sampling, measurement, monitoring, analysis, and modeling of air pollutants. Such program shall include the following elements:

(1) Consideration of individual, as well as complex mixtures of, air pollutants and their chemical transformations in the atmosphere.

(2) Establishment of a national network to monitor, collect, and compile data with quantification of certainty in the status and trends of air emissions, deposition, air quality, surface water quality, forest condition, and visibility impairment, and to ensure the comparability of air quality data collected in different States and obtained from different nations.

(3) Development of improved methods and technologies for sampling, measurement, monitoring, analysis, and modeling to increase understanding of the sources of ozone percursors,[1] ozone formation, ozone transport, regional influences on urban ozone, regional ozone trends, and interactions of ozone with other pollutants. Emphasis shall be placed on those techniques which—

(A) improve the ability to inventory emissions of volatile organic compounds and nitrogen oxides that contribute to urban air pollution, including anthropogenic and natural sources;

(B) improve the understanding of the mechanism through which anthropogenic and biogenic volatile organic compounds react to form ozone and other oxidants; and

(C) improve the ability to identify and evaluate region-specific prevention and control options for ozone pollution.

(4) Submission of periodic reports to the Congress, not less than once every 5 years, which evaluate and assess the effectiveness of air pollution control regulations and programs using monitoring and modeling data obtained pursuant to this subsection.

(d) Environmental health effects research

(1) The Administrator, in consultation with the Secretary of Health and Human Services, shall conduct a research program on the short-term and long-term effects of air pollutants, including wood smoke, on human health. In conducting such research program the Administrator—

(A) shall conduct studies, including epidemiological, clinical, and laboratory and field studies, as necessary to identify and evaluate exposure to and effects of air pollutants on human health;

(B) may utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers; and

(C) shall consult with other Federal agencies to ensure that similar research being conducted in other agencies is coordinated to avoid duplication.

(2) In conducting the research program under this subsection, the Administrator shall develop methods and techniques necessary to identify and assess the risks to human health from both

[1] So in original. Probably should be ''precursors,''.

routine and accidental exposures to individual air pollutants and combinations thereof. Such research program shall include the following elements:

(A) The creation of an Interagency Task Force to coordinate such program. The Task Force shall include representatives of the National Institute for Environmental Health Sciences, the Environmental Protection Agency, the Agency for Toxic Substances and Disease Registry, the National Toxicology Program, the National Institute of Standards and Technology, the National Science Foundation, the Surgeon General, and the Department of Energy. This Interagency Task Force shall be chaired by a representative of the Environmental Protection Agency and shall convene its first meeting within 60 days after November 15, 1990.

(B) An evaluation, within 12 months after November 15, 1990, of each of the hazardous air pollutants listed under section 7412(b) of this title, to decide, on the basis of available information, their relative priority for preparation of environmental health assessments pursuant to subparagraph (C). The evaluation shall be based on reasonably anticipated toxicity to humans and exposure factors such as frequency of occurrence as an air pollutant and volume of emissions in populated areas. Such evaluation shall be reviewed by the Interagency Task Force established pursuant to subparagraph (A).

(C) Preparation of environmental health assessments for each of the hazardous air pollutants referred to in subparagraph (B), beginning 6 months after the first meeting of the Interagency Task Force and to be completed within 96 months thereafter. No fewer than 24 assessments shall be completed and published annually. The assessments shall be prepared in accordance with guidelines developed by the Administrator in consultation with the Interagency Task Force and the Science Advisory Board of the Environmental Protection Agency. Each such assessment shall include—

(i) an examination, summary, and evaluation of available toxicological and epidemiological information for the pollutant to ascertain the levels of human exposure which pose a significant threat to human health and the associated acute, subacute, and chronic adverse health effects;

(ii) a determination of gaps in available information related to human health effects and exposure levels; and

(iii) where appropriate, an identification of additional activities, including toxicological and inhalation testing, needed to identify the types or levels of exposure which may present significant risk of adverse health effects in humans.

(e) Ecosystem research

In carrying out subsection (a) of this section, the Administrator, in cooperation, where appropriate, with the Under Secretary of Commerce for Oceans and Atmosphere, the Director of the Fish and Wildlife Service, and the Secretary of Agriculture, shall conduct a research program to improve understanding of the short-term and long-term causes, effects, and trends of ecosystems damage from air pollutants on ecosystems. Such program shall include the following elements:

(1) Identification of regionally representative and critical ecosystems for research.

(2) Evaluation of risks to ecosystems exposed to air pollutants, including characterization of the causes and effects of chronic and episodic exposures to air pollutants and determination of the reversibility of those effects.

(3) Development of improved atmospheric dispersion models and monitoring systems and networks for evaluating and quantifying exposure to and effects of multiple environmental stresses associated with air pollution.

(4) Evaluation of the effects of air pollution on water quality, including assessments of the short-term and long-term ecological effects of acid deposition and other atmospherically derived pollutants on surface water (including wetlands and estuaries) and groundwater.

(5) Evaluation of the effects of air pollution on forests, materials, crops, biological diversity, soils, and other terrestrial and aquatic systems exposed to air pollutants.

(6) Estimation of the associated economic costs of ecological damage which have occurred as a result of exposure to air pollutants.

Consistent with the purpose of this program, the Administrator may use the estuarine research reserves established pursuant to section 1461 of title 16 to carry out this research.

(f) Liquefied Gaseous Fuels Spill Test Facility

(1) The Administrator, in consultation with the Secretary of Energy and the Federal Coordinating Council for Science, Engineering, and Technology, shall oversee an experimental and analytical research effort, with the experimental research to be carried out at the Liquefied Gaseous Fuels Spill Test Facility. In consultation with the Secretary of Energy, the Administrator shall develop a list of chemicals and a schedule for field testing at the Facility. Analysis of a minimum of 10 chemicals per year shall be carried out, with the selection of a minimum of 2 chemicals for field testing each year. Highest priority shall be given to those chemicals that would present the greatest potential risk to human health as a result of an accidental release—

(A) from a fixed site; or

(B) related to the transport of such chemicals.

(2) The purpose of such research shall be to—

(A) develop improved predictive models for atmospheric dispersion which at a minimum—

(i) describe dense gas releases in complex terrain including man-made structures or obstacles with variable winds;

(ii) improve understanding of the effects of turbulence on dispersion patterns; and

(iii) consider realistic behavior of aerosols by including physicochemical reactions with water vapor, ground deposition, and removal by water spray;

(B) evaluate existing and future atmospheric dispersion models by—

(i) the development of a rigorous, standardized methodology for dense gas models; and

(ii) the application of such methodology to current dense gas dispersion models using data generated from field experiments; and

(C) evaluate the effectiveness of hazard mitigation and emergency response technology for fixed site and transportation related accidental releases of toxic chemicals.

Models pertaining to accidental release shall be evaluated and improved periodically for their utility in planning and implementing evacuation procedures and other mitigative strategies designed to minimize human exposure to hazardous air pollutants released accidentally.

(3) The Secretary of Energy shall make available to interested persons (including other Federal agencies and businesses) the use of the Liquefied Gaseous Fuels Spill Test Facility to conduct research and other activities in connection with the activities described in this subsection.

(g) Pollution prevention and emissions control

In carrying out subsection (a) of this section, the Administrator shall conduct a basic engineering research and technology program to develop, evaluate, and demonstrate nonregulatory strategies and technologies for air pollution prevention. Such strategies and technologies shall be developed with priority on those pollutants which pose a significant risk to human health and the environment, and with opportunities for participation by industry, public interest groups, scientists, and other interested persons in the development of such strategies and technologies. Such program shall include the following elements:

(1) Improvements in nonregulatory strategies and technologies for preventing or reducing multiple air pollutants, including sulfur oxides, nitrogen oxides, heavy metals, PM–10 (particulate matter), carbon monoxide, and carbon dioxide, from stationary sources, including fossil fuel power plants. Such strategies and technologies shall include improvements in the relative cost effectiveness and long-range implications of various air pollutant reduction and nonregulatory control strategies such as energy conservation, including end-use efficiency, and fuel-switching to cleaner fuels. Such strategies and technologies shall be considered for existing and new facilities.

(2) Improvements in nonregulatory strategies and technologies for reducing air emissions from area sources.

(3) Improvements in nonregulatory strategies and technologies for preventing, detecting, and correcting accidental releases of hazardous air pollutants.

(4) Improvements in nonregulatory strategies and technologies that dispose of tires in ways that avoid adverse air quality impacts.

Nothing in this subsection shall be construed to authorize the imposition on any person of air pollution control requirements. The Administrator shall consult with other appropriate Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(h) NIEHS studies

(1) The Director of the National Institute of Environmental Health Sciences may conduct a program of basic research to identify, characterize, and quantify risks to human health from air pollutants. Such research shall be conducted primarily through a combination of university and medical school-based grants, as well as through intramural studies and contracts.

(2) The Director of the National Institute of Environmental Health Sciences shall conduct a program for the education and training of physicians in environmental health.

(3) The Director shall assure that such programs shall not conflict with research undertaken by the Administrator.

(4) There are authorized to be appropriated to the National Institute of Environmental Health Sciences such sums as may be necessary to carry out the purposes of this subsection.

(i) Coordination of research

The Administrator shall develop and implement a plan for identifying areas in which activities authorized under this section can be carried out in conjunction with other Federal ecological and air pollution research efforts. The plan, which shall be submitted to Congress within 6 months after November 15, 1990, shall include—

(1) an assessment of ambient monitoring stations and networks to determine cost effective ways to expand monitoring capabilities in both urban and rural environments;

(2) a consideration of the extent of the feasibility and scientific value of conducting the research program under subsection (e) of this section to include consideration of the effects of atmospheric processes and air pollution effects; and

(3) a methodology for evaluating and ranking pollution prevention technologies, such as those developed under subsection (g) of this section, in terms of their ability to reduce cost effectively the emissions of air pollutants and other airborne chemicals of concern.

Not later than 2 years after November 15, 1990, and every 4 years thereafter, the Administrator shall report to Congress on the progress made in implementing the plan developed under this subsection, and shall include in such report any revisions of the plan.

(j) Continuation of national acid precipitation assessment program

(1) The acid precipitation research program set forth in the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.] shall be continued with modifications pursuant to this subsection.

(2) The Acid Precipitation Task Force shall consist of the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of the Interior, the Secretary of Agriculture, the Administrator of the National Oceanic and Atmospheric Administration, the Administrator of the National Aeronautics and Space Administration, and such additional members as the President may select. The President shall appoint a chairman for the Task Force from among its members within 30 days after November 15, 1990.

(3) The responsibilities of the Task Force shall include the following:

(A) Review of the status of research activities conducted to date under the comprehensive research plan developed pursuant to the Acid Precipitation Act of 1980 [42 U.S.C. 8901 et seq.], and development of a revised plan that identifies significant research gaps and establishes a coordinated program to address current and future research priorities. A draft of the revised plan shall be submitted by the Task Force to Congress within 6 months after November 15, 1990. The plan shall be available for public comment during the 60 day period after its submission, and a final plan shall be submitted by the President to the Congress within 45 days after the close of the comment period.

(B) Coordination with participating Federal agencies, augmenting the agencies' research and monitoring efforts and sponsoring additional research in the scientific community as necessary to ensure the availability and quality of data and methodologies needed to evaluate the status and effectiveness of the acid deposition control program. Such research and monitoring efforts shall include, but not be limited to—

(i) continuous monitoring of emissions of precursors of acid deposition;

(ii) maintenance, upgrading, and application of models, such as the Regional Acid Deposition Model, that describe the interactions of emissions with the atmosphere, and models that describe the response of ecosystems to acid deposition; and

(iii) analysis of the costs, benefits, and effectiveness of the acid deposition control program.

(C) Publication and maintenance of a National Acid Lakes Registry that tracks the condition and change over time of a statistically representative sample of lakes in regions that are known to be sensitive to surface water acidification.

(D) Submission every two years of a unified budget recommendation to the President for activities of the Federal Government in connection with the research program described in this subsection.

(E) Beginning in 1992 and biennially thereafter, submission of a report to Congress describing the results of its investigations and analyses. The reporting of technical information about acid deposition shall be provided in a format that facilitates communication with policymakers and the public. The report shall include—

(i) actual and projected emissions and acid deposition trends;

(ii) average ambient concentrations of acid deposition percursors[2] and their transformation products;

(iii) the status of ecosystems (including forests and surface waters), materials, and visibility affected by acid deposition;

(iv) the causes and effects of such deposition, including changes in surface water quality and forest and soil conditions;

(v) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds; and

(vi) the confidence level associated with each conclusion to aid policymakers in use of the information.

(F) Beginning in 1996, and every 4 years thereafter, the report under subparagraph (E) shall include—

(i) the reduction in deposition rates that must be achieved in order to prevent adverse ecological effects; and

(ii) the costs and benefits of the acid deposition control program created by subchapter IV–A of this chapter.

(k) Air pollution conferences

If, in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, the Administrator may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under this part, the Administrator shall send such findings, together with recommendations concerning the measures which the Administrator finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 7408 of this title.

(July 14, 1955, ch. 360, title I, § 103, formerly § 3, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 394; renumbered § 103 and amended Pub. L. 89–272, title I, §§ 101(3), 103, Oct. 20, 1965, 79 Stat. 992, 996; Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 486; Pub. L. 91–604, §§ 2(a), 4(2), 15(a)(2), (c)(2), Dec. 31, 1970, 84 Stat. 1676, 1689, 1710, 1713; Pub. L. 95–95, title I, § 101(a), (b), Aug. 7, 1977, 91 Stat. 686, 687; Pub. L. 101–549, title IX, § 901(a)–(c), Nov. 15, 1990, 104 Stat. 2700–2703.)

REFERENCES IN TEXT

The Acid Precipitation Act of 1980, referred to in subsec. (j)(1), (3)(A), is title VII of Pub. L. 96–294, June 30, 1980, 94 Stat. 770, which is classified generally to chapter 97 (§ 8901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8901 of this title and Tables.

[2] So in original. Probably should be ''precursors''.

CODIFICATION

In subsec. (b)(4), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 1857b of this title.

PRIOR PROVISIONS

Provisions similar to those in subsec. (a)(3) of this section were contained in subsec. (a) of a prior section 1857b of this title, act July 14, 1955, ch. 360, § 3, 69 Stat. 322, as amended Oct. 9, 1962, Pub. L. 87–761, § 2, 76 Stat. 760, prior to the general amendment of this chapter by Pub. L. 88–206.

Provisions similar to those in this section were contained in prior sections 1857a to 1857d of this title, act July 14, 1955, ch. 360, §§ 2 to 5, 69 Stat. 322 (section 1857b as amended Oct. 9, 1962, Pub. L. 87–761, § 2, 76 Stat. 760; section 1857d as amended Sept. 22, 1959, Pub. L. 86–365, § 1, 73 Stat. 646 and Oct. 9, 1962, Pub. L. 87–761, § 1, 76 Stat. 760), prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 901(a)(1), inserted ''(including health and welfare effects)'' after ''effects''.

Subsec. (b)(8). Pub. L. 101–549, § 901(a)(2), which directed amendment of subsec. (b) by adding par. (8) at end, was executed by adding par. (8) after par. (7) to reflect the probable intent of Congress.

Subsecs. (c) to (f). Pub. L. 101–549, § 901(b), amended subsecs. (c) to (f) generally, substituting present provisions for provisions which related to: in subsec. (c), results of other scientific studies; in subsec. (d), construction of facilities; in subsec. (e), potential air pollution problems, conferences, and findings and recommendations of the Administrator; and, in subsec. (f), accelerated research programs.

Subsecs. (g) to (k). Pub. L. 101–549, § 901(c), added subsecs. (g) to (k).

1977—Subsec. (a). Pub. L. 95–95, § 101(b), struck out reference to ''training'' in par. (1) and added par. (5).

Subsec. (b). Pub. L. 95–95, § 101(a), struck out par. (5) which provided for training and training grants to personnel of air pollution control agencies and other persons with suitable qualifications, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and, following par. (7) as so redesignated, inserted provisions directing the Administrator, in carrying out subsec. (a), to provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and to make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsec. (a)(5) and allowing reasonable fees to be charged for such training provided to persons other than personnel of air pollution control agencies but requiring that such training be provided to such personnel of air pollution control agencies without charge.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsec. (c). Pub. L. 91–604, § 15(a)(2), (c)(2), substituted ''Administrator'' for ''Secretary'' and ''air pollutants'' for ''air pollution agents (or combinations of agents)''.

Subsec. (d). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (e). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing, substituted ''7415'' for ''7415(a)'', and inserted references to subsecs. (b) and (c) of section 7415 of this title.

Subsec. (f). Pub. L. 91–604, § 2(a), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted ''establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research'' for ''initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels'' as cl. (4) and struck out cl. (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emission from gasoline and diesel powered vehicles and relating to the development of improved low-cost techniques to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels.

Subsec. (c). Pub. L. 90–148 struck out provision for promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for recommendation by Secretary of air quality criteria.

Subsec. (e). Pub. L. 90–148 substituted references to subsections (d), (e), and (f) of section 7415 of this title for references to subsections (c), (d), and (e) of section 7415 of this title in provision for admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings.

1965—Subsec. (a)(5). Pub. L. 89–272, § 103(3), added par. (5).

Subsecs. (d), (e). Pub. L. 89–272, § 103(4), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (i) of this section requiring quadrennial reports to Congress and of reporting provisions in subsec. (j)(3)(E) and (F) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 7th and 8th items on page 163 of House Document No. 103–7.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PILOT DESIGN PROGRAMS

Pub. L. 106–246, div. B, title II, § 2603, July 13, 2000, 114 Stat. 558, required the Administrator of the Environ-

mental Protection Agency to make grants to carry out a 2-year program to implement in five metropolitan areas pilot design programs and report to Congress on the results not later than 360 days from first day of the second year of the 2-year program.

NATIONAL ACID LAKES REGISTRY

Section 405 of Pub. L. 101–549 provided that: ''The Administrator of the Environmental Protection Agency shall create a National Acid Lakes Registry that shall list, to the extent practical, all lakes that are known to be acidified due to acid deposition, and shall publish such list within one year of the enactment of this Act [Nov. 15, 1990]. Lakes shall be added to the registry as they become acidic or as data becomes available to show they are acidic. Lakes shall be deleted from the registry as they become nonacidic.''

ASSESSMENT OF INTERNATIONAL AIR POLLUTION CONTROL TECHNOLOGIES

Section 901(e) of Pub. L. 101–549 directed Administrator of Environmental Protection Agency to conduct a study that compares international air pollution control technologies of selected industrialized countries to determine if there exist air pollution control technologies in countries outside the United States that may have beneficial applications to this Nation's air pollution control efforts, including, with respect to each country studied, the topics of urban air quality, motor vehicle emissions, toxic air emissions, and acid deposition, and within 2 years after Nov. 15, 1990, submit to Congress a report detailing the results of such study.

WESTERN STATES ACID DEPOSITION RESEARCH

Section 901(g) of Pub. L. 101–549 provided that:

''(1) The Administrator of the Environmental Protection Agency shall sponsor monitoring and research and submit to Congress annual and periodic assessment reports on—

''(A) the occurrence and effects of acid deposition on surface waters located in that part of the United States west of the Mississippi River;

''(B) the occurrence and effects of acid deposition on high elevation ecosystems (including forests, and surface waters); and

''(C) the occurrence and effects of episodic acidification, particularly with respect to high elevation watersheds.

''(2) The Administrator of the Environmental Protection Agency shall analyze data generated from the studies conducted under paragraph (1), data from the Western Lakes Survey, and other appropriate research and utilize predictive modeling techniques that take into account the unique geographic, climatological, and atmospheric conditions which exist in the western United States to determine the potential occurrence and effects of acid deposition due to any projected increases in the emission of sulfur dioxide and nitrogen oxides in that part of the United States located west of the Mississippi River. The Administrator shall include the results of the project conducted under this paragraph in the reports issued to Congress under paragraph (1).''

CONSULTATION WITH COMMITTEE ON SCIENCE AND TECHNOLOGY OF HOUSE OF REPRESENTATIVES

Section 101(c) of Pub. L. 95–95 provided that: ''The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology on the environmental and atmospheric research, development, and demonstration aspects of this Act [see Short Title of 1977 Amendment note set out under section 7401 of this title]. In addition, the reports and studies required by this Act that relate to research, development, and demonstration issues shall be transmitted to the Committee on Science and Technology at the same time they are made available to other committees of the Congress.''

STUDY OF SUBSTANCES DISCHARGED FROM EXHAUSTS OF MOTOR VEHICLES

Pub. L. 86–493, June 8, 1960, 74 Stat. 162, directed Surgeon General of Public Health Service to conduct a thorough study for purposes of determining, with respect to the various substances discharged from exhausts of motor vehicles, the amounts and kinds of such substances which, from the standpoint of human health, it is safe for motor vehicles to discharge into the atmosphere under the various conditions under which such vehicles may operate, and, not later than two years after June 8, 1960, submit to Congress a report on results of the study, together with such recommendations, if any, based upon the findings made in such study, as he deemed necessary for the protection of the public health.

§ 7404. Research relating to fuels and vehicles

(a) Research programs; grants; contracts; pilot and demonstration plants; byproducts research

The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

(1) conduct and accelerate research programs directed toward development of improved, cost-effective techniques for—

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.[1]

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industry-wide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section 3324(a) and (b) of title 31 and section 5 of title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, except that the determination, approval, and certifi-

[1] So in original. The period probably should be a semicolon.

cation required thereby shall be made by the Administrator; *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter;[2]

(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

(b) Powers of Administrator in establishing research and development programs

In carrying out the provisions of this section, the Administrator may—

(1) conduct and accelerate research and development of cost-effective instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter will be served thereby.

(c) Clean alternative fuels

The Administrator shall conduct a research program to identify, characterize, and predict air emissions related to the production, distribution, storage, and use of clean alternative fuels to determine the risks and benefits to human health and the environment relative to those from using conventional gasoline and diesel fuels. The Administrator shall consult with other Federal agencies to ensure coordination and to avoid duplication of activities authorized under this subsection.

(July 14, 1955, ch. 360, title I, § 104, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 487; amended Pub. L. 91–137, Dec. 5, 1969, 83 Stat. 283; Pub. L. 91–604, §§ 2(b), (c), 13(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1676, 1677, 1709, 1713; Pub. L. 93–15, § 1(a), Apr. 9, 1973, 87 Stat. 11; Pub. L. 93–319, § 13(a), June 22, 1974, 88 Stat. 265; Pub. L. 101–549, title IX, § 901(d), Nov. 15, 1990, 104 Stat. 2706.)

[2] So in original. The word ''and'' probably should appear.

CODIFICATION

In subsec. (a)(2), ''section 3324(a) and (b) of title 31'' substituted for reference to section 3648 of the Revised Statutes (31 U.S.C. 529) on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

Section was formerly classified to section 1857b–1 of this title.

PRIOR PROVISIONS

A prior section 104 of act July 14, 1955, was renumbered section 105 by Pub. L. 90–148 and is classified to section 7405 of this title.

AMENDMENTS

1990—Subsecs. (a)(1), (b)(1). Pub. L. 101–549, § 901(d)(1), substituted ''cost-effective'' for ''low-cost''.

Subsec. (c). Pub. L. 101–549, § 901(d)(2), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: ''For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.''

1974—Subsec. (c). Pub. L. 93–319 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1975.

1973—Subsec. (c). Pub. L. 93–15 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (a)(1). Pub. L. 91–604, § 2(b), inserted provisions authorizing research programs directed toward development of techniques for improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and producing synthetic or new fuels which result in decreased atmospheric emissions.

Subsec. (a)(2). Pub. L. 91–604, § 2(c), added cls. (B) and (C) and redesignated former cl. (B) as (D).

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (c). Pub. L. 91–604, § 13(a), substituted provisions authorizing appropriations for fiscal years ending June 30, 1971, 1972, and 1973, for provisions authorizing appropriations for fiscal years ending June 30, 1968 and 1969.

1969—Subsec. (c). Pub. L. 91–137 authorized appropriation of $45,000,000 for fiscal year ending June 30, 1970.

HYDROGEN FUEL CELL VEHICLE STUDY AND TEST PROGRAM

Section 807 of Pub. L. 101–549 provided that: ''The Administrator of the Environmental Protection Agency, in conjunction with the National Aeronautics and Space Administration and the Department of Energy, shall conduct a study and test program on the development of a hydrogen fuel cell electric vehicle. The study and test program shall determine how best to transfer existing NASA hydrogen fuel cell technology into the form of a mass-producible, cost effective hydrogen fuel cell vehicle. Such study and test program shall include at a minimum a feasibility-design study, the construction of a prototype, and a demonstration. This study and test program should be completed and a report submitted to Congress within 3 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990]. This study and test program should be performed in the university or universities which are best exhibiting the facilities and expertise to develop such a fuel cell vehicle.''

COMBUSTION OF CONTAMINATED USED OIL IN SHIPS

Section 813 of Pub. L. 101–549 provided that: ''Within 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency shall com-

plete a study and submit a report to Congress evaluating the health and environmental impacts of the combustion of contaminated used oil in ships, the reasons for using such oil for such purposes, the alternatives to such use, the costs of such alternatives, and other relevant factors and impacts. In preparing such study, the Administrator shall obtain the view and comments of all interested persons and shall consult with the Secretary of Transportation and the Secretary of the department in which the Coast Guard is operating.''

EXTENSION TO AUG. 31, 1970 OF AUTHORIZATION PERIOD FOR FISCAL YEAR 1970

Pub. L. 91–316, July 10, 1970, 84 Stat. 416, provided in part that the authorization contained in section 104(c) of the Clean Air Act [subsec. (c) of this section] for the fiscal year ending June 30, 1970, should remain available through Aug. 31, 1970, notwithstanding any provisions of this section.

§ 7405. Grants for support of air pollution planning and control programs

(a) Amounts; limitations; assurances of plan development capability

(1)(A) The Administrator may make grants to air pollution control agencies, within the meaning of paragraph (1), (2), (3), (4), or (5) of section 7602 of this title, in an amount up to three-fifths of the cost of implementing programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards. For the purpose of this section, ''implementing'' means any activity related to the planning, developing, establishing, carrying-out, improving, or maintaining of such programs.

(B) Subject to subsections (b) and (c) of this section, an air pollution control agency which receives a grant under subparagraph (A) and which contributes less than the required two-fifths minimum shall have 3 years following November 15, 1990, in which to contribute such amount. If such an agency fails to meet and maintain this required level, the Administrator shall reduce the amount of the Federal contribution accordingly.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 7410 of this title, grants under subparagraph (A) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) Terms and conditions; regulations; factors for consideration; State expenditure limitations

(1) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (A) the population, (B) the extent of the actual or potential air pollution problem, and (C) the financial need of the respective agencies.

(2) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends. Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

(c) Maintenance of effort

(1) No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for the Administrator to award grants under this section in a timely manner each fiscal year, the Administrator shall compare an agency's prospective expenditure level to that of its second preceding fiscal year. The Administrator shall revise the current regulations which define applicable nonrecurrent and recurrent expenditures, and in so doing, give due consideration to exempting an agency from the limitations of this paragraph and subsection (a) of this section due to periodic increases experienced by that agency from time to time in its annual expenditures for purposes acceptable to the Administrator for that fiscal year.

(2) The Administrator may still award a grant to an agency not meeting the requirements of paragraph (*l*)[1] of this subsection if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government. No agency shall receive any grant under this section with respect to the

[1] So in original. Probably should be paragraph ''(1)''.

maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such a grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds. No grants shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

(d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant

The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 7601 of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) Notice and opportunity for hearing when affected by adverse action

No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).

(July 14, 1955, ch. 360, title I, § 105, formerly § 4, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 395; renumbered § 104 and amended Pub. L. 89–272, title I, § 101(2)–(4), Oct. 20, 1965, 79 Stat. 992; Pub. L. 89–675, § 3, Oct. 15, 1966, 80 Stat. 954; renumbered § 105 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 489; Pub. L. 91–604, §§ 3(a), (b)(1), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713; Pub. L. 95–95, title I, § 102, title III, § 305(b), Aug. 7, 1977, 91 Stat. 687, 776; Pub. L. 101–549, title VIII, § 802(a)–(e), Nov. 15, 1990, 104 Stat. 2687, 2688.)

CODIFICATION

Section was formerly classified to section 1857c of this title.

PRIOR PROVISIONS

A prior section 105 of act July 14, 1955, was renumbered section 108 by Pub. L. 90–148 and is classified to section 7415 of this title.

Provisions similar to those in subsecs. (a) and (b) of this section were contained in a prior section 1857d of this title, act July 14, 1955, ch. 360, § 5, 69 Stat. 322, as amended Sept. 22, 1959, Pub. L. 86–365, § 1, 73 Stat. 646; Oct. 9, 1962, Pub. L. 87–761, § 1, 76 Stat. 760, prior to the general amendment by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (a)(1)(A), (B). Pub. L. 101–549, § 802(a), amended subpars. (A) and (B) generally. Prior to amendment, subpars. (A) and (B) read as follows:

''(A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondry [sic] ambient air quality standards.

''(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 7602(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.''

Subsec. (a)(1)(C). Pub. L. 101–549, § 802(b), substituted ''subparagraph (A)'' for ''subparagraph (B)''.

Subsec. (b)(1). Pub. L. 101–549, § 802(c), designated existing provisions of subsec. (b) as par. (1), redesignated former cls. (1) to (3) as cls. (A) to (C), respectively, and struck out at end ''No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.''

Subsec. (b)(2). Pub. L. 101–549, § 802(d), redesignated subsec. (c) as subsec. (b)(2) and substituted ''Subject to the provisions of paragraph (1) of this subsection, no State shall have made available to it for application less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.'' for ''In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.''

Subsec. (c). Pub. L. 101–549, § 802(e), added subsec. (c). Former subsec. (c) redesignated (b)(2).

1977—Subsec. (b). Pub. L. 95–95, § 102(a), inserted '', unless the Administrator, after notice and opportunity for hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government'' after ''will be less than its expenditures were for such programs during the preceding fiscal year''.

Subsec. (c). Pub. L. 95–95, § 102(b), provided that in fiscal year 1978 and subsequent fiscal years, subject to provisions of subsec. (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

Subsec. (e). Pub. L. 95–95, § 305(b), added subsec. (e).

1970—Subsec. (a)(1). Pub. L. 91–604, § 3(a), substituted provisions authorizing the Administrator to make grants, for provisions authorizing the Secretary to make grants, and provisions authorizing grants for programs implementing national primary and secondary ambient air quality standards, for provisions authorizing grants for programs implementing air quality standards authorized by this subchapter, and inserted the provision requiring grants to air pollution control agencies be made to agencies having substantial responsibilities for carrying out the applicable implementation plan with respect to the air quality control region or portion thereof.

Subsecs. (a)(2), (3), (b), (c). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 91–604, § 3(b)(1), added subsec. (d).

1967—Subsec. (a). Pub. L. 90–148 designated existing provisions as par. (1), substituted ''regional air quality control program'' for ''regional air pollution control program,'' added planning to list of authorized activities, and added programs for implementation of air quality standards authorized by this chapter to list of authorized programs, and added pars. (2) and (3).

Subsec. (b). Pub. L. 90–148 made minor changes in the order of provisions.

Subsec. (c). Pub. L. 90–148 reduced percentage limitation on portion of total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966—Subsec. (a). Pub. L. 89–675, § 3(a)(1), struck out provisions limiting available funds to 20 per centum of sums appropriated annually for purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of cost of maintaining programs for prevention and control of air pollution, and authorized Secretary to make grants of up to three-fifths of cost of maintaining regional air pollution control programs.

Subsec. (b). Pub. L. 89–675, § 3(a)(2), substituted ''for the purpose of'' for ''under'', permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding year, and inserted provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub. L. 89–675, § 3(b), substituted ''total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs'' for ''grant funds available under subsection (a) of this section shall be expended'' and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965—Subsec. (a). Pub. L. 89–272 substituted ''this title'' for ''this Act'', which for purposes of codification has been changed to ''this subchapter'', and ''section 302(b)(2) and (4)'' for ''section 9(b)(2) and (4)'', which for purposes of codification has been changed to ''section 7602(b)(2) and (4) of this title''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7406. Interstate air quality agencies; program cost limitations

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 7407 of this title or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution), the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency or such commission in an amount up to three-fifths of the air quality implementation program costs of such agency or commission.

(July 14, 1955, ch. 360, title I, § 106, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 490; amended Pub. L. 91–604, § 3(c), Dec. 31, 1970, 84 Stat. 1677; Pub. L. 101–549, title I, § 102(f)(2), title VIII, § 802(f), Nov. 15, 1990, 104 Stat. 2420, 2688.)

CODIFICATION

Section was formerly classified to section 1857c–1 of this title.

PRIOR PROVISIONS

A prior section 106 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Pub. L. 101–549, § 102(f)(2)(A), inserted ''or of implementing section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution)'' after ''section 7407 of this title''.

Pub. L. 101–549, § 102(f)(2)(B), which directed insertion of ''any commission established under section 7506a of this title (relating to control of interstate air pollution) or section 7511c of this title (relating to control of interstate ozone pollution) or'' after ''program costs of'', was executed by making the insertion after that phrase the first place it appeared to reflect the probable intent of Congress.

Pub. L. 101–549, § 102(f)(2)(C), which directed insertion of ''or such commission'' after ''such agency'' in last sentence, was executed by making insertion after ''such agency'' the first place it appeared in the last sentence to reflect the probable intent of Congress.

Pub. L. 101–549, §§ 102(f)(2)(D), 802(f), substituted ''three-fifths of the air quality implementation pro-

gram costs of such agency or commission'' for ''three-fourths of the air quality planning program costs of such agency''.

1970—Pub. L. 91–604 struck out designation ''(a)'', substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized establishment of air quality planning commissions.

§ 7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under section 7410 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) Designations

(1) Designations generally

(A) Submission by Governors of initial designations following promulgation of new or revised standards

By such date as the Administrator may reasonably require, but not later than 1 year after promulgation of a new or revised national ambient air quality standard for any pollutant under section 7409 of this title, the Governor of each State shall (and at any other time the Governor of a State deems appropriate the Governor may) submit to the Administrator a list of all areas (or portions thereof) in the State, designating as—

(i) nonattainment, any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard for the pollutant,

(ii) attainment, any area (other than an area identified in clause (i)) that meets the national primary or secondary ambient air quality standard for the pollutant, or

(iii) unclassifiable, any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant.

The Administrator may not require the Governor to submit the required list sooner than 120 days after promulgating a new or revised national ambient air quality standard.

(B) Promulgation by EPA of designations

(i) Upon promulgation or revision of a national ambient air quality standard, the Administrator shall promulgate the designations of all areas (or portions thereof) submitted under subparagraph (A) as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised national ambient air quality standard. Such period may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations.

(ii) In making the promulgations required under clause (i), the Administrator may make such modifications as the Administrator deems necessary to the designations of the areas (or portions thereof) submitted under subparagraph (A) (including to the boundaries of such areas or portions thereof). Whenever the Administrator intends to make a modification, the Administrator shall notify the State and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate. The Administrator shall give such notification no later than 120 days before the date the Administrator promulgates the designation, including any modification thereto. If the Governor fails to submit the list in whole or in part, as required under subparagraph (A), the Administrator shall promulgate the designation that the Administrator deems appropriate for any area (or portion thereof) not designated by the State.

(iii) If the Governor of any State, on the Governor's own motion, under subparagraph (A), submits a list of areas (or portions thereof) in the State designated as nonattainment, attainment, or unclassifiable, the Administrator shall act on such designations in accordance with the procedures under paragraph (3) (relating to redesignation).

(iv) A designation for an area (or portion thereof) made pursuant to this subsection shall remain in effect until the area (or portion thereof) is redesignated pursuant to paragraph (3) or (4).

(C) Designations by operation of law

(i) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(A), (B), or (C) of this subsection (as in effect immediately before November 15, 1990) is designated, by operation of law, as a nonattainment area for such pollutant within the meaning of subparagraph (A)(i).

(ii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(E) (as in effect immediately before November 15, 1990) is designated by operation of law, as an attainment area for such pollutant within the meaning of subparagraph (A)(ii).

(iii) Any area designated with respect to any air pollutant under the provisions of paragraph (1)(D) (as in effect immediately before November 15, 1990) is designated, by operation of law, as an unclassifiable area for such pollutant within the meaning of subparagraph (A)(iii).

(2) Publication of designations and redesignations

(A) The Administrator shall publish a notice in the Federal Register promulgating any designation under paragraph (1) or (5), or announcing any designation under paragraph (4), or promulgating any redesignation under paragraph (3).

(B) Promulgation or announcement of a designation under paragraph (1), (4) or (5) shall not be subject to the provisions of sections 553 through 557 of title 5 (relating to notice and comment), except nothing herein shall be construed as precluding such public notice and comment whenever possible.

(3) Redesignation

(A) Subject to the requirements of subparagraph (E), and on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, the Administrator may at any time notify the Governor of any State that available information indicates that the designation of any area or portion of an area within the State or interstate area should be revised. In issuing such notification, which shall be public, to the Governor, the Administrator shall provide such information as the Administrator may have available explaining the basis for the notice.

(B) No later than 120 days after receiving a notification under subparagraph (A), the Governor shall submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof within the State or interstate area, as the Governor considers appropriate.

(C) No later than 120 days after the date described in subparagraph (B) (or paragraph (1)(B)(iii)), the Administrator shall promulgate the redesignation, if any, of the area or portion thereof, submitted by the Governor in accordance with subparagraph (B), making such modifications as the Administrator may deem necessary, in the same manner and under the same procedure as is applicable under clause (ii) of paragraph (1)(B), except that the phrase ''60 days'' shall be substituted for the phrase ''120 days'' in that clause. If the Governor does not submit, in accordance with subparagraph (B), a redesignation for an area (or portion thereof) identified by the Administrator under subparagraph (A), the Administrator shall promulgate such redesignation, if any, that the Administrator deems appropriate.

(D) The Governor of any State may, on the Governor's own motion, submit to the Administrator a revised designation of any area or portion thereof within the State. Within 18 months of receipt of a complete State redesignation submittal, the Administrator shall approve or deny such redesignation. The submission of a redesignation by a Governor shall not affect the effectiveness or enforceability of the applicable implementation plan for the State.

(E) The Administrator may not promulgate a redesignation of a nonattainment area (or portion thereof) to attainment unless—

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under section 7410(k) of this title;

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 7505a of this title; and

(v) the State containing such area has met all requirements applicable to the area under section 7410 of this title and part D of this subchapter.

(F) The Administrator shall not promulgate any redesignation of any area (or portion thereof) from nonattainment to unclassifiable.

(4) Nonattainment designations for ozone, carbon monoxide and particulate matter (PM–10)

(A) Ozone and carbon monoxide

(i) Within 120 days after November 15, 1990, each Governor of each State shall submit to the Administrator a list that designates, affirms or reaffirms the designation of, or redesignates (as the case may be), all areas (or portions thereof) of the Governor's State as attainment, nonattainment, or unclassifiable with respect to the national ambient air quality standards for ozone and carbon monoxide.

(ii) No later than 120 days after the date the Governor is required to submit the list of areas (or portions thereof) required under clause (i) of this subparagraph, the Administrator shall promulgate such designations, making such modifications as the Administrator may deem necessary, in the same manner, and under the same procedure, as is applicable under clause (ii) of paragraph

(1)(B), except that the phrase ''60 days'' shall be substituted for the phrase ''120 days'' in that clause. If the Governor does not submit, in accordance with clause (i) of this subparagraph, a designation for an area (or portion thereof), the Administrator shall promulgate the designation that the Administrator deems appropriate.

(iii) No nonattainment area may be redesignated as an attainment area under this subparagraph.

(iv) Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified under part D of this subchapter as a Serious, Severe, or Extreme Area, the boundaries of such area are hereby revised (on the date 45 days after such classification) by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be, unless within such 45-day period the Governor (in consultation with State and local air pollution control agencies) notifies the Administrator that additional time is necessary to evaluate the application of clause (v). Whenever a Governor has submitted such a notice to the Administrator, such boundary revision shall occur on the later of the date 8 months after such classification or 14 months after November 15, 1990, unless the Governor makes the finding referred to in clause (v), and the Administrator concurs in such finding, within such period. Except as otherwise provided in this paragraph, a boundary revision under this clause or clause (v) shall apply for purposes of any State implementation plan revision required to be submitted after November 15, 1990.

(v) Whenever the Governor of a State has submitted a notice under clause (iv), the Governor, in consultation with State and local air pollution control agencies, shall undertake a study to evaluate whether the entire metropolitan statistical area or consolidated metropolitan statistical area should be included within the nonattainment area. Whenever a Governor finds and demonstrates to the satisfaction of the Administrator, and the Administrator concurs in such finding, that with respect to a portion of a metropolitan statistical area or consolidated metropolitan statistical area, sources in the portion do not contribute significantly to violation of the national ambient air quality standard, the Administrator shall approve the Governor's request to exclude such portion from the nonattainment area. In making such finding, the Governor and the Administrator shall consider factors such as population density, traffic congestion, commercial development, industrial development, meteorological conditions, and pollution transport.

(B) PM–10 designations

By operation of law, until redesignation by the Administrator pursuant to paragraph (3)—

(i) each area identified in 52 Federal Register 29383 (Aug. 7, 1987) as a Group I area (except to the extent that such identification was modified by the Administrator before November 15, 1990) is designated nonattainment for PM–10;

(ii) any area containing a site for which air quality monitoring data show a violation of the national ambient air quality standard for PM–10 before January 1, 1989 (as determined under part 50, appendix K of title 40 of the Code of Federal Regulations) is hereby designated nonattainment for PM–10; and

(iii) each area not described in clause (i) or (ii) is hereby designated unclassifiable for PM–10.

Any designation for particulate matter (measured in terms of total suspended particulates) that the Administrator promulgated pursuant to this subsection (as in effect immediately before November 15, 1990) shall remain in effect for purposes of implementing the maximum allowable increases in concentrations of particulate matter (measured in terms of total suspended particulates) pursuant to section 7473(b) of this title, until the Administrator determines that such designation is no longer necessary for that purpose.

(5) Designations for lead

The Administrator may, in the Administrator's discretion at any time the Administrator deems appropriate, require a State to designate areas (or portions thereof) with respect to the national ambient air quality standard for lead in effect as of November 15, 1990, in accordance with the procedures under subparagraphs (A) and (B) of paragraph (1), except that in applying subparagraph (B)(i) of paragraph (1) the phrase ''2 years from the date of promulgation of the new or revised national ambient air quality standard'' shall be replaced by the phrase ''1 year from the date the Administrator notifies the State of the requirement to designate areas with respect to the standard for lead''.

(6) Designations

(A) Submission

Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

(B) Promulgation

Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

(7) Implementation plan for regional haze

(A) In general

Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 7492(e)(1) of this title (referred to in this paragraph as ''regional haze requirements'').

(B) No preclusion of other provisions

Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.

(e) Redesignation of air quality control regions

(1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State for purposes of efficient and effective air quality management. Upon such redesignation, the list under subsection (d) of this section shall be modified accordingly.

(2) In the case of an air quality control region in a State, or part of such region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

(3) No compliance date extension granted under section 7413(d)(5)[1] of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5)[1] of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

(July 14, 1955, ch. 360, title I, § 107, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95–95, title I, § 103, Aug. 7, 1977, 91 Stat. 687; Pub. L. 101–549, title I, § 101(a), Nov. 15, 1990, 104 Stat. 2399; Pub. L. 108–199, div. G, title IV, § 425(a), Jan. 23, 2004, 118 Stat. 417.)

REFERENCES IN TEXT

Section 7413 of this title, referred to in subsec. (e)(3), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

[1] See References in Text note below.

CODIFICATION

Section was formerly classified to section 1857c–2 of this title.

PRIOR PROVISIONS

A prior section 107 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 490, related to air quality control regions and was classified to section 1857c–2 of this title, prior to repeal by Pub. L. 91–604.

Another prior section 107 of act July 14, 1955, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 399, was renumbered section 111 by Pub. L. 90–148 and is classified to section 7411 of this title.

AMENDMENTS

2004—Subsec. (d)(6), (7). Pub. L. 108–199 added pars. (6) and (7).

1990—Subsec. (d). Pub. L. 101–549 amended subsec. (d) generally, substituting present provisions for provisions which required States to submit lists of regions not in compliance on Aug. 7, 1977, with certain air quality standards to be submitted to the Administrator, and which authorized States to revise and resubmit such lists from time to time.

1977—Subsecs. (d), (e). Pub. L. 95–95 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

OZONE AND PARTICULATE MATTER STANDARDS

Pub. L. 108–199, div. G, title IV, § 425(b), Jan. 23, 2004, 118 Stat. 417, provided that: ''Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act [subsec. (d)(6), (7) of this section] (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century [Pub. L. 105–178] (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act [Jan. 23, 2004], shall remain in effect.''

Pub. L. 105–178, title VI, June 9, 1998, 112 Stat. 463, as amended by Pub. L. 109–59, title VI, § 6012(a), Aug. 10, 2005, 119 Stat. 1882, provided that:

''SEC. 6101. FINDINGS AND PURPOSE.

''(a) The Congress finds that—

''(1) there is a lack of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$, in the United States and the States should receive full funding for the monitoring efforts;

''(2) such data would provide a basis for designating areas as attainment or nonattainment for any $PM_{2.5}$ national ambient air quality standards pursuant to the standards promulgated in July 1997;

''(3) the President of the United States directed the Administrator of the Environmental Protection Agency (referred to in this title as the 'Administrator') in a memorandum dated July 16, 1997, to complete the next periodic review of the particulate matter national ambient air quality standards by July 2002 in order to determine 'whether to revise or maintain the standards';

''(4) the Administrator has stated that 3 years of air quality monitoring data for fine particle levels, measured as $PM_{2.5}$ and performed in accordance with any applicable Federal reference methods, is appropriate for designating areas as attainment or nonattainment pursuant to the July 1997 promulgated standards; and

''(5) the Administrator has acknowledged that in drawing boundaries for attainment and nonattainment areas for the July 1997 ozone national air quality standards, Governors would benefit from considering implementation guidance from EPA on drawing area boundaries.

''(b) The purposes of this title are—

''(1) to ensure that 3 years of air quality monitoring data regarding fine particle levels are gathered for use in the determination of area attainment or nonattainment designations respecting any $PM_{2.5}$ national ambient air quality standards;

''(2) to ensure that the Governors have adequate time to consider implementation guidance from EPA on drawing area boundaries prior to submitting area designations respecting the July 1997 ozone national ambient air quality standards;

''(3) to ensure that the schedule for implementation of the July 1997 revisions of the ambient air quality standards for particulate matter and the schedule for the Environmental Protection Agency's visibility regulations related to regional haze are consistent with the timetable for implementation of such particulate matter standards as set forth in the President's Implementation Memorandum dated July 16, 1997.

''SEC. 6102. PARTICULATE MATTER MONITORING PROGRAM.

''(a) Through grants under section 103 of the Clean Air Act [42 U.S.C. 7403] the Administrator of the Environmental Protection Agency shall use appropriated funds no later than fiscal year 2000 to fund 100 percent of the cost of the establishment, purchase, operation and maintenance of a $PM_{2.5}$ monitoring network necessary to implement the national ambient air quality standards for $PM_{2.5}$ under section 109 of the Clean Air Act [42 U.S.C. 7409]. This implementation shall not result in a diversion or reprogramming of funds from other Federal, State or local Clean Air Act activities. Any funds previously diverted or reprogrammed from section 105 Clean Air Act [42 U.S.C. 7405] grants for $PM_{2.5}$ monitors must be restored to State or local air programs in fiscal year 1999.

''(b) EPA and the States, consistent with their respective authorities under the Clean Air Act [42 U.S.C. 7401 et seq.], shall ensure that the national network (designated in subsection (a)) which consists of the $PM_{2.5}$ monitors necessary to implement the national ambient air quality standards is established by December 31, 1999.

''(c)(1) The Governors shall be required to submit designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard within 1 year after receipt of 3 years of air quality monitoring data performed in accordance with any applicable Federal reference methods for the relevant areas. Only data from the monitoring network designated in subsection (a) and other Federal reference method $PM_{2.5}$ monitors shall be considered for such designations. Nothing in the previous sentence shall be construed as affecting the Governor's authority to designate an area initially as nonattainment, and the Administrator's authority to promulgate the designation of an area as nonattainment, under section 107(d)(1) of the Clean Air Act, based on its contribution to ambient air quality in a nearby nonattainment area.

''(2) For any area designated as nonattainment for the July 1997 $PM_{2.5}$ national ambient air quality standard in accordance with the schedule set forth in this section, notwithstanding the time limit prescribed in paragraph (2) of section 169B(e) of the Clean Air Act [42 U.S.C. 7492(e)(2)], the Administrator shall require State implementation plan revisions referred to in such paragraph (2) to be submitted at the same time as State implementation plan revisions referred to in section 172 of the Clean Air Act [42 U.S.C. 7502] implementing the revised national ambient air quality standard for fine particulate matter are required to be submitted. For any area designated as attainment or unclassifiable for such standard, the Administrator shall require the State implementation plan revisions referred to in such paragraph (2) to be submitted 1 year after the area has been so designated. The preceding provisions of this paragraph shall not preclude the implementation of the agreements and recommendations set forth in the Grand Canyon Visibility Transport Commission Report dated June 1996.

''(d) The Administrator shall promulgate the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] for each area following promulgation of the July 1997 $PM_{2.5}$ national ambient air quality standard by the earlier of 1 year after the initial designations required under subsection (c)(1) are required to be submitted or December 31, 2005.

''(e) FIELD STUDY.—Not later than 2 years after the date of enactment of the SAFETEA–LU [Aug. 10, 2005], the Administrator shall—

''(1) conduct a field study of the ability of the $PM_{2.5}$ Federal Reference Method to differentiate those particles that are larger than 2.5 micrometers in diameter;

''(2) develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter;

''(3) develop a method of measuring the composition of coarse particles; and

''(4) submit a report on the study and responsibilities of the Administrator under paragraphs (1) through (3) to—

''(A) the Committee on Energy and Commerce of the House of Representatives; and

''(B) the Committee on Environment and Public Works of the Senate.

''SEC. 6103. OZONE DESIGNATION REQUIREMENTS.

''(a) The Governors shall be required to submit the designations referred to in section 107(d)(1) of the Clean Air Act [42 U.S.C. 7407(d)(1)] within 2 years following the promulgation of the July 1997 ozone national ambient air quality standards.

''(b) The Administrator shall promulgate final designations no later than 1 year after the designations required under subsection (a) are required to be submitted.

''SEC. 6104. ADDITIONAL PROVISIONS.

''Nothing in sections 6101 through 6103 shall be construed by the Administrator of Environmental Protection Agency or any court, State, or person to affect any pending litigation or to be a ratification of the ozone or $PM_{2.5}$ standards.''

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, and with State and local officials, within nine months after November 15, 1990,[1] and periodically thereafter as necessary to maintain a continuous transportation-air quality planning process, update the June 1978 Transportation-Air Quality Planning Guidelines and publish guidance on the development and implementation of transportation and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards. Such guidelines shall include information on—

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal, State, and

[1] See Codification note below.

local environmental and transportation agencies not later than one year after November 15, 1990, and from time to time thereafter—

(A) information prepared, as appropriate, in consultation with the Secretary of Transportation, and after providing public notice and opportunity for comment, regarding the formulation and emission reduction potential of transportation control measures related to criteria pollutants and their precursors, including, but not limited to—

(i) programs for improved public transit;

(ii) restriction of certain roads or lanes to, or construction of such roads or lanes for use by, passenger buses or high occupancy vehicles;

(iii) employer-based transportation management plans, including incentives;

(iv) trip-reduction ordinances;

(v) traffic flow improvement programs that achieve emission reductions;

(vi) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit service;

(vii) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use;

(viii) programs for the provision of all forms of high-occupancy, shared-ride services;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of non-motorized vehicles or pedestrian use, both as to time and place;

(x) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xi) programs to control extended idling of vehicles;

(xii) programs to reduce motor vehicle emissions, consistent with subchapter II of this chapter, which are caused by extreme cold start conditions;

(xiii) employer-sponsored programs to permit flexible work schedules;

(xiv) programs and ordinances to facilitate non-automobile travel, provision and utilization of mass transit, and to generally reduce the need for single-occupant vehicle travel, as part of transportation planning and development efforts of a locality, including programs and ordinances applicable to new shopping centers, special events, and other centers of vehicle activity;

(xv) programs for new construction and major reconstructions of paths, tracks or areas solely for the use by pedestrian or other non-motorized means of transportation when economically feasible and in the public interest. For purposes of this clause, the Administrator shall also consult with the Secretary of the Interior; and

(xvi) program to encourage the voluntary removal from use and the marketplace of pre-1980 model year light duty vehicles and pre-1980 model light duty trucks.[2]

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of—

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(g) Assessment of risks to ecosystems

The Administrator may assess the risks to ecosystems from exposure to criteria air pollutants (as identified by the Administrator in the Administrator's sole discretion).

(h) RACT/BACT/LAER clearinghouse

The Administrator shall make information regarding emission control technology available to the States and to the general public through a central database. Such information shall include all control technology information received pursuant to State plan provisions requiring permits for sources, including operating permits for existing sources.

(July 14, 1955, ch. 360, title I, § 108, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1678; amended Pub. L. 95–95, title I, §§ 104, 105, title IV, § 401(a), Aug. 7, 1977, 91 Stat. 689, 790; Pub. L. 101–549, title I, §§ 108(a)–(c), (*o*), 111, Nov. 15, 1990, 104 Stat. 2465, 2466, 2469, 2470; Pub. L. 105–362, title XV, § 1501(b), Nov. 10, 1998, 112 Stat. 3294.)

CODIFICATION

November 15, 1990, referred to in subsec. (e), was in the original ''enactment of the Clean Air Act Amendments of 1989'', and was translated as meaning the date of the enactment of Pub. L. 101–549, popularly known as the Clean Air Act Amendments of 1990, to reflect the probable intent of Congress.

Section was formerly classified to section 1857c–3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91–604 and is classified to section 7415 of this title.

AMENDMENTS

1998—Subsec. (f)(3), (4). Pub. L. 105–362 struck out par. (3), which required reports by the Secretary of Transportation and the Administrator to be submitted to Congress by Jan. 1, 1993, and every 3 years thereafter, reviewing and analyzing existing State and local air quality related transportation programs, evaluating

[2] So in original. The period probably should be a semicolon.

achievement of goals, and recommending changes to existing programs, and par. (4), which required that in each report after the first report the Secretary of Transportation include a description of the actions taken to implement the changes recommended in the preceding report.

1990—Subsec. (e). Pub. L. 101–549, § 108(a), inserted first sentence and struck out former first sentence which read as follows: ''The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title.''

Subsec. (f)(1). Pub. L. 101–549, § 108(b), in introductory provisions, substituted present provisions for provisions relating to Federal agencies, States, and air pollution control agencies within either 6 months or one year after Aug. 7, 1977.

Subsec. (f)(1)(A). Pub. L. 101–549, § 108(b), substituted present provisions for provisions relating to information prepared in cooperation with Secretary of Transportation, regarding processes, procedures, and methods to reduce certain pollutants.

Subsec. (f)(3), (4). Pub. L. 101–549, § 111, added pars. (3) and (4).

Subsec. (g). Pub. L. 101–549, § 108(*o*), added subsec. (g).

Subsec. (h). Pub. L. 101–549, § 108(c), added subsec. (h).

1977—Subsec. (a)(1)(A). Pub. L. 95–95, § 401(a), substituted ''emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare'' for ''which in his judgment has an adverse effect on public health or welfare''.

Subsec. (b)(1). Pub. L. 95–95, § 104(a), substituted ''cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology'' for ''technology and costs of emission control''.

Subsec. (c). Pub. L. 95–95, § 104(b), inserted provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95–95, § 105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Ad-

ministrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(July 14, 1955, ch. 360, title I, § 109, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1679; amended Pub. L. 95–95, title I, § 106, Aug. 7, 1977, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c–4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91–604 and is classified to section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95–95, § 106(b), added subsec. (c).

Subsec. (d). Pub. L. 95–95, § 106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

ROLE OF SECONDARY STANDARDS

Pub. L. 101–549, title VIII, § 817, Nov. 15, 1990, 104 Stat. 2697, provided that:

''(a) REPORT.—The Administrator shall request the National Academy of Sciences to prepare a report to the Congress on the role of national secondary ambient air quality standards in protecting welfare and the environment. The report shall:

''(1) include information on the effects on welfare and the environment which are caused by ambient concentrations of pollutants listed pursuant to section 108 [42 U.S.C. 7408] and other pollutants which may be listed;

''(2) estimate welfare and environmental costs incurred as a result of such effects;

''(3) examine the role of secondary standards and the State implementation planning process in preventing such effects;

''(4) determine ambient concentrations of each such pollutant which would be adequate to protect welfare and the environment from such effects;

''(5) estimate the costs and other impacts of meeting secondary standards; and

''(6) consider other means consistent with the goals and objectives of the Clean Air Act [42 U.S.C. 7401 et seq.] which may be more effective than secondary standards in preventing or mitigating such effects.

''(b) SUBMISSION TO CONGRESS; COMMENTS; AUTHORIZATION.—(1) The report shall be transmitted to the Congress not later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

''(2) At least 90 days before issuing a report the Administrator shall provide an opportunity for public comment on the proposed report. The Administrator shall include in the final report a summary of the comments received on the proposed report.

''(3) There are authorized to be appropriated such sums as are necessary to carry out this section.''

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Admin-

istrator (either as a part of a plan submitted under the preceding sentence or separately) within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) Each implementation plan submitted by a State under this chapter shall be adopted by the State after reasonable notice and public hearing. Each such plan shall—

(A) include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter;

(B) provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to—

(i) monitor, compile, and analyze data on ambient air quality, and

(ii) upon request, make such data available to the Administrator;

(C) include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved, including a permit program as required in parts C and D of this subchapter;

(D) contain adequate provisions—

(i) prohibiting, consistent with the provisions of this subchapter, any source or other type of emissions activity within the State from emitting any air pollutant in amounts which will—

(I) contribute significantly to nonattainment in, or interfere with maintenance by, any other State with respect to any such national primary or secondary ambient air quality standard, or

(II) interfere with measures required to be included in the applicable implementation plan for any other State under part C of this subchapter to prevent significant deterioration of air quality or to protect visibility,

(ii) insuring compliance with the applicable requirements of sections 7426 and 7415 of this title (relating to interstate and international pollution abatement);

(E) provide (i) necessary assurances that the State (or, except where the Administrator deems inappropriate, the general purpose local government or governments, or a regional agency designated by the State or general purpose local governments for such purpose) will have adequate personnel, funding, and authority under State (and, as appropriate, local) law to carry out such implementation plan (and is not prohibited by any provision of Federal or State law from carrying out such implementation plan or portion thereof), (ii) requirements that the State comply with the requirements respecting State boards under section 7428 of this title, and (iii) necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of such plan provision;

(F) require, as may be prescribed by the Administrator—

(i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources,

(ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection;

(G) provide for authority comparable to that in section 7603 of this title and adequate contingency plans to implement such authority;

(H) provide for revision of such plan—

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate to attain the national ambient air quality standard which it implements or to otherwise comply with any additional requirements established under this chapter;

(I) in the case of a plan or plan revision for an area designated as a nonattainment area, meet the applicable requirements of part D of this subchapter (relating to nonattainment areas);

(J) meet the applicable requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), and part C of this subchapter (relating to prevention of significant deterioration of air quality and visibility protection);

(K) provide for—

(i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and

(ii) the submission, upon request, of data related to such air quality modeling to the Administrator;

(L) require the owner or operator of each major stationary source to pay to the permit-

ting authority, as a condition of any permit required under this chapter, a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under subchapter V of this chapter; and

(M) provide for consultation and participation by local political subdivisions affected by the plan.

(3)(A) Repealed. Pub. L. 101–549, title I, § 101(d)(1), Nov. 15, 1990, 104 Stat. 2409.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator, in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d)[1] of this title, suspensions under subsection (f) or (g) of this section (relating to temporary energy or economic authority), orders under section 7419 of this title (relating to primary nonferrous smelters), or extensions of compliance in decrees entered under section 7413(e)[1] of this title (relating to iron- and steel-producing operations) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, or extensions had been granted.

(4) Repealed. Pub. L. 101–549, title I, § 101(d)(2), Nov. 15, 1990, 104 Stat. 2409.

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) of this section respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term ''indirect source'' means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii) of this section), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term ''indirect source review program'' means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term ''transportation control measure'' does not include any measure which is an ''indirect source review program''.

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d)[1] of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

[1] See References in Text note below.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall promulgate a Federal implementation plan at any time within 2 years after the Administrator—

(A) finds that a State has failed to make a required submission or finds that the plan or plan revision submitted by the State does not satisfy the minimum criteria established under subsection (k)(1)(A) of this section, or

(B) disapproves a State implementation plan submission in whole or in part,

unless the State corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such Federal implementation plan.

(2)(A) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(A), Nov. 15, 1990, 104 Stat. 2409.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(B), Nov. 15, 1990, 104 Stat. 2409.

(D) For purposes of this paragraph—

(i) The term ''parking surcharge regulation'' means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term ''management of parking supply'' shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term ''preferential bus/carpool lane'' shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) Repealed. Pub. L. 101–549, title I, § 101(d)(3)(C), Nov. 15, 1990, 104 Stat. 2409.

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D of this subchapter.

(d), (e) Repealed. Pub. L. 101–549, title I, § 101(d)(4), (5), Nov. 15, 1990, 104 Stat. 2409

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets) adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c–10[2] of this title, as in effect before August 7, 1977, or section 7413(d)[2] of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within 12 months of submission of the proposed plan revision, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c–10[2] of this title as in effect before August 7, 1977, or under section 7413(d)[2] of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than 5 years after November 15, 1990, and every 3 years thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d)[2] of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section; no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

[2] See References in Text note below.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(k) Environmental Protection Agency action on plan submissions

(1) Completeness of plan submissions

(A) Completeness criteria

Within 9 months after November 15, 1990, the Administrator shall promulgate minimum criteria that any plan submission must meet before the Administrator is required to act on such submission under this subsection. The criteria shall be limited to the information necessary to enable the Administrator to determine whether the plan submission complies with the provisions of this chapter.

(B) Completeness finding

Within 60 days of the Administrator's receipt of a plan or plan revision, but no later than 6 months after the date, if any, by which a State is required to submit the plan or revision, the Administrator shall determine whether the minimum criteria established pursuant to subparagraph (A) have been met. Any plan or plan revision that a State submits to the Administrator, and that has not been determined by the Administrator (by the date 6 months after receipt of the submission) to have failed to meet the minimum criteria established pursuant to subparagraph (A), shall on that date be deemed by operation of law to meet such minimum criteria.

(C) Effect of finding of incompleteness

Where the Administrator determines that a plan submission (or part thereof) does not meet the minimum criteria established pursuant to subparagraph (A), the State shall be treated as not having made the submission (or, in the Administrator's discretion, part thereof).

(2) Deadline for action

Within 12 months of a determination by the Administrator (or a determination deemed by operation of law) under paragraph (1) that a State has submitted a plan or plan revision (or, in the Administrator's discretion, part thereof) that meets the minimum criteria established pursuant to paragraph (1), if applicable (or, if those criteria are not applicable, within 12 months of submission of the plan or revision), the Administrator shall act on the submission in accordance with paragraph (3).

(3) Full and partial approval and disapproval

In the case of any submittal on which the Administrator is required to act under paragraph (2), the Administrator shall approve such submittal as a whole if it meets all of the applicable requirements of this chapter. If a portion of the plan revision meets all the applicable requirements of this chapter, the Administrator may approve the plan revision in part and disapprove the plan revision in part. The plan revision shall not be treated as meeting the requirements of this chapter until the Administrator approves the entire plan revision as complying with the applicable requirements of this chapter.

(4) Conditional approval

The Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment.

(5) Calls for plan revisions

Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standard, to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter, the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies, and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions. Such findings and notice shall be public. Any finding under this paragraph shall, to the extent the Administrator deems appropriate, subject the State to the requirements of this chapter to which the State was subject when it developed and submitted the plan for which such finding was made, except that the Administrator may adjust any dates applicable under such requirements as appropriate (except that the Administrator may not adjust any attainment date prescribed under part D of this subchapter, unless such date has elapsed).

(6) Corrections

Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

(*l*) Plan revisions

Each revision to an implementation plan submitted by a State under this chapter shall be

adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 of this title), or any other applicable requirement of this chapter.

(m) Sanctions

The Administrator may apply any of the sanctions listed in section 7509(b) of this title at any time (or at any time after) the Administrator makes a finding, disapproval, or determination under paragraphs (1) through (4), respectively, of section 7509(a) of this title in relation to any plan or plan item (as that term is defined by the Administrator) required under this chapter, with respect to any portion of the State the Administrator determines reasonable and appropriate, for the purpose of ensuring that the requirements of this chapter relating to such plan or plan item are met. The Administrator shall, by rule, establish criteria for exercising his authority under the previous sentence with respect to any deficiency referred to in section 7509(a) of this title to ensure that, during the 24-month period following the finding, disapproval, or determination referred to in section 7509(a) of this title, such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency.

(n) Savings clauses

(1) Existing plan provisions

Any provision of any applicable implementation plan that was approved or promulgated by the Administrator pursuant to this section as in effect before November 15, 1990, shall remain in effect as part of such applicable implementation plan, except to the extent that a revision to such provision is approved or promulgated by the Administrator pursuant to this chapter.

(2) Attainment dates

For any area not designated nonattainment, any plan or plan revision submitted or required to be submitted by a State—

(A) in response to the promulgation or revision of a national primary ambient air quality standard in effect on November 15, 1990, or

(B) in response to a finding of substantial inadequacy under subsection (a)(2) of this section (as in effect immediately before November 15, 1990),

shall provide for attainment of the national primary ambient air quality standards within 3 years of November 15, 1990, or within 5 years of issuance of such finding of substantial inadequacy, whichever is later.

(3) Retention of construction moratorium in certain areas

In the case of an area to which, immediately before November 15, 1990, the prohibition on construction or modification of major stationary sources prescribed in subsection (a)(2)(I) of this section (as in effect immediately before November 15, 1990) applied by virtue of a finding of the Administrator that the State containing such area had not submitted an implementation plan meeting the requirements of section 7502(b)(6) of this title (relating to establishment of a permit program) (as in effect immediately before November 15, 1990) or 7502(a)(1) of this title (to the extent such requirements relate to provision for attainment of the primary national ambient air quality standard for sulfur oxides by December 31, 1982) as in effect immediately before November 15, 1990, no major stationary source of the relevant air pollutant or pollutants shall be constructed or modified in such area until the Administrator finds that the plan for such area meets the applicable requirements of section 7502(c)(5) of this title (relating to permit programs) or subpart 5 of part D of this subchapter (relating to attainment of the primary national ambient air quality standard for sulfur dioxide), respectively.

(*o*) Indian tribes

If an Indian tribe submits an implementation plan to the Administrator pursuant to section 7601(d) of this title, the plan shall be reviewed in accordance with the provisions for review set forth in this section for State plans, except as otherwise provided by regulation promulgated pursuant to section 7601(d)(2) of this title. When such plan becomes effective in accordance with the regulations promulgated under section 7601(d) of this title, the plan shall become applicable to all areas (except as expressly provided otherwise in the plan) located within the exterior boundaries of the reservation, notwithstanding the issuance of any patent and including rights-of-way running through the reservation.

(p) Reports

Any State shall submit, according to such schedule as the Administrator may prescribe, such reports as the Administrator may require relating to emission reductions, vehicle miles traveled, congestion levels, and any other information the Administrator may deem necessary to assess the development[3] effectiveness, need for revision, or implementation of any plan or plan revision required under this chapter.

(July 14, 1955, ch. 360, title I, § 110, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1680; amended Pub. L. 93–319, § 4, June 22, 1974, 88 Stat. 256; Pub. L. 95–95, title I, §§ 107, 108, Aug. 7, 1977, 91 Stat. 691, 693; Pub. L. 95–190, § 14(a)(1)–(6), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 97–23, § 3, July 17, 1981, 95 Stat. 142; Pub. L. 101–549, title I, §§ 101(b)–(d), 102(h), 107(c), 108(d), title IV, § 412, Nov. 15, 1990, 104 Stat. 2404–2408, 2422, 2464, 2466, 2634.)

REFERENCES IN TEXT

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L. 93–319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

[3] So in original. Probably should be followed by a comma.

Section 7413 of this title, referred to in subsecs. (a)(3)(C), (6), (f)(5), (g)(3), and (i), was amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsecs. (d) and (e) of section 7413 no longer relates to final compliance orders and steel industry compliance extension, respectively.

Section 1857c–10 of this title, as in effect before August 7, 1977, referred to in subsecs. (f)(5) and (g)(3), was in the original ''section 119, as in effect before the date of the enactment of this paragraph'', meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, §3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95–95, §107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101–549, title VII, §701, Nov. 15, 1990, 104 Stat. 2672, see note above. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857c–5 of this title.

PRIOR PROVISIONS

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91–604 and is classified to section 7417 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, §101(d)(8), substituted ''3 years (or such shorter period as the Administrator may prescribe)'' for ''nine months'' in two places.

Subsec. (a)(2). Pub. L. 101–549, §101(b), amended par. (2) generally, substituting present provisions for provisions setting the time within which the Administrator was to approve or disapprove a plan or portion thereof and listing the conditions under which the plan or portion thereof was to be approved after reasonable notice and hearing.

Subsec. (a)(3)(A). Pub. L. 101–549, §101(d)(1), struck out subpar. (A) which directed Administrator to approve any revision of an implementation plan if it met certain requirements and had been adopted by the State after reasonable notice and public hearings.

Subsec. (a)(3)(D). Pub. L. 101–549, §101(d)(1), struck out subpar. (D) which directed that certain implementation plans be revised to include comprehensive measures and requirements.

Subsec. (a)(4). Pub. L. 101–549, §101(d)(2), struck out par. (4) which set forth requirements for review procedure.

Subsec. (c)(1). Pub. L. 101–549, §102(h), amended par. (1) generally, substituting present provisions for provisions relating to preparation and publication of regulations setting forth an implementation plan, after opportunity for a hearing, upon failure of a State to make required submission or revision.

Subsec. (c)(2)(A). Pub. L. 101–549, §101(d)(3)(A), struck out subpar. (A) which required a study and report on necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations to achieve and maintain national primary ambient air quality standards.

Subsec. (c)(2)(C). Pub. L. 101–549, §101(d)(3)(B), struck out subpar. (C) which authorized suspension of certain regulations and requirements relating to management of parking supply.

Subsec. (c)(4). Pub. L. 101–549, §101(d)(3)(C), struck out par. (4) which permitted Governors to temporarily suspend measures in implementation plans relating to retrofits, gas rationing, and reduction of on-street parking.

Subsec. (c)(5)(B). Pub. L. 101–549, §101(d)(3)(D), struck out ''(including the written evidence required by part D),'' after ''include comprehensive measures''.

Subsec. (d). Pub. L. 101–549, §101(d)(4), struck out subsec. (d) which defined an applicable implementation plan for purposes of this chapter.

Subsec. (e). Pub. L. 101–549, §101(d)(5), struck out subsec. (e) which permitted an extension of time for attainment of a national primary ambient air quality standard.

Subsec. (f)(1). Pub. L. 101–549, §412, inserted ''or of any requirement under section 7651j of this title (concerning excess emissions penalties or offsets)'' in subpar. (A) and in last sentence.

Subsec. (g)(1). Pub. L. 101–549, §101(d)(6), substituted ''12 months of submission of the proposed plan revision'' for ''the required four month period'' in closing provisions.

Subsec. (h)(1). Pub. L. 101–549, §101(d)(7), substituted ''5 years after November 15, 1990, and every three years thereafter'' for ''one year after August 7, 1977, and annually thereafter'' and struck out at end ''Each such document shall be revised as frequently as practicable but not less often than annually.''

Subsecs. (k) to (n). Pub. L. 101–549, §101(c), added subsecs. (k) to (n).

Subsec. (*o*). Pub. L. 101–549, §107(c), added subsec. (*o*).

Subsec. (p). Pub. L. 101–549, §108(d), added subsec. (p).

1981—Subsec. (a)(3)(C). Pub. L. 97–23 inserted reference to extensions of compliance in decrees entered under section 7413(e) of this title (relating to iron- and steel-producing operations).

1977—Subsec. (a)(2)(A). Pub. L. 95–95, §108(a)(1), substituted ''(A) except as may be provided in subparagraph (I)(i) in the case of a plan'' for ''(A)(i) in the case of a plan''.

Subsec. (a)(2)(B). Pub. L. 95–95, §108(a)(2), substituted ''transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)'' for ''land use and transportation controls''.

Subsec. (a)(2)(D). Pub. L. 95–95, §108(a)(3), substituted ''it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure'' for ''it includes a procedure''.

Subsec. (a)(2)(E). Pub. L. 95–95, §108(a)(4), substituted ''it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement'' for ''it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region''.

Subsec. (a)(2)(F). Pub. L. 95–95, §108(a)(5), added cl. (vi).

Subsec. (a)(2)(H). Pub. L. 95–190, §14(a)(1), substituted ''1977;'' for ''1977''.

Pub. L. 95–95, § 108(a)(6), inserted ''except as provided in paragraph (3)(C),'' after ''or (ii)'' and ''or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977'' after ''to achieve the national ambient air quality primary or secondary standard which it implements''.

Subsec. (a)(2)(I). Pub. L. 95–95, § 108(b), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95–190, § 14(a)(2), substituted ''; and'' for '', and''.

Pub. L. 95–95, § 108(b), added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95–95, § 108(b) added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95–95, § 108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95–190, § 14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95–95, § 108(e), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95–190, § 14(a)(3), struck out ''preconstruction or premodification'' before ''review''.

Subsec. (a)(6). Pub. L. 95–95, § 108(e), added par. (6).

Subsec. (c)(1). Pub. L. 95–95, § 108(d)(1), (2), substituted ''plan which meets the requirements of this section'' for ''plan for any national ambient air quality primary or secondary standard within the time prescribed'' in subpar. (A) and, in provisions following subpar. (C), directed that any portion of a plan relating to any measure described in first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95–95, § 108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95–95, § 108(f), substituted ''and which implements the requirements of this section'' for ''and which implements a national primary or secondary ambient air quality standard in a State''.

Subsec. (f). Pub. L. 95–95, § 107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95–95, § 108(g), added subsec. (g) relating to publication of comprehensive document.

Pub. L. 95–95, § 107(b), added subsec. (g) relating to Governor's authority to issue temporary emergency suspensions.

Subsec. (h). Pub. L. 95–190, § 14(a)(5), redesignated subsec. (g), added by Pub. L. 95–95, § 108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95–190, § 14(a)(5), redesignated subsec. (h), added by Pub. L. 95–95, § 108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95–190 § 14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95–95, § 108(g), as (j) and in subsec. (j) as so redesignated, substituted ''will enable such source'' for ''at such source will enable it''.

1974—Subsec. (a)(3). Pub. L. 93–319, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93–319, § 4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95–95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SAVINGS PROVISION

Section 16 of Pub. L. 91–604 provided that:

''(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91–604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

''(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

''(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter].''

FEDERAL ENERGY ADMINISTRATOR

''Federal Energy Administrator'', for purposes of this chapter, to mean Administrator of Federal Energy Administration established by Pub. L. 93–275, May 7, 1974,

88 Stat. 97, which is classified to section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until Federal Energy Administrator takes office and after Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

Federal Energy Administration terminated and functions vested by law in Administrator thereof transferred to Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term ''standard of performance'' means a standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated.

(2) The term ''new source'' means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term ''stationary source'' means any building, structure, facility, or installation which emits or may emit any air pollutant. Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.

(4) The term ''modification'' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term ''owner or operator'' means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term ''existing source'' means any stationary source other than a new source.

(7) The term ''technological system of continuous emission reduction'' means—

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii)[1] of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within one year after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one year after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every 8 years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard. Standards of performance or revisions thereof shall become effective upon promulgation. When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i)

[1] See References in Text note below.

and (ii)[1] of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) of this title or emitted from a source category which is regulated under section 7412 of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) For those categories of major stationary sources that the Administrator listed under subsection (b)(1)(A) of this section before November 15, 1990, and for which regulations had not been proposed by the Administrator by November 15, 1990, the Administrator shall—

(A) propose regulations establishing standards of performance for at least 25 percent of such categories of sources within 2 years after November 15, 1990;

(B) propose regulations establishing standards of performance for at least 50 percent of such categories of sources within 4 years after November 15, 1990; and

(C) propose regulations for the remaining categories of sources within 6 years after November 15, 1990.

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) of this section any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) of this section contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Unless later deadlines for action of the Administrator are otherwise prescribed under this section, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(6) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase ''not feasible to prescribe or enforce a standard of performance'' means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

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

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; avail-

able methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, § 111, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1683; amended Pub. L. 92–157, title III, § 302(f), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95–95, title I, § 109(a)–(d)(1), (e), (f), title IV, § 401(b), Aug. 7, 1977, 91 Stat. 697–703, 791; Pub. L. 95–190, § 14(a)(7)–(9), Nov. 16, 1977, 91 Stat. 1399; Pub. L. 95–623, § 13(a), Nov. 9, 1978, 92 Stat. 3457; Pub. L. 101–549, title I, § 108(e)–(g), title III, § 302(a), (b), title IV, § 403(a), Nov. 15, 1990, 104 Stat. 2467, 2574, 2631.)

REFERENCES IN TEXT

Such Act, referred to in subsec. (a)(8), means Pub. L. 93–319, June 22, 1974, 88 Stat. 246, as amended, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Section 7413 of this title, referred to in subsec. (a)(8), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, subsec. (d) of section 7413 no longer relates to final compliance orders.

Subsection (a)(1) of this section, referred to in subsec. (b)(6), was amended generally by Pub. L. 101–549, title VII, § 403(a), Nov. 15, 1990, 104 Stat. 2631, and, as so amended, no longer contains subpars.

CODIFICATION

Section was formerly classified to section 1857c–6 of this title.

PRIOR PROVISIONS

A prior section 111 of act July 14, 1955, was renumbered section 118 by Pub. L. 91–604 and is classified to section 7418 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 403(a), amended par. (1) generally, substituting provisions defining ''standard of performance'' with respect to any air pollutant for provisions defining such term with respect to subsec. (b) fossil fuel fired and other stationary sources and subsec. (d) particular sources.

Subsec. (a)(3). Pub. L. 101–549, § 108(f), inserted at end ''Nothing in subchapter II of this chapter relating to nonroad engines shall be construed to apply to stationary internal combustion engines.''

Subsec. (b)(1)(B). Pub. L. 101–549, § 108(e)(1), substituted ''Within one year'' for ''Within 120 days'',

''within one year'' for ''within 90 days'', and ''every 8 years'' for ''every four years'', inserted before last sentence ''Notwithstanding the requirements of the previous sentence, the Administrator need not review any such standard if the Administrator determines that such review is not appropriate in light of readily available information on the efficacy of such standard.'', and inserted at end ''When implementation and enforcement of any requirement of this chapter indicate that emission limitations and percent reductions beyond those required by the standards promulgated under this section are achieved in practice, the Administrator shall, when revising standards promulgated under this section, consider the emission limitations and percent reductions achieved in practice.''

Subsec. (d)(1)(A)(i). Pub. L. 101–549, § 302(a), which directed the substitution of ''7412(b)'' for ''7412(b)(1)(A)'', could not be executed, because of the prior amendment by Pub. L. 101–549, § 108(g), see below.

Pub. L. 101–549, § 108(g), substituted ''or emitted from a source category which is regulated under section 7412 of this title'' for ''or 7412(b)(1)(A)''.

Subsec. (f)(1). Pub. L. 101–549, § 108(e)(2), amended par. (1) generally, substituting present provisions for provisions requiring the Administrator to promulgate regulations listing the categories of major stationary sources not on the required list by Aug. 7, 1977, and regulations establishing standards of performance for such categories.

Subsec. (g)(5) to (8). Pub. L. 101–549, § 302(b), redesignated par. (7) as (5) and struck out ''or section 7412 of this title'' after ''this section'', redesignated par. (8) as (6), and struck out former pars. (5) and (6) which read as follows:

''(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

''(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.''

1978—Subsecs. (d)(1)(A)(ii), (g)(4)(B). Pub. L. 95–623, § 13(a)(2), substituted ''under this section'' for ''under subsection (b) of this section''.

Subsec. (h)(5). Pub. L. 95–623, § 13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95–623, § 13(a)(3), substituted in pars. (1)(A) and (2)(A) ''standards under this section'' and ''under this section'' for ''standards under subsection (b) of this section'' and ''under subsection (b) of this section'', respectively.

1977—Subsec. (a)(1). Pub. L. 95–95, § 109(c)(1)(A), added subpars. (A), (B), and (C), substituted ''For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect'' for ''a standard for emissions of air pollutants which reflects'', ''and the percentage reduction achievable'' for ''achievable'', and ''technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)'' for ''system of emission reduction which (taking into account the cost of achieving such reduction)'' in existing provisions, and inserted provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95–95, § 109(c)(1)(B), added par. (7) defining ''technological system of continuous emission reduction''.

Pub. L. 95–95, § 109(f), added par. (7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4).

Subsec. (a)(7), (8). Pub. L. 95–190, § 14(a)(7), redesignated second par. (7) as (8).

Subsec. (b)(1)(A). Pub. L. 95–95, § 401(b), substituted ''such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger'' for ''such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of''.

Subsec. (b)(1)(B). Pub. L. 95–95, § 109(c)(2), substituted ''shall, at least every four years, review and, if appropriate,'' for ''may, from time to time,''.

Subsec. (b)(5), (6). Pub. L. 95–95, § 109(c)(3), added pars. (5) and (6).

Subsec. (c)(1). Pub. L. 95–95, § 109(d)(1), struck out ''(except with respect to new sources owned or operated by the United States)'' after ''implement and enforce such standards''.

Subsec. (d)(1). Pub. L. 95–95, § 109(b)(1), substituted ''standards of performance'' for ''emission standards'' and inserted provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95–95, § 109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95–95, § 109(a), added subsecs. (f) to (i).

Subsecs. (j), (k). Pub. L. 95–190, § 14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted ''(B)'' for ''(8)'' as designation for second subpar. in par. (2). Former subsec. (j), added by Pub. L. 95–95, § 109(e), which related to compliance with applicable standards of performance, was struck out.

Pub. L. 95–95, § 109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92–157 substituted in first sentence ''publish proposed'' for ''propose''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

REGULATIONS

Section 403(b), (c) of Pub. L. 101–549 provided that:

''(b) REVISED REGULATIONS.—Not later than three years after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator shall promulgate revised regulations for standards of performance for new fossil fuel fired electric utility units commencing construction after the date on which such regulations are proposed that, at a minimum, require any source subject to such revised standards to emit sulfur dioxide at a rate not greater than would have resulted from compliance by such source with the applicable standards of performance under this section [amending sections 7411 and 7479 of this title] prior to such revision.

''(c) APPLICABILITY.—The provisions of subsections (a) [amending this section] and (b) apply only so long as the provisions of section 403(e) of the Clean Air Act [42 U.S.C. 7651b(e)] remain in effect.''

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation

system for Canadian and Alaskan natural gas transferred to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until first anniversary of date of initial operation of Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees. Office of Federal Inspector for the Alaska Natural Gas Transportation System abolished and functions and authority vested in Inspector transferred to Secretary of Energy by section 3012(b) of Pub. L. 102–486, set out as an Abolition of Office of Federal Inspector note under section 719e of Title 15, Commerce and Trade. Functions and authority vested in Secretary of Energy subsequently transferred to Federal Coordinator for Alaska Natural Gas Transportation Projects by section 720d(f) of Title 15.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7412. Hazardous air pollutants

(a) Definitions

For purposes of this section, except subsection (r) of this section—

(1) Major source

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

(2) Area source

The term ''area source'' means any stationary source of hazardous air pollutants that is not a major source. For purposes of this section, the term ''area source'' shall not include motor vehicles or nonroad vehicles subject to regulation under subchapter II of this chapter.

(3) Stationary source

The term ''stationary source'' shall have the same meaning as such term has under section 7411(a) of this title.

(4) New source

The term ''new source'' means a stationary source the construction or reconstruction of which is commenced after the Administrator first proposes regulations under this section establishing an emission standard applicable to such source.

(5) Modification

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

(6) Hazardous air pollutant

The term ''hazardous air pollutant'' means any air pollutant listed pursuant to subsection (b) of this section.

(7) Adverse environmental effect

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

(8) Electric utility steam generating unit

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

(9) Owner or operator

The term ''owner or operator'' means any person who owns, leases, operates, controls, or supervises a stationary source.

(10) Existing source

The term ''existing source'' means any stationary source other than a new source.

(11) Carcinogenic effect

Unless revised, the term ''carcinogenic effect'' shall have the meaning provided by the Administrator under Guidelines for Carcinogenic Risk Assessment as of the date of enactment.[1] Any revisions in the existing Guidelines shall be subject to notice and opportunity for comment.

[1] See References in Text note below.

(b) List of pollutants

(1) Initial list

The Congress establishes for purposes of this section a list of hazardous air pollutants as follows:

CAS number	Chemical name
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
53963	2-Acetylaminofluorene
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
92671	4-Aminobiphenyl
62533	Aniline
90040	o-Anisidine
1332214	Asbestos
71432	Benzene (including benzene from gasoline)
92875	Benzidine
98077	Benzotrichloride
100447	Benzyl chloride
92524	Biphenyl
117817	Bis(2-ethylhexyl)phthalate (DEHP)
542881	Bis(chloromethyl)ether
75252	Bromoform
106990	1,3-Butadiene
156627	Calcium cyanamide
105602	Caprolactam
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
532274	2-Chloroacetophenone
108907	Chlorobenzene
510156	Chlorobenzilate
67663	Chloroform
107302	Chloromethyl methyl ether
126998	Chloroprene
1319773	Cresols/Cresylic acid (isomers and mixture)
95487	o-Cresol
108394	m-Cresol
106445	p-Cresol
98828	Cumene
94757	2,4-D, salts and esters
3547044	DDE
334883	Diazomethane
132649	Dibenzofurans
96128	1,2-Dibromo-3-chloropropane
84742	Dibutylphthalate
106467	1,4-Dichlorobenzene(p)
91941	3,3-Dichlorobenzidene
111444	Dichloroethyl ether (Bis(2-chloroethyl)ether)
542756	1,3-Dichloropropene
62737	Dichlorvos
111422	Diethanolamine
121697	N,N-Diethyl aniline (N,N-Dimethylaniline)
64675	Diethyl sulfate
119904	3,3-Dimethoxybenzidine
60117	Dimethyl aminoazobenzene
119937	3,3′-Dimethyl benzidine
79447	Dimethyl carbamoyl chloride
68122	Dimethyl formamide
57147	1,1-Dimethyl hydrazine
131113	Dimethyl phthalate
77781	Dimethyl sulfate
534521	4,6-Dinitro-o-cresol, and salts
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
123911	1,4-Dioxane (1,4-Diethyleneoxide)
122667	1,2-Diphenylhydrazine
106898	Epichlorohydrin (l-Chloro-2,3-epoxypropane)
106887	1,2-Epoxybutane
140885	Ethyl acrylate
100414	Ethyl benzene
51796	Ethyl carbamate (Urethane)
75003	Ethyl chloride (Chloroethane)
106934	Ethylene dibromide (Dibromoethane)
107062	Ethylene dichloride (1,2-Dichloroethane)
107211	Ethylene glycol
151564	Ethylene imine (Aziridine)
75218	Ethylene oxide
96457	Ethylene thiourea
75343	Ethylidene dichloride (1,1-Dichloroethane)
50000	Formaldehyde
76448	Heptachlor
118741	Hexachlorobenzene
87683	Hexachlorobutadiene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride (Hydrofluoric acid)
123319	Hydroquinone
78591	Isophorone
58899	Lindane (all isomers)
108316	Maleic anhydride
67561	Methanol
72435	Methoxychlor
74839	Methyl bromide (Bromomethane)
74873	Methyl chloride (Chloromethane)
71556	Methyl chloroform (1,1,1-Trichloroethane)
78933	Methyl ethyl ketone (2-Butanone)
60344	Methyl hydrazine
74884	Methyl iodide (Iodomethane)
108101	Methyl isobutyl ketone (Hexone)
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tert butyl ether
101144	4,4-Methylene bis(2-chloroaniline)
75092	Methylene chloride (Dichloromethane)
101688	Methylene diphenyl diisocyanate (MDI)
101779	4,4′-Methylenedianiline
91203	Naphthalene
98953	Nitrobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
79469	2-Nitropropane
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
56382	Parathion
82688	Pentachloronitrobenzene (Quintobenzene)
87865	Pentachlorophenol
108952	Phenol
106503	p-Phenylenediamine
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls (Aroclors)
1120714	1,3-Propane sultone
57578	beta-Propiolactone
123386	Propionaldehyde
114261	Propoxur (Baygon)
78875	Propylene dichloride (1,2-Dichloropropane)
75569	Propylene oxide
75558	1,2-Propylenimine (2-Methyl aziridine)
91225	Quinoline
106514	Quinone
100425	Styrene
96093	Styrene oxide

CAS number	Chemical name
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin
79345	1,1,2,2-Tetrachloroethane
127184	Tetrachloroethylene (Perchloroethylene)
7550450	Titanium tetrachloride
108883	Toluene
95807	2,4-Toluene diamine
584849	2,4-Toluene diisocyanate
95534	o-Toluidine
8001352	Toxaphene (chlorinated camphene)
120821	1,2,4-Trichlorobenzene
79005	1,1,2-Trichloroethane
79016	Trichloroethylene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
121448	Triethylamine
1582098	Trifluralin
540841	2,2,4-Trimethylpentane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride (1,1-Dichloroethylene)
1330207	Xylenes (isomers and mixture)
95476	o-Xylenes
108383	m-Xylenes
106423	p-Xylenes
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
0	Beryllium Compounds
0	Cadmium Compounds
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
0	Cyanide Compounds[1]
0	Glycol ethers[2]
0	Lead Compounds
0	Manganese Compounds
0	Mercury Compounds
0	Fine mineral fibers[3]
0	Nickel Compounds
0	Polycylic Organic Matter[4]
0	Radionuclides (including radon)[5]
0	Selenium Compounds

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

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

[2] Includes mono- and di- ethers of ethylene glycol, diethylene glycol, and triethylene glycol $R–(OCH2CH2)_n–OR'$ where

n = 1, 2, or 3

R = alkyl or aryl groups

R′ = R, H, or groups which, when removed, yield glycol ethers with the structure: $R–(OCH2CH)_n–OH$. Polymers are excluded from the glycol category.

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

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

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

(2) Revision of the list

The Administrator shall periodically review the list established by this subsection and publish the results thereof and, where appropriate, revise such list by rule, adding pollutants which present, or may present, through inhalation or other routes of exposure, a threat of adverse human health effects (including, but not limited to, substances which are known to be, or may reasonably be anticipated to be, carcinogenic, mutagenic, teratogenic, neurotoxic, which cause reproductive dysfunction, or which are acutely or chronically toxic) or adverse environmental effects whether through ambient concentrations, bioaccumulation, deposition, or otherwise, but not including releases subject to regulation under subsection (r) of this section as a result of emissions to the air. No air pollutant which is listed under section 7408(a) of this title may be added to the list under this section, except that the prohibition of this sentence shall not apply to any pollutant which independently meets the listing criteria of this paragraph and is a precursor to a pollutant which is listed under section 7408(a) of this title or to any pollutant which is in a class of pollutants listed under such section. No substance, practice, process or activity regulated under subchapter VI of this chapter shall be subject to regulation under this section solely due to its adverse effects on the environment.

(3) Petitions to modify the list

(A) Beginning at any time after 6 months after November 15, 1990, any person may petition the Administrator to modify the list of hazardous air pollutants under this subsection by adding or deleting a substance or, in case of listed pollutants without CAS numbers (other than coke oven emissions, mineral fibers, or polycyclic organic matter) removing certain unique substances. Within 18 months after receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. Any such petition shall include a showing by the petitioner that there is adequate data on the health or environmental defects[2] of the pollutant or other evidence adequate to support the petition. The Administrator may not deny a petition solely on the basis of inadequate resources or time for review.

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

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

(D) The Administrator shall delete one or more unique chemical substances that contain a listed hazardous air pollutant not having a CAS number (other than coke oven emissions,

[2] So in original. Probably should be ''effects''.

mineral fibers, or polycyclic organic matter) upon a showing by the petitioner or on the Administrator's own determination that such unique chemical substances that contain the named chemical of such listed hazardous air pollutant meet the deletion requirements of subparagraph (C). The Administrator must grant or deny a deletion petition prior to promulgating any emission standards pursuant to subsection (d) of this section applicable to any source category or subcategory of a listed hazardous air pollutant without a CAS number listed under subsection (b) of this section for which a deletion petition has been filed within 12 months of November 15, 1990.

(4) Further information

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

(5) Test methods

The Administrator may establish, by rule, test measures and other analytic procedures for monitoring and measuring emissions, ambient concentrations, deposition, and bioaccumulation of hazardous air pollutants.

(6) Prevention of significant deterioration

The provisions of part C of this subchapter (prevention of significant deterioration) shall not apply to pollutants listed under this section.

(7) Lead

The Administrator may not list elemental lead as a hazardous air pollutant under this subsection.

(c) List of source categories

(1) In general

Not later than 12 months after November 15, 1990, the Administrator shall publish, and shall from time to time, but no less often than every 8 years, revise, if appropriate, in response to public comment or new information, a list of all categories and subcategories of major sources and area sources (listed under paragraph (3)) of the air pollutants listed pursuant to subsection (b) of this section. To the extent practicable, the categories and subcategories listed under this subsection shall be consistent with the list of source categories established pursuant to section 7411 of this title and part C of this subchapter. Nothing in the preceding sentence limits the Administrator's authority to establish subcategories under this section, as appropriate.

(2) Requirement for emissions standards

For the categories and subcategories the Administrator lists, the Administrator shall establish emissions standards under subsection (d) of this section, according to the schedule in this subsection and subsection (e) of this section.

(3) Area sources

The Administrator shall list under this subsection each category or subcategory of area sources which the Administrator finds presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section. The Administrator shall, not later than 5 years after November 15, 1990, and pursuant to subsection (k)(3)(B) of this section, list, based on actual or estimated aggregate emissions of a listed pollutant or pollutants, sufficient categories or subcategories of area sources to ensure that area sources representing 90 percent of the area source emissions of the 30 hazardous air pollutants that present the greatest threat to public health in the largest number of urban areas are subject to regulation under this section. Such regulations shall be promulgated not later than 10 years after November 15, 1990.

(4) Previously regulated categories

The Administrator may, in the Administrator's discretion, list any category or subcategory of sources previously regulated under this section as in effect before November 15, 1990.

(5) Additional categories

In addition to those categories and subcategories of sources listed for regulation pursuant to paragraphs (1) and (3), the Administrator may at any time list additional categories and subcategories of sources of hazardous air pollutants according to the same criteria for listing applicable under such paragraphs. In the case of source categories and subcategories listed after publication of the initial list required under paragraph (1) or (3), emission standards under subsection (d) of this section for the category or subcategory shall be promulgated within 10 years after November 15, 1990, or within 2 years after the date on which such category or subcategory is listed, whichever is later.

(6) Specific pollutants

With respect to alkylated lead compounds, polycyclic organic matter, hexachlorobenzene, mercury, polychlorinated biphenyls, 2,3,7,8-tetrachlorodibenzofurans and 2,3,7,8-tetrachlorodibenzo-p-dioxin, the Administrator shall, not later than 5 years after November 15, 1990, list categories and subcategories of sources assuring that sources accounting for not less than 90 per centum of the aggregate emissions of each such pollutant are subject to standards under subsection (d)(2) or (d)(4) of this section. Such standards shall be promulgated not later than 10 years after November 15, 1990. This paragraph shall not be construed to require the Administrator to promulgate standards for such pollutants emitted by electric utility steam generating units.

(7) Research facilities

The Administrator shall establish a separate category covering research or laboratory facilities, as necessary to assure the equitable treatment of such facilities. For purposes of this section, ''research or laboratory facility'' means any stationary source whose primary purpose is to conduct research and development into new processes and products, where

such source is operated under the close supervision of technically trained personnel and is not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner.

(8) Boat manufacturing

When establishing emissions standards for styrene, the Administrator shall list boat manufacturing as a separate subcategory unless the Administrator finds that such listing would be inconsistent with the goals and requirements of this chapter.

(9) Deletions from the list

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

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

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

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

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

(d) Emission standards

(1) In general

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

(2) Standards and methods

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

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

(B) enclose systems or processes to eliminate emissions,

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

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

(E) are a combination of the above.

None of the measures described in subparagraphs (A) through (D) shall, consistent with the provisions of section 7414(c) of this title, in any way compromise any United States patent or United States trademark right, or any confidential business information, or any trade secret or any other intellectual property right.

(3) New and existing sources

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

(A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard,

with the lowest achievable emission rate (as defined by section 7501 of this title) applicable to the source category and prevailing at the time, in the category or subcategory for categories and subcategories with 30 or more sources, or

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

(4) Health threshold

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

(5) Alternative standard for area sources

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

(6) Review and revision

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

(7) Other requirements preserved

No emission standard or other requirement promulgated under this section shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section 7411 of this title, part C or D of this subchapter, or other authority of this chapter or a standard issued under State authority.

(8) Coke ovens

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

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

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

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

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

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

(ii) door and jam cleaning practices.

Notwithstanding subsection (i) of this section, the compliance date for such work practice regulations for coke oven batteries shall be not later than the date 3 years after November 15, 1990.

(C) For coke oven batteries electing to qualify for an extension of the compliance date for standards promulgated under subsection (f) of this section in accordance with subsection (i)(8) of this section, the emission standards under this subsection for coke oven batteries shall require that coke oven batteries not exceed 8 per centum leaking doors, 1 per centum leaking lids, 5 per centum leaking offtakes, and 16 seconds visible emissions per charge, with no exclusion for emissions during the period after the closing of self-sealing doors. Notwithstanding subsection (i) of this section, the compliance date for such emission standards for existing coke oven batteries seeking an extension shall be not later than the date 3 years after November 15, 1990.

(9) Sources licensed by the Nuclear Regulatory Commission

No standard for radionuclide emissions from any category or subcategory of facilities licensed by the Nuclear Regulatory Commission (or an Agreement State) is required to be promulgated under this section if the Administrator determines, by rule, and after consultation with the Nuclear Regulatory Commission, that the regulatory program established by the Nuclear Regulatory Commission pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.] for such category or subcategory provides an ample margin of safety to protect the public health. Nothing in this subsection shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce

any standard or limitation respecting emissions of radionuclides which is more stringent than the standard or limitation in effect under section 7411 of this title or this section.

(10) Effective date

Emission standards or other regulations promulgated under this subsection shall be effective upon promulgation.

(e) Schedule for standards and review

(1) In general

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

(A) emission standards for not less than 40 categories and subcategories (not counting coke oven batteries) shall be promulgated not later than 2 years after November 15, 1990;

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

(C) emission standards for 25 per centum of the listed categories and subcategories shall be promulgated not later than 4 years after November 15, 1990;

(D) emission standards for an additional 25 per centum of the listed categories and subcategories shall be promulgated not later than 7 years after November 15, 1990; and

(E) emission standards for all categories and subcategories shall be promulgated not later than 10 years after November 15, 1990.

(2) Priorities

In determining priorities for promulgating standards under subsection (d) of this section, the Administrator shall consider—

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

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

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

(3) Published schedule

Not later than 24 months after November 15, 1990, and after opportunity for comment, the Administrator shall publish a schedule establishing a date for the promulgation of emission standards for each category and subcategory of sources listed pursuant to subsection (c)(1) and (3) of this section which shall be consistent with the requirements of paragraphs (1) and (2). The determination of priorities for the promulgation of standards pursuant to this paragraph is not a rulemaking and shall not be subject to judicial review, except that, failure to promulgate any standard pursuant to the schedule established by this paragraph shall be subject to review under section 7604 of this title.

(4) Judicial review

Notwithstanding section 7607 of this title, no action of the Administrator adding a pollutant to the list under subsection (b) of this section or listing a source category or subcategory under subsection (c) of this section shall be a final agency action subject to judicial review, except that any such action may be reviewed under such section 7607 of this title when the Administrator issues emission standards for such pollutant or category.

(5) Publicly owned treatment works

The Administrator shall promulgate standards pursuant to subsection (d) of this section applicable to publicly owned treatment works (as defined in title II of the Federal Water Pollution Control Act [33 U.S.C. 1281 et seq.]) not later than 5 years after November 15, 1990.

(f) Standard to protect health and environment

(1) Report

Not later than 6 years after November 15, 1990, the Administrator shall investigate and report, after consultation with the Surgeon General and after opportunity for public comment, to Congress on—

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

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

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

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

(2) Emission standards

(A) If Congress does not act on any recommendation submitted under paragraph (1), the Administrator shall, within 8 years after promulgation of standards for each category or subcategory of sources pursuant to subsection (d) of this section, promulgate standards for such category or subcategory if promulgation of such standards is required in order to provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990) or to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. Emission standards promulgated under this subsection shall provide an ample margin of safety to protect public health in accordance with this section (as in effect before November 15, 1990), unless the Administrator determines that a more stringent standard is necessary to prevent, taking into consideration costs, energy, safety, and other relevant factors, an adverse environmental effect. If standards promulgated pursuant to subsection (d) of this section and applicable to a category or subcategory of sources emitting

a pollutant (or pollutants) classified as a known, probable or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million, the Administrator shall promulgate standards under this subsection for such source category.

(B) Nothing in subparagraph (A) or in any other provision of this section shall be construed as affecting, or applying to the Administrator's interpretation of this section, as in effect before November 15, 1990, and set forth in the Federal Register of September 14, 1989 (54 Federal Register 38044).

(C) The Administrator shall determine whether or not to promulgate such standards and, if the Administrator decides to promulgate such standards, shall promulgate the standards 8 years after promulgation of the standards under subsection (d) of this section for each source category or subcategory concerned. In the case of categories or subcategories for which standards under subsection (d) of this section are required to be promulgated within 2 years after November 15, 1990, the Administrator shall have 9 years after promulgation of the standards under subsection (d) of this section to make the determination under the preceding sentence and, if required, to promulgate the standards under this paragraph.

(3) Effective date

Any emission standard established pursuant to this subsection shall become effective upon promulgation.

(4) Prohibition

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

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

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

(5) Area sources

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

(6) Unique chemical substances

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

(g) Modifications

(1) Offsets

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

(B) The Administrator shall, after notice and opportunity for comment and not later than 18 months after November 15, 1990, publish guidance with respect to implementation of this subsection. Such guidance shall include an identification, to the extent practicable, of the relative hazard to human health resulting from emissions to the ambient air of each of the pollutants listed under subsection (b) of this section sufficient to facilitate the offset showing authorized by subparagraph (A). Such guidance shall not authorize offsets between pollutants where the increased pollutant (or more than one pollutant in a stream of pollutants) causes adverse effects to human health for which no safety threshold for exposure can be determined unless there are corresponding decreases in such types of pollutant(s).

(2) Construction, reconstruction and modifications

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

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

(3) Procedures for modifications

The Administrator (or the State) shall establish reasonable procedures for assuring

that the requirements applying to modifications under this section are reflected in the permit.

(h) Work practice standards and other requirements

(1) In general

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

(2) Definition

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

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

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

(3) Alternative standard

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

(4) Numerical standard required

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

(i) Schedule for compliance

(1) Preconstruction and operating requirements

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

(2) Special rule

Notwithstanding the requirements of paragraph (1), a new source which commences construction or reconstruction after a standard, limitation or regulation applicable to such source is proposed and before such standard, limitation or regulation is promulgated shall not be required to comply with such promulgated standard until the date 3 years after the date of promulgation if—

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

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

(3) Compliance schedule for existing sources

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

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

(4) Presidential exemption

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

(5) Early reduction

(A) The Administrator (or a State acting pursuant to a permit program approved under subchapter V of this chapter) shall issue a per-

mit allowing an existing source, for which the owner or operator demonstrates that the source has achieved a reduction of 90 per centum or more in emissions of hazardous air pollutants (95 per centum in the case of hazardous air pollutants which are particulates) from the source, to meet an alternative emission limitation reflecting such reduction in lieu of an emission limitation promulgated under subsection (d) of this section for a period of 6 years from the compliance date for the otherwise applicable standard, provided that such reduction is achieved before the otherwise applicable standard under subsection (d) of this section is first proposed. Nothing in this paragraph shall preclude a State from requiring reductions in excess of those specified in this subparagraph as a condition of granting the extension authorized by the previous sentence.

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

(C) The reduction shall be determined with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987, provided that, there is no evidence that emissions in the base year are artificially or substantially greater than emissions in other years prior to implementation of emissions reduction measures. The Administrator may allow a source to use a baseline year of 1985 or 1986 provided that the source can demonstrate to the satisfaction of the Administrator that emissions data for the source reflects verifiable data based on information for such source, received by the Administrator prior to November 15, 1990, pursuant to an information request issued under section 7414 of this title.

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

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

(6) Other reductions

Notwithstanding the requirements of this section, no existing source that has installed—

(A) best available control technology (as defined in section 7479(3) of this title), or

(B) technology required to meet a lowest achievable emission rate (as defined in section 7501 of this title),

prior to the promulgation of a standard under this section applicable to such source and the same pollutant (or stream of pollutants) controlled pursuant to an action described in subparagraph (A) or (B) shall be required to comply with such standard under this section until the date 5 years after the date on which such installation or reduction has been achieved, as determined by the Administrator. The Administrator may issue such rules and guidance as are necessary to implement this paragraph.

(7) Extension for new sources

A source for which construction or reconstruction is commenced after the date an emission standard applicable to such source is proposed pursuant to subsection (d) of this section but before the date an emission standard applicable to such source is proposed pursuant to subsection (f) of this section shall not be required to comply with the emission standard under subsection (f) of this section until the date 10 years after the date construction or reconstruction is commenced.

(8) Coke ovens

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

(B)(i) Not later than December 31, 1992, the Administrator shall promulgate emission limitations for coke oven emissions from coke oven batteries. Notwithstanding paragraph (3) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 1998. Such emission limitations shall reflect the lowest achievable emission rate as defined in section 7501 of this title for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than—

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

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

with an exclusion for emissions during the period after the closing of self-sealing oven doors (or the total mass emissions equivalent). The rulemaking in which such emission limitations are promulgated shall also establish an

appropriate measurement methodology for determining compliance with such emission limitations, and shall establish such emission limitations in terms of an equivalent level of mass emissions reduction from a coke oven battery, unless the Administrator finds that such a mass emissions standard would not be practicable or enforceable. Such measurement methodology, to the extent it measures leaking doors, shall take into consideration alternative test methods that reflect the best technology and practices actually applied in the affected industries, and shall assure that the final test methods are consistent with the performance of such best technology and practices.

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

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

(II) 1 per centum leaking lids;

(III) 4 per centum leaking offtakes; and

(IV) 16 seconds visible emissions per charge,

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

(C) Not later than January 1, 2007, the Administrator shall review the emission limitations promulgated under subparagraph (B) and revise, as necessary, such emission limitations to reflect the lowest achievable emission rate as defined in section 7501 of this title at the time for a coke oven battery that is rebuilt or a replacement at a coke oven plant for an existing battery. Such emission limitations shall be no less stringent than the emission limitation promulgated under subparagraph (B). Notwithstanding paragraph (2) of this subsection, the compliance date for such emission limitations for existing coke oven batteries shall be January 1, 2010.

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

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

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

(j) Equivalent emission limitation by permit

(1) Effective date

The requirements of this subsection shall apply in each State beginning on the effective date of a permit program established pursuant to subchapter V of this chapter in such State, but not prior to the date 42 months after November 15, 1990.

(2) Failure to promulgate a standard

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

(3) Applications

By the date established by paragraph (2), the owner or operator of a major source subject to this subsection shall file an application for a permit. If the owner or operator of a source has submitted a timely and complete application for a permit required by this subsection, any failure to have a permit shall not be a violation of paragraph (2), unless the delay in final action is due to the failure of the applicant to timely submit information required or requested to process the application. The Administrator shall not later than 18 months after November 15, 1990, and after notice and opportunity for comment, establish requirements for applications under this subsection including a standard application form and criteria for determining in a timely manner the completeness of applications.

(4) Review and approval

Permit applications submitted under this subsection shall be reviewed and approved or disapproved according to the provisions of section 7661d of this title. In the event that the Administrator (or the State) disapproves a permit application submitted under this subsection or determines that the application is incomplete, the applicant shall have up to 6 months to revise the application to meet the objections of the Administrator (or the State).

(5) Emission limitation

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

(6) Applicability of subsequent standards

If the Administrator promulgates an emission standard that is applicable to the major source prior to the date on which a permit application is approved, the emission limitation in the permit shall reflect the promulgated standard rather than the emission limitation determined pursuant to paragraph (5), provided that the source shall have the compliance period provided under subsection (i) of this section. If the Administrator promulgates a standard under subsection (d) of this section that would be applicable to the source in lieu of the emission limitation established by permit under this subsection after the date on which the permit has been issued, the Administrator (or the State) shall revise such permit upon the next renewal to reflect the standard promulgated by the Administrator providing such source a reasonable time to comply, but no longer than 8 years after such standard is promulgated or 8 years after the date on which the source is first required to comply with the emissions limitation established by paragraph (5), whichever is earlier.

(k) Area source program

(1) Findings and purpose

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

(2) Research program

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

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

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

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

Health effects considered under this program shall include, but not be limited to, carcinogenicity, mutagenicity, teratogenicity, neurotoxicity, reproductive dysfunction and other acute and chronic effects including the role of such pollutants as precursors of ozone or acid aerosol formation. The Administrator shall report the preliminary results of such research not later than 3 years after November 15, 1990.

(3) National strategy

(A) Considering information collected pursuant to the monitoring program authorized by paragraph (2), the Administrator shall, not later than 5 years after November 15, 1990, and after notice and opportunity for public comment, prepare and transmit to the Congress a comprehensive strategy to control emissions of hazardous air pollutants from area sources in urban areas.

(B) The strategy shall—

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

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

(C) The strategy shall include a schedule of specific actions to substantially reduce the public health risks posed by the release of hazardous air pollutants from area sources that will be implemented by the Administrator

under the authority of this or other laws (including, but not limited to, the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], the Federal Insecticide, Fungicide and Rodenticide Act [7 U.S.C. 136 et seq.] and the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) or by the States. The strategy shall achieve a reduction in the incidence of cancer attributable to exposure to hazardous air pollutants emitted by stationary sources of not less than 75 per centum, considering control of emissions of hazardous air pollutants from all stationary sources and resulting from measures implemented by the Administrator or by the States under this or other laws.

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

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

(F) The Administrator shall implement the strategy as expeditiously as practicable assuring that all sources are in compliance with all requirements not later than 9 years after November 15, 1990.

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

(4) Areawide activities

In addition to the national urban air toxics strategy authorized by paragraph (3), the Administrator shall also encourage and support areawide strategies developed by State or local air pollution control agencies that are intended to reduce risks from emissions by area sources within a particular urban area. From the funds available for grants under this section, the Administrator shall set aside not less than 10 per centum to support areawide strategies addressing hazardous air pollutants emitted by area sources and shall award such funds on a demonstration basis to those States with innovative and effective strategies. At the request of State or local air pollution control officials, the Administrator shall prepare guidelines for control technologies or management practices which may be applicable to various categories or subcategories of area sources.

(5) Report

The Administrator shall report to the Congress at intervals not later than 8 and 12 years after November 15, 1990, on actions taken under this subsection and other parts of this chapter to reduce the risk to public health posed by the release of hazardous air pollutants from area sources. The reports shall also identify specific metropolitan areas that continue to experience high risks to public health as the result of emissions from area sources.

***(l)* State programs**

(1) In general

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

(2) Guidance

Not later than 12 months after November 15, 1990, the Administrator shall publish guidance that would be useful to the States in developing programs for submittal under this subsection. The guidance shall also provide for the registration of all facilities producing, processing, handling or storing any substance listed pursuant to subsection (r) of this section in amounts greater than the threshold quantity. The Administrator shall include as an element in such guidance an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b) of this section.

(3) Technical assistance

The Administrator shall establish and maintain an air toxics clearinghouse and center to provide technical information and assistance to State and local agencies and, on a cost recovery basis, to others on control technology, health and ecological risk assessment, risk analysis, ambient monitoring and modeling, and emissions measurement and monitoring. The Administrator shall use the authority of section 7403 of this title to examine methods for preventing, measuring, and controlling emissions and evaluating associated health and ecological risks. Where appropriate, such activity shall be conducted with not-for-profit organizations. The Administrator may conduct research on methods for preventing, measuring and controlling emissions and evaluating associated health and environment risks. All information collected under this paragraph shall be available to the public.

(4) Grants

Upon application of a State, the Administrator may make grants, subject to such terms and conditions as the Administrator deems appropriate, to such State for the purpose of assisting the State in developing and implementing a program for submittal and approval under this subsection. Programs assisted under this paragraph may include program elements addressing air pollutants or extremely hazardous substances other than those specifically subject to this section.

Grants under this paragraph may include support for high-risk point source review as provided in paragraph (2) and support for the development and implementation of areawide area source programs pursuant to subsection (k) of this section.

(5) Approval or disapproval

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

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

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

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

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

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

(6) Withdrawal

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

(7) Authority to enforce

Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard or requirement under this section.

(8) Local program

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

(9) Permit authority

Nothing in this subsection shall affect the authorities and obligations of the Administrator or the State under subchapter V of this chapter.

(m) Atmospheric deposition to Great Lakes and coastal waters

(1) Deposition assessment

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

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

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

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

(D) evaluate any adverse effects to public health or the environment caused by such deposition (including effects resulting from indirect exposure pathways) and assess the contribution of such deposition to violations of water quality standards established pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] and drinking water standards established pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.]; and

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

(2) Great Lakes monitoring network

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

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

(B) The Administrator shall use the data provided by the network to identify and

track the movement of hazardous air pollutants through the Great Lakes, to determine the portion of water pollution loadings attributable to atmospheric deposition of such pollutants, and to support development of remedial action plans and other management plans as required by the Great Lakes Water Quality Agreement.

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

(3) Monitoring for the Chesapeake Bay and Lake Champlain

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

(4) Monitoring for coastal waters

The Administrator shall design and deploy atmospheric deposition monitoring networks for coastal waters and their watersheds and shall make any information collected through such networks available to the public. As part of this effort, the Administrator shall conduct research to develop and improve deposition monitoring methods, and to determine the relative contribution of atmospheric pollutants to pollutant loadings. For purposes of this subsection, ''coastal waters'' shall mean estuaries selected pursuant to section 320(a)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. 1330(a)(2)(A)] or listed pursuant to section 320(a)(2)(B) of such Act [33 U.S.C. 1330(a)(2)(B)] or estuarine research reserves designated pursuant to section 1461 of title 16.

(5) Report

Within 3 years of November 15, 1990, and biennially thereafter, the Administrator, in cooperation with the Under Secretary of Commerce for Oceans and Atmosphere, shall submit to the Congress a report on the results of any monitoring, studies, and investigations conducted pursuant to this subsection. Such report shall include, at a minimum, an assessment of—

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

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

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

(D) whether pollution loadings in the Great Lakes, the Chesapeake Bay, Lake Champlain or coastal waters cause or contribute to exceedances of drinking water standards pursuant to the Safe Drinking Water Act [42 U.S.C. 300f et seq.] or water quality standards pursuant to the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.] or, with respect to the Great Lakes, exceedances of the specific objectives of the Great Lakes Water Quality Agreement; and

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

(6) Additional regulation

As part of the report to Congress, the Administrator shall determine whether the other provisions of this section are adequate to prevent serious adverse effects to public health and serious or widespread environmental effects, including such effects resulting from indirect exposure pathways, associated with atmospheric deposition to the Great Lakes, the Chesapeake Bay, Lake Champlain and coastal waters of hazardous air pollutants (and their atmospheric transformation products). The Administrator shall take into consideration the tendency of such pollutants to bioaccumulate. Within 5 years after November 15, 1990, the Administrator shall, based on such report and determination, promulgate, in accordance with this section, such further emission standards or control measures as may be necessary and appropriate to prevent such effects, including effects due to bioaccumulation and indirect exposure pathways. Any requirements promulgated pursuant to this paragraph with respect to coastal waters shall only apply to the coastal waters of the States which are subject to section 7627(a) of this title.

(n) Other provisions

(1) Electric utility steam generating units

(A) The Administrator shall perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by electric utility steam generating units of pollutants listed under subsection (b) of this section after imposition of the requirements of this chapter. The Administrator shall report the results of this study to the Congress within 3 years after November 15, 1990. The Administrator shall develop and describe in the Administrator's report to Congress alternative control strategies for emissions which may warrant regulation under this section. The Administrator shall regulate electric utility steam generating units under this section, if the Administrator finds such regulation is appropriate and necessary after considering the results of the study required by this subparagraph.

(B) The Administrator shall conduct, and transmit to the Congress not later than 4

years after November 15, 1990, a study of mercury emissions from electric utility steam generating units, municipal waste combustion units, and other sources, including area sources. Such study shall consider the rate and mass of such emissions, the health and environmental effects of such emissions, technologies which are available to control such emissions, and the costs of such technologies.

(C) The National Institute of Environmental Health Sciences shall conduct, and transmit to the Congress not later than 3 years after November 15, 1990, a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur. Such study shall include a threshold for mercury concentrations in the tissue of fish which may be consumed (including consumption by sensitive populations) without adverse effects to public health.

(2) Coke oven production technology study

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

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

(C) On completion of the study, the Secretary shall submit to Congress a report on the results of the study and shall make recommendations to the Administrator identifying practicable and economically viable control technologies for coke oven production facilities to reduce residual risks remaining after implementation of the standard under subsection (d) of this section.

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

(3) Publicly owned treatment works

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

(4) Oil and gas wells; pipeline facilities

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

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

(5) Hydrogen sulfide

The Administrator is directed to assess the hazards to public health and the environment resulting from the emission of hydrogen sulfide associated with the extraction of oil and natural gas resources. To the extent practicable, the assessment shall build upon and not duplicate work conducted for an assessment pursuant to section 8002(m) of the Solid Waste Disposal Act [42 U.S.C. 6982(m)] and shall reflect consultation with the States. The assessment shall include a review of existing State and industry control standards, techniques and enforcement. The Administrator shall report to the Congress within 24 months after November 15, 1990, with the findings of such assessment, together with any recommendations, and shall, as appropriate, develop and implement a control strategy for emissions of hydrogen sulfide to protect human health and the environment, based on the findings of such assessment, using authorities under this chapter including sections[3] 7411 of this title and this section.

(6) Hydrofluoric acid

Not later than 2 years after November 15, 1990, the Administrator shall, for those regions of the country which do not have comprehensive health and safety regulations with respect to hydrofluoric acid, complete a study of the

[3] So in original. Probably should be ''section''.

potential hazards of hydrofluoric acid and the uses of hydrofluoric acid in industrial and commercial applications to public health and the environment considering a range of events including worst-case accidental releases and shall make recommendations to the Congress for the reduction of such hazards, if appropriate.

(7) RCRA facilities

In the case of any category or subcategory of sources the air emissions of which are regulated under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.], the Administrator shall take into account any regulations of such emissions which are promulgated under such subtitle and shall, to the maximum extent practicable and consistent with the provisions of this section, ensure that the requirements of such subtitle and this section are consistent.

(*o*) National Academy of Sciences study

(1) Request of the Academy

Within 3 months of November 15, 1990, the Administrator shall enter into appropriate arrangements with the National Academy of Sciences to conduct a review of—

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

(B) improvements in such methodology.

(2) Elements to be studied

In conducting such review, the National Academy of Sciences should consider, but not be limited to, the following—

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

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

(3) Other health effects of concern

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

(4) Report

A report on the results of such review shall be submitted to the Senate Committee on Environment and Public Works, the House Committee on Energy and Commerce, the Risk Assessment and Management Commission established by section 303 of the Clean Air Act Amendments of 1990 and the Administrator not later than 30 months after November 15, 1990.

(5) Assistance

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

(6) Authorization

Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to carry out this subsection.

(7) Guidelines for carcinogenic risk assessment

The Administrator shall consider, but need not adopt, the recommendations contained in the report of the National Academy of Sciences prepared pursuant to this subsection and the views of the Science Advisory Board, with respect to such report. Prior to the promulgation of any standard under subsection (f) of this section, and after notice and opportunity for comment, the Administrator shall publish revised Guidelines for Carcinogenic Risk Assessment or a detailed explanation of the reasons that any recommendations contained in the report of the National Academy of Sciences will not be implemented. The publication of such revised Guidelines shall be a final Agency action for purposes of section 7607 of this title.

(p) Mickey Leland National Urban Air Toxics Research Center

(1) Establishment

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

(2) Board of Directors

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

(3) Scientific Advisory Panel

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

(4) Funding

The center shall be established and funded with both Federal and private source funds.

(q) Savings provision

(1) Standards previously promulgated

Any standard under this section in effect before the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990] shall remain in force and effect after such date unless modified as provided in this section before the date of enactment of such Amendments or under such Amendments. Except as provided in paragraph (4), any standard under this section which has been promulgated, but has not taken effect, before such date shall not be affected by such Amendments unless modified as provided in this section before such date or under such Amendments. Each such standard shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of this section within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. If a timely petition for review of any such standard under section 7607 of this title is pending on such date of enactment, the standard shall be upheld if it complies with this section as in effect before that date. If any such standard is remanded to the Administrator, the Administrator may in the Administrator's discretion apply either the requirements of this section, or those of this section as in effect before the date of enactment of the Clean Air Act Amendments of 1990.

(2) Special rule

Notwithstanding paragraph (1), no standard shall be established under this section, as amended by the Clean Air Act Amendments of 1990, for radionuclide emissions from (A) elemental phosphorous plants, (B) grate calcination elemental phosphorous plants, (C) phosphogypsum stacks, or (D) any subcategory of the foregoing. This section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from such plants and stacks.

(3) Other categories

Notwithstanding paragraph (1), this section, as in effect prior to the date of enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], shall remain in effect for radionuclide emissions from non-Department of Energy Federal facilities that are not licensed by the Nuclear Regulatory Commission, coal-fired utility and industrial boilers, underground uranium mines, surface uranium mines, and disposal of uranium mill tailings piles, unless the Administrator, in the Administrator's discretion, applies the requirements of this section as modified by the Clean Air Act Amendments of 1990 to such sources of radionuclides.

(4) Medical facilities

Notwithstanding paragraph (1), no standard promulgated under this section prior to November 15, 1990, with respect to medical research or treatment facilities shall take effect for two years following November 15, 1990, unless the Administrator makes a determination pursuant to a rulemaking under subsection (d)(9) of this section. If the Administrator determines that the regulatory program established by the Nuclear Regulatory Commission for such facilities does not provide an ample margin of safety to protect public health, the requirements of this section shall fully apply to such facilities. If the Administrator determines that such regulatory program does provide an ample margin of safety to protect the public health, the Administrator is not required to promulgate a standard under this section for such facilities, as provided in subsection (d)(9) of this section.

(r) Prevention of accidental releases

(1) Purpose and general duty

It shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to paragraph (3) or any other extremely hazardous substance. The owners and operators of stationary sources producing, processing, handling or storing such substances have a general duty in the same manner and to the same extent as section 654 of title 29 to identify hazards which may result from such releases using appropriate hazard assessment techniques, to design and maintain a safe facility taking such steps as are necessary to prevent releases, and to minimize the consequences of accidental releases which do occur. For purposes of this paragraph, the provisions of section 7604 of this title shall not be available to any person or otherwise be construed to be applicable to this paragraph. Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances.

(2) Definitions

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

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

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

(D) The term ''retail facility'' means a stationary source at which more than one-half of the income is obtained from direct sales to end users or at which more than one-half of the fuel sold, by volume, is sold through a cylinder exchange program.

(3) List of substances

The Administrator shall promulgate not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. For purposes of promulgating such list, the Administrator shall use, but is not limited to, the list of extremely hazardous substances published under the Emergency Planning and Community Right-to-Know[4] Act of 1986 [42 U.S.C. 11001 et seq.], with such modifications as the Administrator deems appropriate. The initial list shall include chlorine, anhydrous ammonia, methyl chloride, ethylene oxide, vinyl chloride, methyl isocyanate, hydrogen cyanide, ammonia, hydrogen sulfide, toluene diisocyanate, phosgene, bromine, anhydrous hydrogen chloride, hydrogen fluoride, anhydrous sulfur dioxide, and sulfur trioxide. The initial list shall include at least 100 substances which pose the greatest risk of causing death, injury, or serious adverse effects to human health or the environment from accidental releases. Regulations establishing the list shall include an explanation of the basis for establishing the list. The list may be revised from time to time by the Administrator on the Administrator's own motion or by petition and shall be reviewed at least every 5 years. No air pollutant for which a national primary ambient air quality standard has been established shall be included on any such list. No substance, practice, process, or activity regulated under subchapter VI of this chapter shall be subject to regulations under this subsection. The Administrator shall establish procedures for the addition and deletion of substances from the list established under this paragraph consistent with those applicable to the list in subsection (b) of this section.

(4) Factors to be considered

In listing substances under paragraph (3), the Administrator—

(A) shall consider—

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

(ii) the likelihood of accidental releases of the substance; and

(iii) the potential magnitude of human exposure to accidental releases of the substance; and

(B) shall not list a flammable substance when used as a fuel or held for sale as a fuel at a retail facility under this subsection solely because of the explosive or flammable properties of the substance, unless a fire or explosion caused by the substance will result in acute adverse health effects from human exposure to the substance, including the unburned fuel or its combustion byproducts, other than those caused by the heat of the fire or impact of the explosion.

(5) Threshold quantity

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

(6) Chemical Safety Board

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

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

(C) The Board shall—

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

(ii) issue periodic reports to the Congress, Federal, State and local agencies, including the Environmental Protection Agency and the Occupational Safety and Health Administration, concerned with the safety of chemical production, processing, handling and storage, and other interested persons recommending measures to reduce the likelihood or the consequences of accidental releases and proposing corrective steps to

[4] So in original. Probably should be ''Right-To-Know''.

make chemical production, processing, handling and storage as safe and free from risk of injury as is possible and may include in such reports proposed rules or orders which should be issued by the Administrator under the authority of this section or the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.] to prevent or minimize the consequences of any release of substances that may cause death, injury or other serious adverse effects on human health or substantial property damage as the result of an accidental release; and

(iii) establish by regulation requirements binding on persons for reporting accidental releases into the ambient air subject to the Board's investigatory jurisdiction. Reporting releases to the National Response Center, in lieu of the Board directly, shall satisfy such regulations. The National Response Center shall promptly notify the Board of any releases which are within the Board's jurisdiction.

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

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

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

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

(H) Not later than 18 months after November 15, 1990, the Board shall publish a report accompanied by recommendations to the Administrator on the use of hazard assessments in preventing the occurrence and minimizing the consequences of accidental releases of extremely hazardous substances. The recommendations shall include a list of extremely hazardous substances which are not regulated substances (including threshold quantities for such substances) and categories of stationary sources for which hazard assessments would be an appropriate measure to aid in the prevention of accidental releases and to minimize the consequences of those releases that do occur. The recommendations shall also include a description of the information and analysis which would be appropriate to include in any hazard assessment. The Board shall also make recommendations with respect to the role of risk management plans as required by paragraph (8)(B)[5] in preventing accidental releases. The Board may from time to time review and revise its recommendations under this subparagraph.

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

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;[6]

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

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

(J) The Board may make recommendations with respect to accidental releases to the Secretary of Labor. Whenever the Board submits such recommendation, the Secretary shall respond to such recommendation formally and in writing not later than 180 days after receipt thereof. The response to the Board's recommendation by the Administrator[7] shall indicate whether the Secretary will—

(i) initiate a rulemaking or issue such orders as are necessary to implement the recommendation in full or in part, pursuant to any timetable contained in the recommendation;[6]

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

Any determination by the Secretary not to implement a recommendation or to implement a recommendation only in part, including any variation from the schedule contained in the

[5] So in original. Probably should be paragraph "(7)(B)".

[6] So in original. The word "or" probably should appear.

[7] So in original. The word "Administrator" probably should be "Secretary".

recommendation, shall be accompanied by a statement from the Secretary setting forth the reasons for such determination.

(K) Within 2 years after November 15, 1990, the Board shall issue a report to the Administrator of the Environmental Protection Agency and to the Administrator of the Occupational Safety and Health Administration recommending the adoption of regulations for the preparation of risk management plans and general requirements for the prevention of accidental releases of regulated substances into the ambient air (including recommendations for listing substances under paragraph (3)) and for the mitigation of the potential adverse effect on human health or the environment as a result of accidental releases which should be applicable to any stationary source handling any regulated substance in more than threshold amounts. The Board may include proposed rules or orders which should be issued by the Administrator under authority of this subsection or by the Secretary of Labor under the Occupational Safety and Health Act [29 U.S.C. 651 et seq.]. Any such recommendations shall be specific and shall identify the regulated substance or class of regulated substances (or other substances) to which the recommendations apply. The Administrator shall consider such recommendations before promulgating regulations required by paragraph (7)(B).

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

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

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

Whenever the Administrator or the Board conducts an inspection of a facility pursuant to this subsection, employees and their representatives shall have the same rights to participate in such inspections as provided in the Occupational Safety and Health Act [29 U.S.C. 651 et seq.].

(M) In addition to that described in subparagraph (L), the Board may use any information gathering authority of the Administrator under this chapter, including the subpoena power provided in section 7607(a)(1) of this title.

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

(O) After the effective date of any reporting requirement promulgated pursuant to subparagraph (C)(iii) it shall be unlawful for any person to fail to report any release of any extremely hazardous substance as required by such subparagraph. The Administrator is authorized to enforce any regulation or requirements established by the Board pursuant to subparagraph (C)(iii) using the authorities of sections 7413 and 7414 of this title. Any request for information from the owner or operator of a stationary source made by the Board or by the Administrator under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, 7603, 7604 and 7607 of this title and any other enforcement provisions of this chapter, as a request made by the Administrator under section 7414 of this title and may be enforced by the Chairperson of the Board or by the Administrator as provided in such section.

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

(Q) Consistent with subsection[8] (G) and section 7414(c) of this title any records, reports or information obtained by the Board shall be available to the Administrator, the Secretary of Labor, the Congress and the public, except that upon a showing satisfactory to the Board by any person that records, reports, or information, or particular part thereof (other than release or emissions data) to which the Board has access, if made public, is likely to cause substantial harm to the person's competitive position, the Board shall consider such record, report, or information or particular portion thereof confidential in accordance with section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, and authorized representatives of the United States concerned with carrying out this chapter or when relevant under any proceeding under this chapter. This subparagraph does not constitute authority to withhold records, reports, or information from the Congress.

(R) Whenever the Board submits or transmits any budget estimate, budget request, supplemental budget request, or other budget information, legislative recommendation, prepared testimony for congressional hearings, recommendation or study to the President, the Secretary of Labor, the Administrator, or the Director of the Office of Management and Budget, it shall concurrently transmit a copy thereof to the Congress. No report of the Board shall be subject to review by the Administrator or any Federal agency or to judicial

[8] So in original. Probably should be ''subparagraph''.

review in any court. No officer or agency of the United States shall have authority to require the Board to submit its budget requests or estimates, legislative recommendations, prepared testimony, comments, recommendations or reports to any officer or agency of the United States for approval or review prior to the submission of such recommendations, testimony, comments or reports to the Congress. In the performance of their functions as established by this chapter, the members, officers and employees of the Board shall not be responsible to or subject to supervision or direction, in carrying out any duties under this subsection, of any officer or employee or agent of the Environmental Protection Agency, the Department of Labor or any other agency of the United States except that the President may remove any member, officer or employee of the Board for inefficiency, neglect of duty or malfeasance in office. Nothing in this section shall affect the application of title 5 to officers or employees of the Board.

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

(7) Accident prevention

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

(B)(i) Within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases. The Administrator shall utilize the expertise of the Secretaries of Transportation and Labor in promulgating such regulations. As appropriate, such regulations shall cover the use, operation, repair, replacement, and maintenance of equipment to monitor, detect, inspect, and control such releases, including training of persons in the use and maintenance of such equipment and in the conduct of periodic inspections. The regulations shall include procedures and measures for emergency response after an accidental release of a regulated substance in order to protect human health and the environment. The regulations shall cover storage, as well as operations. The regulations shall, as appropriate, recognize differences in size, operations, processes, class and categories of sources and the voluntary actions of such sources to prevent such releases and respond to such releases. The regulations shall be applicable to a stationary source 3 years after the date of promulgation, or 3 years after the date on which a regulated substance present at the source in more than threshold amounts is first listed under paragraph (3), whichever is later.

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

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

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

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

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

(iii) The owner or operator of each stationary source covered by clause (ii) shall register a risk management plan prepared under this subparagraph with the Administrator before the effective date of regulations under clause (i) in such form and manner as the Administrator shall, by rule, require. Plans prepared pursuant to this subparagraph shall also be submitted to the Chemical Safety and Hazard Investigation Board, to the State in which the stationary source is located, and to any local agency or entity having responsibility for planning for or responding to accidental releases which may occur at such source, and shall be available to the public under section 7414(c) of this title. The Administrator shall establish, by rule, an auditing system to regularly review and, if necessary, require revision in risk management plans to assure that the plans comply with this subparagraph. Each such plan shall be updated periodically as required by the Administrator, by rule.

(C) Any regulations promulgated pursuant to this subsection shall to the maximum extent practicable, consistent with this subsection, be consistent with the recommendations and standards established by the American Society of Mechanical Engineers (ASME), the American National Standards Institute (ANSI) or the American Society of Testing Materials (ASTM). The Administrator shall take into consideration the concerns of small business in promulgating regulations under this subsection.

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

(E) After the effective date of any regulation or requirement imposed under this subsection, it shall be unlawful for any person to operate any stationary source subject to such regulation or requirement in violation of such regulation or requirement. Each regulation or requirement under this subsection shall for purposes of sections 7413, 7414, 7416, 7420, 7604, and 7607 of this title and other enforcement provisions of this chapter, be treated as a standard in effect under subsection (d) of this section.

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

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

(H) PUBLIC ACCESS TO OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—

(i) DEFINITIONS.—In this subparagraph:

(I) COVERED PERSON.—The term ''covered person'' means—

(aa) an officer or employee of the United States;

(bb) an officer or employee of an agent or contractor of the Federal Government;

(cc) an officer or employee of a State or local government;

(dd) an officer or employee of an agent or contractor of a State or local government;

(ee) an individual affiliated with an entity that has been given, by a State or local government, responsibility for preventing, planning for, or responding to accidental releases;

(ff) an officer or employee or an agent or contractor of an entity described in item (ee); and

(gg) a qualified researcher under clause (vii).

(II) OFFICIAL USE.—The term ''official use'' means an action of a Federal, State, or local government agency or an entity referred to in subclause (I)(ee) intended to carry out a function relevant to preventing, planning for, or responding to accidental releases.

(III) OFF-SITE CONSEQUENCE ANALYSIS INFORMATION.—The term ''off-site consequence analysis information'' means those portions of a risk management plan, excluding the executive summary of the plan, consisting of an evaluation of 1 or more worst-case release scenarios or alternative release scenarios, and any electronic data base created by the Administrator from those portions.

(IV) RISK MANAGEMENT PLAN.—The term ''risk management plan'' means a risk management plan submitted to the Administrator by an owner or operator of a stationary source under subparagraph (B)(iii).

(ii) REGULATIONS.—Not later than 1 year after August 5, 1999, the President shall—

(I) assess—

(aa) the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet; and

(bb) the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(II) based on the assessment under subclause (I), promulgate regulations governing the distribution of off-site consequence analysis information in a manner that, in the opinion of the President, minimizes the likelihood of accidental releases and

the risk described in subclause (I)(aa) and the likelihood of harm to public health and welfare, and—

(aa) allows access by any member of the public to paper copies of off-site consequence analysis information for a limited number of stationary sources located anywhere in the United States, without any geographical restriction;

(bb) allows other public access to off-site consequence analysis information as appropriate;

(cc) allows access for official use by a covered person described in any of items (cc) through (ff) of clause (i)(I) (referred to in this subclause as a ''State or local covered person'') to off-site consequence analysis information relating to stationary sources located in the person's State;

(dd) allows a State or local covered person to provide, for official use, off-site consequence analysis information relating to stationary sources located in the person's State to a State or local covered person in a contiguous State; and

(ee) allows a State or local covered person to obtain for official use, by request to the Administrator, off-site consequence analysis information that is not available to the person under item (cc).

(iii) AVAILABILITY UNDER FREEDOM OF INFORMATION ACT.—

(I) FIRST YEAR.—Off-site consequence analysis information, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 during the 1-year period beginning on August 5, 1999.

(II) AFTER FIRST YEAR.—If the regulations under clause (ii) are promulgated on or before the end of the period described in subclause (I), off-site consequence analysis information covered by the regulations, and any ranking of stationary sources derived from the information, shall not be made available under section 552 of title 5 after the end of that period.

(III) APPLICABILITY.—Subclauses (I) and (II) apply to off-site consequence analysis information submitted to the Administrator before, on, or after August 5, 1999.

(iv) AVAILABILITY OF INFORMATION DURING TRANSITION PERIOD.—The Administrator shall make off-site consequence analysis information available to covered persons for official use in a manner that meets the requirements of items (cc) through (ee) of clause (ii)(II), and to the public in a form that does not make available any information concerning the identity or location of stationary sources, during the period—

(I) beginning on August 5, 1999; and

(II) ending on the earlier of the date of promulgation of the regulations under clause (ii) or the date that is 1 year after August 5, 1999.

(v) PROHIBITION ON UNAUTHORIZED DISCLOSURE OF INFORMATION BY COVERED PERSONS.—

(I) IN GENERAL.—Beginning on August 5, 1999, a covered person shall not disclose to the public off-site consequence analysis information in any form, or any statewide or national ranking of identified stationary sources derived from such information, except as authorized by this subparagraph (including the regulations promulgated under clause (ii)). After the end of the 1-year period beginning on August 5, 1999, if regulations have not been promulgated under clause (ii), the preceding sentence shall not apply.

(II) CRIMINAL PENALTIES.—Notwithstanding section 7413 of this title, a covered person that willfully violates a restriction or prohibition established by this subparagraph (including the regulations promulgated under clause (ii)) shall, upon conviction, be fined for an infraction under section 3571 of title 18 (but shall not be subject to imprisonment) for each unauthorized disclosure of off-site consequence analysis information, except that subsection (d) of such section 3571 shall not apply to a case in which the offense results in pecuniary loss unless the defendant knew that such loss would occur. The disclosure of off-site consequence analysis information for each specific stationary source shall be considered a separate offense. The total of all penalties that may be imposed on a single person or organization under this item shall not exceed $1,000,000 for violations committed during any 1 calendar year.

(III) APPLICABILITY.—If the owner or operator of a stationary source makes off-site consequence analysis information relating to that stationary source available to the public without restriction—

(aa) subclauses (I) and (II) shall not apply with respect to the information; and

(bb) the owner or operator shall notify the Administrator of the public availability of the information.

(IV) LIST.—The Administrator shall maintain and make publicly available a list of all stationary sources that have provided notification under subclause (III)(bb).

(vi) NOTICE.—The Administrator shall provide notice of the definition of official use as provided in clause (i)(III)[9] and examples of actions that would and would not meet that definition, and notice of the restrictions on further dissemination and the penalties established by this chapter to each covered person who receives off-site consequence analysis information under clause (iv) and each covered person who receives off-site consequence analysis information for an official use under the regulations promulgated under clause (ii).

(vii) QUALIFIED RESEARCHERS.—

(I) IN GENERAL.—Not later than 180 days after August 5, 1999, the Administrator, in

[9] So in original. Probably should be ''(i)(II)''.

consultation with the Attorney General, shall develop and implement a system for providing off-site consequence analysis information, including facility identification, to any qualified researcher, including a qualified researcher from industry or any public interest group.

(II) LIMITATION ON DISSEMINATION.—The system shall not allow the researcher to disseminate, or make available on the Internet, the off-site consequence analysis information, or any portion of the off-site consequence analysis information, received under this clause.

(viii) READ-ONLY INFORMATION TECHNOLOGY SYSTEM.—In consultation with the Attorney General and the heads of other appropriate Federal agencies, the Administrator shall establish an information technology system that provides for the availability to the public of off-site consequence analysis information by means of a central data base under the control of the Federal Government that contains information that users may read, but that provides no means by which an electronic or mechanical copy of the information may be made.

(ix) VOLUNTARY INDUSTRY ACCIDENT PREVENTION STANDARDS.—The Environmental Protection Agency, the Department of Justice, and other appropriate agencies may provide technical assistance to owners and operators of stationary sources and participate in the development of voluntary industry standards that will help achieve the objectives set forth in paragraph (1).

(x) EFFECT ON STATE OR LOCAL LAW.—

(I) IN GENERAL.—Subject to subclause (II), this subparagraph (including the regulations promulgated under this subparagraph) shall supersede any provision of State or local law that is inconsistent with this subparagraph (including the regulations).

(II) AVAILABILITY OF INFORMATION UNDER STATE LAW.—Nothing in this subparagraph precludes a State from making available data on the off-site consequences of chemical releases collected in accordance with State law.

(xi) REPORT.—

(I) IN GENERAL.—Not later than 3 years after August 5, 1999, the Attorney General, in consultation with appropriate State, local, and Federal Government agencies, affected industry, and the public, shall submit to Congress a report that describes the extent to which regulations promulgated under this paragraph have resulted in actions, including the design and maintenance of safe facilities, that are effective in detecting, preventing, and minimizing the consequences of releases of regulated substances that may be caused by criminal activity. As part of this report, the Attorney General, using available data to the extent possible, and a sampling of covered stationary sources selected at the discretion of the Attorney General, and in consultation with appropriate State, local, and Federal governmental agencies, affected industry, and the public, shall review the vulnerability of covered stationary sources to criminal and terrorist activity, current industry practices regarding site security, and security of transportation of regulated substances. The Attorney General shall submit this report, containing the results of the review, together with recommendations, if any, for reducing vulnerability of covered stationary sources to criminal and terrorist activity, to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate and other relevant committees of Congress.

(II) INTERIM REPORT.—Not later than 12 months after August 5, 1999, the Attorney General shall submit to the Committee on Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate, and other relevant committees of Congress, an interim report that includes, at a minimum—

(aa) the preliminary findings under subclause (I);

(bb) the methods used to develop the findings; and

(cc) an explanation of the activities expected to occur that could cause the findings of the report under subclause (I) to be different than the preliminary findings.

(III) AVAILABILITY OF INFORMATION.—Information that is developed by the Attorney General or requested by the Attorney General and received from a covered stationary source for the purpose of conducting the review under subclauses (I) and (II) shall be exempt from disclosure under section 552 of title 5 if such information would pose a threat to national security.

(xii) SCOPE.—This subparagraph—

(I) applies only to covered persons; and

(II) does not restrict the dissemination of off-site consequence analysis information by any covered person in any manner or form except in the form of a risk management plan or an electronic data base created by the Administrator from off-site consequence analysis information.

(xiii) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator and the Attorney General such sums as are necessary to carry out this subparagraph (including the regulations promulgated under clause (ii)), to remain available until expended.

(8) Research on hazard assessments

The Administrator may collect and publish information on accident scenarios and consequences covering a range of possible events for substances listed under paragraph (3). The Administrator shall establish a program of long-term research to develop and disseminate information on methods and techniques for haz-

ard assessment which may be useful in improving and validating the procedures employed in the preparation of hazard assessments under this subsection.

(9) Order authority

(A) In addition to any other action taken, when the Administrator determines that there may be an imminent and substantial endangerment to the human health or welfare or the environment because of an actual or threatened accidental release of a regulated substance, the Administrator may secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require. The Administrator may also, after notice to the State in which the stationary source is located, take other action under this paragraph including, but not limited to, issuing such orders as may be necessary to protect human health. The Administrator shall take action under section 7603 of this title rather than this paragraph whenever the authority of such section is adequate to protect human health and the environment.

(B) Orders issued pursuant to this paragraph may be enforced in an action brought in the appropriate United States district court as if the order were issued under section 7603 of this title.

(C) Within 180 days after November 15, 1990, the Administrator shall publish guidance for using the order authorities established by this paragraph. Such guidance shall provide for the coordinated use of the authorities of this paragraph with other emergency powers authorized by section 9606 of this title, sections 311(c), 308, 309 and 504(a) of the Federal Water Pollution Control Act [33 U.S.C. 1321(c), 1318, 1319, 1364(a)], sections 3007, 3008, 3013, and 7003 of the Solid Waste Disposal Act [42 U.S.C. 6927, 6928, 6934, 6973], sections 1445 and 1431 of the Safe Drinking Water Act [42 U.S.C. 300j–4, 300i], sections 5 and 7 of the Toxic Substances Control Act [15 U.S.C. 2604, 2606], and sections 7413, 7414, and 7603 of this title.

(10) Presidential review

The President shall conduct a review of release prevention, mitigation and response authorities of the various Federal agencies and shall clarify and coordinate agency responsibilities to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources which may exist. The President may utilize the resources and solicit the recommendations of the Chemical Safety and Hazard Investigation Board in conducting such review. At the conclusion of such review, but not later than 24 months after November 15, 1990, the President shall transmit a message to the Congress on the release prevention, mitigation and response activities of the Federal Government making such recommendations for change in law as the President may deem appropriate. Nothing in this paragraph shall be interpreted, construed or applied to authorize the President to modify or reassign release prevention, mitigation or response authorities otherwise established by law.

(11) State authority

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

(s) Periodic report

Not later than January 15, 1993 and every 3 years thereafter, the Administrator shall prepare and transmit to the Congress a comprehensive report on the measures taken by the Agency and by the States to implement the provisions of this section. The Administrator shall maintain a database on pollutants and sources subject to the provisions of this section and shall include aggregate information from the database in each annual report. The report shall include, but not be limited to—

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

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

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

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

(July 14, 1955, ch. 360, title I, § 112, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1685; amended Pub. L. 95–95, title I, §§ 109(d)(2), 110, title IV, § 401(c), Aug. 7, 1977, 91 Stat. 701, 703, 791; Pub. L. 95–623, § 13(b), Nov. 9, 1978, 92 Stat. 3458; Pub. L. 101–549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531; Pub. L. 102–187, Dec. 4, 1991, 105 Stat. 1285; Pub. L. 105–362, title IV, § 402(b), Nov. 10, 1998, 112 Stat. 3283; Pub. L. 106–40, §§ 2, 3(a), Aug. 5, 1999, 113 Stat. 207, 208.)

REFERENCES IN TEXT

The date of enactment, referred to in subsec. (a)(11), probably means the date of enactment of Pub. L. 101–549, which amended this section generally and was approved Nov. 15, 1990.

The Atomic Energy Act, referred to in subsec. (d)(9), probably means the Atomic Energy Act of 1954, act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, and amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsecs. (e)(5) and (m)(1)(D), (5)(D), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92–500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. Title II of the Act is classified generally to subchapter II (§ 1281 et seq.) of chapter 26 of Title 33. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Toxic Substances Control Act, referred to in subsec. (k)(3)(C), is Pub. L. 94–469, Oct. 11, 1976, 90 Stat.

2003, as amended, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Federal Insecticide, Fungicide and Rodenticide Act, referred to in subsec. (k)(3)(C), probably means the Federal Insecticide, Fungicide, and Rodenticide Act, act June 25, 1947, ch. 125, as amended generally by Pub. L. 92–516, Oct. 21, 1972, 86 Stat. 973, which is classified generally to subchapter II (§ 136 et seq.) of chapter 6 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 136 of Title 7 and Tables.

The Resource Conservation and Recovery Act, referred to in subsec. (k)(3)(C), probably means the Resource Conservation and Recovery Act of 1976, Pub. L. 94–580, Oct. 21, 1976, 90 Stat. 2796, as amended, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

The Safe Drinking Water Act, referred to in subsec. (m)(1)(D), (5)(D), is title XIV of act July 1, 1944, as added Dec. 16, 1974, Pub. L. 93–523, § 2(a), 88 Stat. 1660, as amended, which is classified generally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Solid Waste Disposal Act, referred to in subsec. (n)(7), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Section 303 of the Clean Air Act Amendments of 1990, referred to in subsec. (*o*)(4), probably means section 303 of Pub. L. 101–549, which is set out below.

The Clean Air Act Amendments of 1990, referred to in subsec. (q)(1)–(3), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Emergency Planning and Community Right-To-Know Act of 1986, referred to in subsec. (r)(3), is title III of Pub. L. 99–499, Oct. 17, 1986, 100 Stat. 1728, which is classified generally to chapter 116 (§ 11001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 11001 of this title and Tables.

The Occupational Safety and Health Act, referred to in subsec. (r)(6)(C)(ii), (K), (L), probably means the Occupational Safety and Health Act of 1970, Pub. L. 91–596, Dec. 29, 1970, 84 Stat. 1590, as amended, which is classified principally to chapter 15 (§ 651 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 651 of Title 29 and Tables.

CODIFICATION

Section was formerly classified to section 1857c-7 of this title.

AMENDMENTS

1999—Subsec. (r)(2)(D). Pub. L. 106–40, § 2(5), added subpar. (D).

Subsec. (r)(4). Pub. L. 106–40, § 2, substituted ''Administrator—

''(A) shall consider—''

for ''Administrator shall consider each of the following criteria—'' in introductory provisions, redesignated subpars. (A) to (C) as cls. (i) to (iii), respectively, of subpar. (A) and added subpar. (B).

Subsec. (r)(7)(H). Pub. L. 106–40, § 3(a), added subpar. (H).

1998—Subsec. (n)(2)(C). Pub. L. 105–362 substituted ''On completion of the study, the Secretary shall submit to Congress a report on the results of the study and'' for ''The Secretary shall prepare annual reports to Congress on the status of the research program and at the completion of the study''.

1991—Subsec. (b)(1). Pub. L. 102–187 struck out ''7783064 Hydrogen sulfide'' from list of pollutants.

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), definitions; in subsec. (b), list of hazardous air pollutants, emission standards, and pollution control techniques; in subsec. (c), prohibited acts and exemption; in subsec. (d), State implementation and enforcement; and in subsec. (e), design, equipment, work practice, and operational standards.

1978—Subsec. (e)(5). Pub. L. 95–623 added par. (5).

1977—Subsec. (a)(1). Pub. L. 95–95, § 401(c), substituted ''causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness'' for ''may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness''.

Subsec. (d)(1). Pub. L. 95–95, § 109(d)(2), struck out ''(except with respect to stationary sources owned or operated by the United States)'' after ''implement and enforce such standards''.

Subsec. (e). Pub. L. 95–95, § 110, added subsec. (e).

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions of law requiring submittal to Congress of any annual, semiannual, or other regular periodic report listed in House Document No. 103–7 (in which reports required under subsecs. (m)(5), (r)(6)(C)(ii), and (s) of this section are listed, respectively, as the 8th item on page 162, the 9th item on page 198, and the 9th item on page 162), see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursu-

ant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DELEGATION OF AUTHORITY

Memorandum of President of the United States, Aug. 19, 1993, 58 F.R. 52397, provided:

Memorandum for the Administrator of the Environmental Protection Agency

WHEREAS, the Environmental Protection Agency, the agencies and departments that are members of the National Response Team (authorized under Executive Order No. 12580, 52 Fed. Reg. 2923 (1987) [42 U.S.C. 9615 note]), and other Federal agencies and departments undertake emergency release prevention, mitigation, and response activities pursuant to various authorities;

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 112(r)(10) of the Clean Air Act (the ''Act'') (section 7412(r)(10) of title 42 of the United States Code) and section 301 of title 3 of the United States Code, and in order to provide for the delegation of certain functions under the Act [42 U.S.C. 7401 et seq.], I hereby:

(1) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to conduct a review of release prevention, mitigation, and response authorities of Federal agencies in order to assure the most effective and efficient implementation of such authorities and to identify any deficiencies in authority or resources that may exist, to the extent such review is required by section 112(r)(10) of the Act; and

(2) Authorize you, in coordination with agencies and departments that are members of the National Response Team and other appropriate agencies and departments, to prepare and transmit a message to the Congress concerning the release prevention, mitigation, and response activities of the Federal Government with such recommendations for change in law as you deem appropriate, to the extent such message is required by section 112(r)(10) of the Act.

The authority delegated by this memorandum may be further redelegated within the Environmental Protection Agency.

You are hereby authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

Memorandum of President of the United States, Jan. 27, 2000, 65 F.R. 8631, provided:

Memorandum for the Attorney General[,] the Administrator of the Environmental Protection Agency[, and] the Director of the Office of Management and Budget

By the authority vested in me as President by the Constitution and laws of the United States of America, including section 112(r)(7)(H) of the Clean Air Act (''Act'') (42 U.S.C. 7412(r)(7)(H)), as added by section 3 of the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act (Public Law 106–40), and section 301 of title 3, United States Code, I hereby delegate to:

(1) the Attorney General the authority vested in the President under section 112(r)(7)(H)(ii)(I)(aa) of the Act to assess the increased risk of terrorist and other criminal activity associated with the posting of off-site consequence analysis information on the Internet;

(2) the Administrator of the Environmental Protection Agency (EPA) the authority vested in the President under section 112(r)(7)(H)(ii)(I)(bb) of the Act to assess the incentives created by public disclosure of off-site consequence analysis information for reduction in the risk of accidental releases; and

(3) the Attorney General and the Administrator of EPA, jointly, the authority vested in the President under section 112(r)(7)(H)(ii)(II) of the Act to promulgate regulations, based on these assessments, governing the distribution of off-site consequence analysis information. These regulations, in proposed and final form, shall be subject to review and approval by the Director of the Office of Management and Budget.

The Administrator of EPA is authorized and directed to publish this memorandum in the Federal Register.

WILLIAM J. CLINTON.

REPORTS

Pub. L. 106–40, § 3(b), Aug. 5, 1999, 113 Stat. 213, provided that:

''(1) DEFINITION OF ACCIDENTAL RELEASE.—In this subsection, the term 'accidental release' has the meaning given the term in section 112(r)(2) of the Clean Air Act (42 U.S.C. 7412(r)(2)).

''(2) REPORT ON STATUS OF CERTAIN AMENDMENTS.—Not later than 2 years after the date of enactment of this Act [Aug. 5, 1999], the Comptroller General of the United States shall submit to Congress a report on the status of the development of amendments to the National Fire Protection Association Code for Liquefied Petroleum Gas that will result in the provision of information to local emergency response personnel concerning the off-site effects of accidental releases of substances exempted from listing under section 112(r)(4)(B) of the Clean Air Act (as added by section 3).

''(3) REPORT ON COMPLIANCE WITH CERTAIN INFORMATION SUBMISSION REQUIREMENTS.—Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report that—

''(A) describes the level of compliance with Federal and State requirements relating to the submission to local emergency response personnel of information intended to help the local emergency response personnel respond to chemical accidents or related environmental or public health threats; and

''(B) contains an analysis of the adequacy of the information required to be submitted and the efficacy of the methods for delivering the information to local emergency response personnel.''

REEVALUATION OF REGULATIONS

Pub. L. 106–40, § 3(c), Aug. 5, 1999, 113 Stat. 213, provided that: ''The President shall reevaluate the regulations promulgated under this section within 6 years after the enactment of this Act [Aug. 5, 1999]. If the President determines not to modify such regulations, the President shall publish a notice in the Federal Register stating that such reevaluation has been completed and that a determination has been made not to modify the regulations. Such notice shall include an explanation of the basis of such decision.''

PUBLIC MEETING DURING MORATORIUM PERIOD

Pub. L. 106–40, § 4, Aug. 5, 1999, 113 Stat. 214, provided that:

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of this Act [Aug. 5, 1999], each owner or operator of a stationary source covered by section 112(r)(7)(B)(ii) of the Clean Air Act [42 U.S.C. 7412(r)(7)(B)(ii)] shall convene a public meeting, after reasonable public notice, in order to describe and discuss the local implications of the risk management plan submitted by the stationary source pursuant to section 112(r)(7)(B)(iii) of the Clean Air Act, including a summary of the off-site consequence analysis portion of the plan. Two or more stationary sources may conduct a joint meeting. In lieu of conducting such a meeting, small business stationary sources as defined in section 507(c)(1) of the Clean Air Act [42 U.S.C. 7661f(c)(1)] may comply with this section by publicly posting a summary of the off-site consequence analysis information for their facility not later than 180 days after the enactment of this Act. Not later than 10 months after the date of enactment of this Act, each such owner or operator shall send a certification to the director of the

Federal Bureau of Investigation stating that such meeting has been held, or that such summary has been posted, within 1 year prior to, or within 6 months after, the date of the enactment of this Act. This section shall not apply to sources that employ only Program 1 processes within the meaning of regulations promulgated under section 112(r)(7)(B)(i) of the Clean Air Act.

''(b) ENFORCEMENT.—The Administrator of the Environmental Protection Agency may bring an action in the appropriate United States district court against any person who fails or refuses to comply with the requirements of this section, and such court may issue such orders, and take such other actions, as may be necessary to require compliance with such requirements.''

RISK ASSESSMENT AND MANAGEMENT COMMISSION

Section 303 of Pub. L. 101–549 provided that:

''(a) ESTABLISHMENT.—There is hereby established a Risk Assessment and Management Commission (hereafter referred to in this section as the 'Commission'), which shall commence proceedings not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and which shall make a full investigation of the policy implications and appropriate uses of risk assessment and risk management in regulatory programs under various Federal laws to prevent cancer and other chronic human health effects which may result from exposure to hazardous substances.

''(b) CHARGE.—The Commission shall consider—

''(1) the report of the National Academy of Sciences authorized by section 112(*o*) of the Clean Air Act [42 U.S.C. 7412(*o*)], the use and limitations of risk assessment in establishing emission or effluent standards, ambient standards, exposure standards, acceptable concentration levels, tolerances or other environmental criteria for hazardous substances that present a risk of carcinogenic effects or other chronic health effects and the suitability of risk assessment for such purposes;

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

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

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

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

''(c) MEMBERSHIP.—Such Commission shall be composed of ten members who shall have knowledge or experience in fields of risk assessment or risk management, including three members to be appointed by the President, two members to be appointed by the Speaker of the House of Representatives, one member to be appointed by the Minority Leader of the House of Representatives, two members to be appointed by the Majority Leader of the Senate, one member to be appointed by the Minority Leader of the Senate, and one member to be appointed by the President of the National Academy of Sciences. Appointments shall be made not later than 18 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990].

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

''(e) STAFF AND CONTRACTS.—

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

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

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

''(f) REPORT.—A report containing the results of all Commission studies and investigations under this section, together with any appropriate legislative recommendations or administrative recommendations, shall be made available to the public for comment not later than 42 months after the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] and shall be submitted to the President and to the Congress not later than 48 months after such date of enactment. In the report, the Commission shall make recommendations with respect to the appropriate use of risk assessment and risk management in Federal regulatory programs to prevent cancer or other chronic health effects which may result from exposure to hazardous substances. The Commission shall cease to exist upon the date determined by the Commission, but not later than 9 months after the submission of such report.

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

[References in laws to the rates of pay for GS–16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101–509, set out in a note under section 5376 of Title 5.]

§ 7413. Federal enforcement

(a) In general

(1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is

in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

(A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action in accordance with subsection (b) of this section.

(2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as ''period of federally assumed enforcement''), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

(A) issuing an order requiring such person to comply with such requirement or prohibition,

(B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

(C) bringing a civil action in accordance with subsection (b) of this section.

(3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

(A) issue an administrative penalty order in accordance with subsection (d) of this section,

(B) issue an order requiring such person to comply with such requirement or prohibition,

(C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or

(D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

(4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

(5) Failure to comply with new source requirements

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

(A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies;[1]

(B) issue an administrative penalty order in accordance with subsection (d) of this section, or

(C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal ac-

[1] So in original. The semicolon probably should be a comma.

tion under subsection (c) of this section at any time for any such violation.

(b) Civil judicial enforcement

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day for each violation, or both, in any of the following instances:

(1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced (A) during any period of federally assumed enforcement, or (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such person has violated, or is in violation of, such requirement or prohibition.

(2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV–A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).

(3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

(c) Criminal penalties

(1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411(e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475(a) of this title (relating to preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a(a) or 7661b(c) of this title (relating to permits), or any requirement or prohibition of subchapter IV–A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

(A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);

(B) fails to notify or report as required under this chapter; or

(C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter[2]

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV–A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant

[2] So in original. Probably should be followed by a comma.

to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002(a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than $1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation placed another person in imminent danger of death or serious bodily injury—

(i) the defendant is responsible only for actual awareness or actual belief possessed; and

(ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

(C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

(i) an occupation, a business, or a profession; or

(ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

(D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

(E) The term ''organization'' means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(F) The term ''serious bodily injury'' means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(6) For the purpose of this subsection, the term ''person'' includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Administrative assessment of civil penalties

(1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to $25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

(A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued (i) during any period of federally assumed enforcement, or (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

(B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV–A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

(C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed $200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity

for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed $5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

(e) Penalty assessment criteria

(1) In determining the amount of any penalty to be assessed under this section or section 7604(a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607(a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.

(2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604(a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by

a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

(f) Awards

The Administrator may pay an award, not to exceed $10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV–A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,[3] or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

(g) Settlements; public participation

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

(h) Operator

For purposes of the provisions of this section and section 7420 of this title, the term ''operator'', as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term ''a person'' shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term ''a person'' shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.

(July 14, 1955, ch. 360, title I, § 113, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1686; amended Pub. L. 92–157, title III, § 302(b), (c), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, § 6(a)(1)–(3), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§ 111, 112(a), Aug. 7, 1977, 91 Stat. 704, 705; Pub. L. 95–190, § 14(a)(10)–(21), (b)(1), Nov. 16, 1977, 91 Stat. 1400, 1404; Pub. L. 97–23, § 2, July 17, 1981, 95 Stat. 139; Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672.)

CODIFICATION

Section was formerly classified to section 1857c–8 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), finding of violation, notice, compliance order, civil action, State failure to enforce plan, and construction or modification of major stationary sources; in subsec. (b), violations by owners or operators of major stationary sources; in subsec. (c), penalties; in subsec. (d), final compliance orders; and in subsec. (e), steel industry compliance extension.

1981—Subsec. (e). Pub. L. 97–23 added subsec. (e).

1977—Subsec. (a)(5). Pub. L. 95–95, § 111(a), added par. (5).

Subsec. (b). Pub. L. 95–95, § 111(b), (c), substituted ''shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person'' for ''may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person'' in provisions preceding par. (1), inserted references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), inserted reference to subsec. (d) of this section in par. (4), added par. (5), and, in provisions following par. (5), authorized the commencement of civil actions to recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated factors to be taken into consideration in determining the amount of civil penalties, and authorized awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95–190, § 14(a)(10), (11), inserted ''or'' after ''ozone);'', and substituted ''7624'' for ''7620'', ''conversion), section'' for ''conversion) section'', and ''orders), or'' for ''orders) or''.

Subsec. (c)(1). Pub. L. 95–95, § 111(d)(1), (2), substituted ''any order issued under section 7419 of this title or under subsection (a) or (d) of this section'' for ''any order issued by the Administrator under subsection (a) of this section'' in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95–95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95–190, § 14(a)(12), inserted ''or'' after ''section,''.

Subsec. (c)(1)(D). Pub. L. 95–190, § 14(a)(13), substituted ''1977 subsection'' for ''1977) subsection'' and ''penalties), or'' for ''penalties) or''.

Subsec. (c)(3). Pub. L. 95–95, § 111(d)(3), added par. (3).

Subsec. (d). Pub. L. 95–95, § 112(a), added subsec. (d).

[3] So in original. The comma probably should not appear.

Subsec. (d)(1). Pub. L. 95–190, § 14(a)(14), substituted ''to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order'' for ''an order for any stationary source'' and ''such requirement'' for ''any requirement of an applicable implementation plan''.

Subsec. (d)(1)(E). Pub. L. 95–190, § 14(a)(15), inserted provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95–190, § 14(a)(16), inserted provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95–190, § 14(a)(17), substituted ''title) upon'' for ''title upon''.

Subsec. (d)(5)(A). Pub. L. 95–190, § 14(a)(18), substituted ''an additional period for'' for ''an additional period of''.

Subsec. (d)(8). Pub. L. 95–190, § 14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95–190, § 14(a)(20), substituted ''in effect'' for ''issued'', ''Federal'' for ''other'', and ''and no action under'' for ''or''.

Subsec. (d)(11). Pub. L. 95–190, § 14(a)(21), substituted ''and in effect'' for ''(and approved by the Administrator)''.

1974—Subsec. (a)(3). Pub. L. 93–319, § 6(a)(1), inserted reference to section 1857c–10(g) of this title (relating to energy-related authorities).

Subsecs. (b)(3), (c)(1)(C). Pub. L. 93–319, § 6(a)(2), (3), inserted reference to section 1857c–10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92–157, § 302(b), inserted ''(A)'' before ''during'' and '', or (B)'' after ''assumed enforcement''.

Subsec. (c)(1)(A). Pub. L. 92–157, § 302(c), inserted ''(i)'' before ''during'' and '', or (ii)'' after ''assumed enforcement''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Federal Power Commission terminated and its functions, personnel, property, funds, etc., transferred to Secretary of Energy (except for certain functions transferred to Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

§ 7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title, any standard of performance under section 7411 of this title, any emission standard under section 7412 of this title,,[1] or any regulation of solid waste combustion under section 7429 of this title, or any regulation under section 7429 of this title (relating to solid waste combustion), (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission source, who manufactures emission control equipment or process equipment, who the Administrator believes may have information necessary for the purposes set forth in this subsection, or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title with respect to a provision of subchapter II of this chapter) on a one-time, periodic or continuous basis to—

(A) establish and maintain such records;

(B) make such reports;

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

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

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

(F) submit compliance certifications in accordance with subsection (a)(3) of this section; and

(G) provide such other information as the Administrator may reasonably require; and[2]

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

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

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

[1] So in original.

[2] So in original. The ''and'' probably should not appear.

which such person is required to sample under paragraph (1).[3]

(3) The[4] Administrator shall in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, require enhanced monitoring and submission of compliance certifications. Compliance certifications shall include (A) identification of the applicable requirement that is the basis of the certification, (B) the method used for determining the compliance status of the source, (C) the compliance status, (D) whether compliance is continuous or intermittent, (E) such other facts as the Administrator may require. Compliance certifications and monitoring data shall be subject to subsection (c) of this section. Submission of a compliance certification shall in no way limit the Administrator's authorities to investigate or otherwise implement this chapter. The Administrator shall promulgate rules to provide guidance and to implement this paragraph within 2 years after November 15, 1990.

(b) State enforcement

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

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

(c) Availability of records, reports, and information to public; disclosure of trade secrets

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

(d) Notice of proposed entry, inspection, or monitoring

(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 7413(d)[5] of this title, before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) of this section with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 7410(c) of this title.

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

(July 14, 1955, ch. 360, title I, § 114, as added Pub. L. 91–604, § 4(a), Dec. 31, 1970, 84 Stat. 1687; amended Pub. L. 93–319, § 6(a)(4), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title I, §§ 109(d)(3), 113, title III, § 305(d), Aug. 7, 1977, 91 Stat. 701, 709, 776; Pub. L. 95–190, § 14(a)(22), (23), Nov. 16, 1977, 91 Stat. 1400; Pub. L. 101–549, title III, § 302(c), title VII, § 702(a), (b), Nov. 15, 1990, 104 Stat. 2574, 2680, 2681.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (d)(1), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

CODIFICATION

Section was formerly classified to section 1857c–9 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 702(a)(1), which directed that "or" be struck out in first sentence immediately before "any emission standard under section 7412 of this title," could not be executed because of the prior amendment by Pub. L. 101–549, § 302(c), see below.

Pub. L. 101–549, § 702(a)(2), inserted "or any regulation under section 7429 of this title (relating to solid waste combustion)," before "(ii) of determining".

Pub. L. 101–549, § 302(c), struck out "or" after "performance under section 7411 of this title," and inserted ", or any regulation of solid waste combustion under section 7429 of this title," after "standard under section 7412 of this title".

Subsec. (a)(1). Pub. L. 101–549, § 702(a)(3), amended par. (1) generally. Prior to amendment, par. (1) read as follows: "the Administrator may require any person who owns or operates any emission source or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title) with respect to a provision of sub-

[3] The period probably should be "; and".

[4] So in original. Probably should not be capitalized.

[5] See References in Text note below.

chapter II of this chapter to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and''.

Subsec. (a)(3). Pub. L. 101–549, § 702(b), added par. (3).

1977—Subsec. (a). Pub. L. 95–190, § 14(a)(22), inserted reference to subchapter II of this chapter and ''new'' before ''motor'' in two places.

Pub. L. 95–95, § 305(d), substituted ''carrying out any provision of this chapter (except with respect to a manufacturer of motor vehicles or motor vehicle engines)'' for ''carrying out sections 119 or 303'' in cl. (iii) preceding par. (1), substituted ''any person subject to any requirement of this chapter (other than a manufacturer subject to the provisions of sections 7525(c) or 7542 of this title)'' for ''the owner or operator of any emission source'' in par. (1), substituted ''any premises of such person'' for ''any premises in which an emission source is located'' in subpar. (A) of par. (2), and substituted ''emissions which such person is required to sample'' for ''emissions which the owner or operator of such source is required to sample'' in subpar. (B) of subpar. (2).

Subsec. (a)(1). Pub. L. 95–190, § 14(a)(23), inserted reference to subchapter II of this chapter and ''who owns or operates any emission source or who is'' after ''any person''.

Subsec. (b)(1). Pub. L. 95–95, § 109(d)(3), struck out ''(except with respect to new sources owned or operated by the United States)'' after ''to carry out this section''.

Subsec. (d). Pub. L. 95–95, § 113, added subsec. (d).

1974—Subsec. (a). Pub. L. 93–319 inserted reference to section 119.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7415. International air pollution

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

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

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a) of this section. Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

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

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

(July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 396; renumbered § 105 and amended Pub. L. 89–272, title I, §§ 101(2), (3), 102, Oct. 20, 1965, 79 Stat. 992, 995, renumbered § 108 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 491, renumbered § 115 and amended Pub. L. 91–604, §§ 4(a), (b)(2)–(10), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1688, 1689, 1713; Pub. L. 95–95, title I, § 114, Aug. 7, 1977, 91 Stat. 710.)

CODIFICATION

Section was formerly classified to section 1857d of this title.

AMENDMENTS

1977—Pub. L. 95–95 completely revised section by substituting provisions establishing a mechanism for the Administrator to trigger a revision of a State implementation plan under section 7410(a)(2)(H) upon a petition of an international agency or the Secretary of State if he finds that emissions originating in a State endanger the health or welfare of persons in a foreign country for provisions calling for the abatement of air pollution by means of conference procedures.

1970—Subsec. (a). Pub. L. 91–604, § 4(b)(2), inserted ''and which is covered by subsection (b) or (c) of this section'' after ''persons''.

Subsec. (b). Pub. L. 91–604, §§ 4(b)(3), (4), (5), 15(c)(2), redesignated former subsec. (d)(1)(A), (B), and (C) as

(b)(1), (2), and (3), substituted ''Administrator'' for ''Secretary'' wherever appearing, and added subsec. (b)(4). Former subsec. (b), which related to the encouragement of municipal, State, and interstate action to abate air pollution, was struck out.

Subsec. (c). Pub. L. 91–604, §§4(b)(3), (6), 15(c)(2), redesignated former subsec. (d)(1)(D) as (c) and substituted ''Administrator'' for ''Secretary'' and ''Secretary of Health, Education, and Welfare'' wherever appearing and ''subsection'' for ''subparagraph'' wherever appearing. Former subsec. (c), which related to the procedure for the promulgation of State air quality standards, was struck out.

Subsec. (d). Pub. L. 91–604, §§4(b)(4), (6), (7), (8), 15(c)(2), redesignated former subsec. (d)(2) and (3) as (d)(1) and (2), in (d)(1) substituted ''Administrator'' for ''Secretary'' wherever appearing and ''any conference under this section'' for ''such conference'', and in (d)(2) substituted ''Administrator'' for ''Secretary''. Former subsec. (d)(1)(A), (B), and (C) were redesignated as (b)(1), (2), and (3), respectively, and subsec. (d)(1)(D) was redesignated as (c).

Subsec. (e). Pub. L. 91–604, §15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 91–604, §15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing and ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsec. (g). Pub. L. 91–604, §§4(b)(9), 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''subsection (c)'' for ''subparagraph (D) of subsection (d)''.

Subsecs. (i), (j). Pub. L. 91–604, §15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (k). Pub. L. 91–604, §4(b)(3), (10), substituted provisions relating to compliance with any requirement of an applicable implementation plan or with any standard prescribed under section 7411 of this title or section 7412 of this title, for provisions relating to the enjoining of imminent and substantial endangerment from pollution sources.

1967—Subsec. (b). Pub. L. 90–148 substituted reference to subsec. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsecs. (c), (d). Pub. L. 90–148 added subsec. (c), redesignated former subsec. (c) as (d), inserted in par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and inserted provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated (e).

Subsec. (e). Pub. L. 90–148 redesignated former subsec. (d) as (e). Former subsec. (e) redesignated (f) and amended.

Subsec. (f). Pub. L. 90–148 redesignated former subsec. (e) as (f) and inserted in par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the hearing board. Former subsec. (f) redesignated (g) and amended.

Subsec. (g). Pub. L. 90–148 redesignated former subsec. (f) as (g) and substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated (h) and amended.

Subsec. (h). Pub. L. 90–148 redesignated former subsec. (g) as (h) and substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated (i) and amended.

Subsec. (i). Pub. L. 90–148 redesignated former subsec. (h) as (i) and substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from $50 to $100. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 90–148 redesignated former subsec. (i) as (j).

Subsec. (k). Pub. L. 90–148 added subsec. (k).

1965—Subsec. (b). Pub. L. 89–272, §101(2), substituted ''this title'' for ''this Act'', which for purposes of codification has been changed to ''this subchapter''.

Subsec. (c)(1)(D). Pub. L. 89–272, §102(a), added subpar. (D).

Subsec. (d)(3). Pub. L. 89–272, §101(2), substituted ''subchapter'' for ''chapter''.

Subsec. (f)(1). Pub. L. 89–272, §102(b), designated existing provisions as cl. (A) and added cl. (B).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

UNITED STATES-CANADIAN NEGOTIATIONS ON AIR QUALITY

Pub. L. 95–426, title VI, §612, Oct. 7, 1978, 92 Stat. 990, provided that:

''(a) The Congress finds that—

''(1) the United States and Canada share a common environment along a 5,500 mile border;

''(2) the United States and Canada are both becoming increasingly concerned about the effects of pollution, particularly that resulting from power generation facilities, since the facilities of each country affect the environment of the other;

''(3) the United States and Canada have subscribed to international conventions; have joined in the environmental work of the United Nations, the Organization for Economic Cooperation and Development, and other international environmental forums; and have entered into and implemented effectively the provisions of the historic Boundary Waters Treaty of 1909; and

''(4) the United States and Canada have a tradition of cooperative resolution of issues of mutual concern which is nowhere more evident than in the environmental area.

''(b) It is the sense of the Congress that the President should make every effort to negotiate a cooperative agreement with the Government of Canada aimed at preserving the mutual airshed of the United States and Canada so as to protect and enhance air resources and insure the attainment and maintenance of air quality protective of public health and welfare.

''(c) It is further the sense of the Congress that the President, through the Secretary of State working in concert with interested Federal agencies and the affected States, should take whatever diplomatic actions appear necessary to reduce or eliminate any undesirable impact upon the United States and Canada resulting from air pollution from any source.''

§ 7416. Retention of State authority

Except as otherwise provided in sections 1857c–10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of

air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(July 14, 1955, ch. 360, title I, § 116, formerly § 109, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 497; renumbered § 116 and amended Pub. L. 91–604, § 4(a), (c), Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 93–319, § 6(b), June 22, 1974, 88 Stat. 259; Pub. L. 95–190, § 14(a)(24), Nov. 16, 1977, 91 Stat. 1400.)

REFERENCES IN TEXT

1857c–10(c), (e), and (f) (as in effect before August 7, 1977), referred to in text, was in the original "119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)" meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413 of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857d–1 of this title.

AMENDMENTS

1977—Pub. L. 95–190 inserted reference to specified provisions in effect before Aug. 7, 1977.

1974—Pub. L. 93–319 inserted reference to section 1857c–10(c), (e), and (f).

1970—Pub. L. 91–604, § 4(c), substituted provisions which authorized any State or political subdivision thereof to adopt or enforce, except as otherwise provided, emission standards or limitations under the specified conditions, or any requirement respecting control or abatement of air pollution, for provisions which authorized any State, political subdivision, or intermunicipal or interstate agency to adopt standards and plans to achieve a higher level of air quality than approved by the Secretary.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7417. Advisory committees

(a) Establishment; membership

In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics or technology.

(b) Compensation

The members of any other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(c)[1] Consultations by Administrator

Prior to—

(1) issuing criteria for an air pollutant under section 7408(a)(2) of this title,

(2) publishing any list under section 7411(b)(1)(A) or section 7412(b)(1)(A)[2] of this title,

(3) publishing any standard under section 7411 or section 7412 of this title, or

(4) publishing any regulation under section 7521(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence experts, and Federal departments and agencies.

(July 14, 1955, ch. 360, title I, § 117 formerly § 6, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 399; renumbered § 106, Pub. L. 89–272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; renumbered § 110 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 498; renumbered § 117 and amended Pub. L. 91–604, §§ 4(a), (d), 15(c)(2), Dec. 31, 1970, 84 Stat. 1678, 1689, 1713; Pub. L. 95–95, title I, § 115, Aug. 7, 1977, 91 Stat. 711; Pub. L. 95–623, § 13(c), Nov. 9, 1978, 92 Stat. 3458.)

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (c)(2), was amended generally by Pub. L. 101–549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

CODIFICATION

Subsec. (c) was originally enacted as subsec. (f) but has been redesignated (c) for purposes of codification in

[1] See Codification note below.

[2] See References in Text note below.

view of the failure of Pub. L. 95–95 to redesignate subsec. (f) as (c) after repealing former subsecs. (a) and (b) and redesignating former subsecs. (d) and (e) as (a) and (b).

Section was formerly classified to section 1857e of this title.

AMENDMENTS

1978—Subsec. (c)(3). Pub. L. 95–623 substituted ''7411'' for ''7411(b)(1)(B)'' and ''7412'' for ''7412(b)(1)(B)''.

1977—Subsec. (a). Pub. L. 95–95, § 115(1), (2), redesignated subsec. (d) as (a). Former subsec. (a), establishing an Air Quality Advisory Board in the Environmental Protection Agency, was struck out.

Subsec. (b). Pub. L. 95–95, § 115(1)–(3), redesignated subsec. (e) as (b) and substituted ''The members of any other advisory committees'' for ''The members of the Board and other advisory committees'' and ''conferences or meetings or while otherwise serving'' for ''conferences or meetings of the Board or while otherwise serving''. Former subsec. (b), setting out the duties of the Air Quality Advisory Board, was struck out.

Subsecs. (c) to (e). Pub. L. 95–95, § 115(1), (2), struck out subsec. (c) which related to clerical and technical assistance for the Air Quality Advisory Board, and redesignated subsecs. (d) and (e) as (a) and (b), respectively.

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare'' and ''Administrator'' for ''Secretary''.

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 91–604, § 15(c)(2), substituted ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsecs. (d), (e). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (f). Pub. L. 91–604, § 4(d), added subsec. (f).

1967—Subsec. (a). Pub. L. 90–148 substituted provisions establishing in the Department of Health, Education, and Welfare an Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub. L. 90–148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semiannual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c) to (e). Pub. L. 90–148 added subsecs. (c) to (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the 2-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7418. Control of pollution from Federal facilities

(a) General compliance

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to any requirement to pay a fee or charge imposed by any State or local agency to defray the costs of its air pollution regulatory program, (C) to the exercise of any Federal, State, or local administrative authority, and (D) to any process and sanction, whether enforced in Federal, State, or local courts, or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

(b) Exemption

The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412(i)(4) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(c) Government vehicles

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

(d) Vehicles operated on Federal installations

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

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

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

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

(July 14, 1955, ch. 360, title I, § 118, formerly, § 7, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 399; renumbered § 107, Pub. L. 89–272, title I, § 101(3), Oct. 20, 1965, 79 Stat. 992; renumbered § 111 and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; renumbered § 118 and amended Pub. L. 91–604, §§ 4(a), 5, Dec. 31, 1970, 84 Stat. 1678, 1689; Pub. L. 95–95, title I, § 116, Aug. 7, 1977, 91 Stat. 711; Pub. L. 101–549, title I, § 101(e), title II, § 235, title III, § 302(d), Nov. 15, 1990, 104 Stat. 2409, 2530, 2574.)

CODIFICATION

Section was formerly classified to section 1857f of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 235, inserted heading.

Pub. L. 101–549, § 101(e), amended second sentence generally. Prior to amendment, second sentence read as follows: "The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner."

Subsec. (b). Pub. L. 101–549, § 302(d), substituted "section 7412(i)(4) of this title" for "section 7412(c) of this title".

Subsecs. (c), (d). Pub. L. 101–549, § 235, added subsecs. (c) and (d).

1977—Subsec. (a). Pub. L. 95–95, § 116(a), designated existing first sentence as subsec. (a) and inserted provisions enumerating the legal and administrative areas to which the compliance requirements apply and directing that agencies, officers, agents, and employees not be immune and that officers, agents, or employees of the United States not be personally liable for civil penalties for which they are not otherwise liable.

Subsec. (b). Pub. L. 95–95, § 116(b), designated second and following existing sentences as subsec. (b) and inserted provisions authorizing the President to exempt weaponry, equipment, aircraft, vehicles, and other classes and categories of property of the Armed Forces and the National Guard from compliance but to reconsider the need for such an exemption at three-year intervals.

1970—Pub. L. 91–604, § 5, struck out lettered designations (a) and (b), and, as so redesignated, substituted provisions requiring Federal facilities to comply with Federal, State, local, and interstate air pollution control and abatement requirements and provisions authorizing the President to exempt, under the specified terms and conditions, any emission source of any department, etc., in the executive branch from compliance with control and abatement requirements, for provisions requiring, to the extent practicable and consistent with the interests of the United States and within any available appropriations, Federal facilities to cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency to prevent and control air pollution and provisions authorizing the Secretary to establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any facility was required to obtain a permit, under the specified terms and conditions, for the discharge of any matter into the air of the United States.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (b) of this section relating to annual reports to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 20 of House Document No. 103–7.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EXECUTIVE ORDER NO. 11282

Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663, which provided for the prevention, control, and abatement of air pollution from Federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at Federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, formerly set out as a note under section 4331 of this title.

§ 7419. Primary nonferrous smelter orders

(a) Issuance; hearing; enforcement orders; statement of grounds for application; findings

(1) Upon application by the owner or operator of a primary nonferrous smelter, a primary nonferrous smelter order under subsection (b) of this section may be issued—

(A) by the Administrator, after thirty days' notice to the State, or

(B) by the State in which such source is located, but no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this chapter.

Not later than ninety days after submission by the State to the Administrator of notice of the issuance of a primary nonferrous smelter order under this section, the Administrator shall determine whether or not such order has been issued by the State in accordance with the requirements of this chapter. If the Administrator determines that such order has not been issued in accordance with such requirements, he shall conduct a hearing respecting the reasonably available control technology for primary nonferrous smelters.

(2)(A) An order issued under this section to a primary nonferrous smelter shall be referred to as a ''primary nonferrous smelter order''. No primary nonferrous smelter may receive both an enforcement order under section 7413(d)[1] of this title and a primary nonferrous smelter order under this section.

(B) Before any hearing conducted under this section, in the case of an application made by the owner or operator of a primary nonferrous smelter for a second order under this section, the applicant shall furnish the Administrator (or the State as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). The statement of the grounds for the proposed order shall be provided by the Administrator or the State in any case in which such State or Administrator is acting on its own initiative. Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of such hearing. No primary nonferrous smelter order may be granted unless the applicant establishes that he meets the conditions required for the issuance of such order (or the Administrator or State establishes the meeting of such conditions when acting on their own initiative).

(C) Any decision with respect to the issuance of a primary nonferrous smelter order shall be accompanied by a concise statement of the findings and of the basis of such findings.

(3) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(b) Prerequisites to issuance of orders

A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on August 7, 1977;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

(3) such smelter is unable to comply with such requirement by the applicable date for compliance because no means of emission limitation applicable to such smelter which will enable it to achieve compliance with such requirement has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, non-air quality health and environmental impact, and energy consideration).

[1] See References in Text note below.

(c) Second orders

(1) A second order issued to a smelter under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. The increments of progress shall be limited to requiring compliance with subsection (d) of this section and, in the case of a second order, to procuring, installing, and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator determines such means have been adequately demonstrated to be reasonably available within the meaning of subsection (b)(3) of this section.

(2) Not in excess of two primary nonferrous smelter orders may be issued under this section to any primary nonferrous smelter. The first such order issued to a smelter shall not result in the postponement of the requirement with respect to which such order is issued beyond January 1, 1983. The second such order shall not result in the postponement of such requirement beyond January 1, 1988.

(d) Interim measures; continuous emission reduction technology

(1)(A) Each primary nonferrous smelter to which an order is issued under this section shall be required to use such interim measures for the period during which such order is in effect as may be necessary in the judgment of the Administrator to assure attainment and maintenance of the national primary and secondary ambient air quality standards during such period, taking into account the aggregate effect on air quality of such order together with all variances, extensions, waivers, enforcement orders, delayed compliance orders and primary nonferrous smelter orders previously issued under this chapter.

(B) Such interim requirements shall include—

(i) a requirement that the source to which the order applies comply with such reporting requirements and conduct such monitoring as the Administrator determines may be necessary, and

(ii) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons.

(C) Such interim measures shall also, except as provided in paragraph (2), include continuous emission reduction technology. The Administrator shall condition the use of any such interim measures upon the agreement of the owner or operator of the smelter—

(i) to comply with such conditions as the Administrator determines are necessary to maximize the reliability and enforceability of such interim measures, as applied to the smelter, in attaining and maintaining the national ambient air quality standards to which the order relates, and

(ii) to commit reasonable resources to research and development of appropriate emission control technology.

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 7621 of this title.

(4) In the case of any smelter which on August 7, 1977, uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) Termination of orders

At any time during which an order under this section applies, the Administrator may enter upon a public hearing respecting the availability of technology. Any order under this section shall be terminated if the Administrator determines on the record, after notice and public hearing, that the conditions upon which the order was based no longer exist. If the owner or operator of the smelter to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under subsection (c) of this section.

(f) Violation of requirements

If the Administrator determines that a smelter to which an order is issued under this section is in violation of any requirement of subsection (c) or (d) of this section, he shall—

(1) enforce such requirement under section 7413 of this title,

(2) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(3) give notice of noncompliance and commence action under section 7420 of this title, or

(4) take any appropriate combination of such actions.

(July 14, 1955, ch. 360, title I, § 119, as added Pub. L. 95–95, title I, § 117(b), Aug. 7, 1977, 91 Stat. 712; amended Pub. L. 95–190, § 14(a)(25)–(27), Nov. 16, 1977, 91 Stat. 1401.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(A), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

PRIOR PROVISIONS

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, was classified to section 1857c–10 of this title and provided for the authority to deal with energy shortages, prior to repeal by Pub. L. 95–95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95–190, § 14(a)(25), added par. (3).

Subsec. (d)(3). Pub. L. 95–190, § 14(a)(26), substituted ''7621'' for ''7619''.

Subsec. (e). Pub. L. 95–190, § 14(a)(27), substituted ''an order under this section'' for ''such order''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7420. Noncompliance penalty

(a) Assessment and collection

(1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).

(B)(i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section.

(ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b)(2)(B) of this section.

(2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates—

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 7411, 7477, 7603, or 7412 of this title, or

(iii) a stationary source which is not in compliance with any requirement of subchapter IV–A, V, or VI of this chapter, or

(iv) any source referred to in clause (i), (ii), or (iii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of subsection (d)(2) of this section, in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

(B) Notwithstanding the requirements of subparagraph (A)(i) and (ii), the owner or operator of any source shall be exempted from the duty to pay a noncompliance penalty under such requirements with respect to that source if, in accordance with the procedures in subsection (b)(5) of this section, the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to—

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 7413(d)(5)[1] of this title or section 1857c–10[1] of this title (as in effect before August 7, 1977);

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 1857c–10(c)(1)[1] of this title (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 792(a) and (b) of title 15 or under any legislation which amends or supersedes such provisions;

(iii) the use of innovative technology sanctioned by an enforcement order under section 7413(d)(4)[1] of this title;

[1] See References in Text note below.

(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 7413(d)[1] of this title (or an order under section 7413 of this title issued before August 7, 1977) which has the effect of permitting a delay or violation of any requirement of this chapter (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 7410(f) or (g) of this title.

An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

(C) The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

(b) Regulations

Regulations under subsection (a) of this section shall—

(1) permit the assessment and collection of such penalty by the State if the State has a delegation of authority in effect under subsection (a)(1)(B)(i) of this section;

(2) provide for the assessment and collection of such penalty by the Administrator, if—

(A) the State does not have a delegation of authority in effect under subsection (a)(1)(B)(i) of this section, or

(B) the State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

(3) require the States, or in the event the States fail to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person referred to in subsection (a)(2)(A) of this section with respect to each source owned or operated by such person which is not in compliance as provided in such subsection, not later than July 1, 1979, or thirty days after the discovery of such noncompliance, whichever is later;

(4) require each person to whom notice is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2) of this section) and the schedule of payments (determined in accordance with subsection (d)(3) of this section) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator, or

(B) submit a petition, within forty–five days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (a)(2)(B) of this section with respect to a particular source;

(5) require the Administrator to provide a hearing on the record (within the meaning of subchapter II of chapter 5 of title 5) and to make a decision on such petition (including findings of fact and conclusions of law) not later than ninety days after the receipt of any petition under paragraph (4)(B), unless the State agrees to provide a hearing which is substantially similar to such a hearing on the record and to make a decision on such petition (including such findings and conclusions) within such ninety-day period;

(6)(A) authorize the Administrator on his own initiative to review the decision of the State under paragraph (5) and disapprove it if it is not in accordance with the requirements of this section, and (B) require the Administrator to do so not later than sixty days after receipt of a petition under this subparagraph, notice, and public hearing and a showing by such petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section;

(7) require payment, in accordance with subsection (d) of this section, of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which such notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to such source;

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

(9) require a final adjustment of the penalty within 180 days after such source comes into compliance in accordance with subsection (d)(4) of this section.

In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator. A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute noncompliance penalty applicable to such source.

(c) Contract to assist in determining amount of penalty assessment or payment schedule

If the owner or operator of any stationary source to whom a notice is issued under subsection (b)(3) of this section—

(1) does not submit a timely petition under subsection (b)(4)(B) of this section, or

(2) submits a petition under subsection (b)(4)(B) of this section which is denied, and

fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the State (or the Administrator, as the case may be) may enter into a contract with any person who has no financial interest in the owner or operator of the source (or in any person controlling, controlled by or under common control with such source) to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(d) Payment

(1) All penalties assessed by the Administrator under this section shall be paid to the United States Treasury. All penalties assessed by the State under this section shall be paid to such State.

(2) The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—

(A) the amount determined in accordance with regulations promulgated by the Administrator under subsection (a) of this section, which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source, minus

(B) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into, and maintaining compliance with, such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subparagraph (A).

To the extent that any expenditure under subparagraph (B) made during any quarter is not subtracted for such quarter from the costs under subparagraph (A), such expenditure may be subtracted for any subsequent quarter from such costs. In no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3)(A) The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any adjustment or any subtraction under paragraph (2)(B)) after the first payment shall be equal.

(B) The first payment shall be due on the date six months after the date of issuance of the notice of noncompliance under subsection (b)(3) of this section with respect to any source or on January 1, 1980, whichever is later. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(C) For the purpose of this section, the term ''period of covered noncompliance'' means the period which begins—

(i) two years after August 7, 1977, in the case of a source for which notice of noncompliance under subsection (b)(3) of this section is issued on or before the date two years after August 7, 1977, or

(ii) on the date of issuance of the notice of noncompliance under subsection (b)(3) of this section, in the case of a source for which such notice is issued after July 1, 1979,

and ending on the date on which such source comes into (or for the purpose of establishing the schedule of payments, is estimated to come into) compliance with such requirement.

(4) Upon making a determination that a source with respect to which a penalty has been paid under this section is in compliance and is maintaining compliance with the applicable requirement, the State (or the Administrator as the case may be) shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance, and shall within 180 days after such source comes into compliance—

(A) provide reimbursement with interest (to be paid by the State or Secretary of the Treasury, as the case may be) at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any overpayment by such person, or

(B) assess and collect an additional payment with interest at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any underpayment by such person.

(5) Any person who fails to pay the amount of any penalty with respect to any source under this section on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(e) Judicial review

Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b) of this section, shall be considered a final action for purposes of judicial review of any penalty under section 7607 of this title.

(f) Other orders, payments, sanctions, or requirements

Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this chapter or State or local law.

(g) More stringent emission limitations or other requirements

In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this chapter after August 7, 1977, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

(July 14, 1955, ch. 360, title I, § 120, as added Pub. L. 95–95, title I, § 118, Aug. 7, 1977, 91 Stat. 714; amended Pub. L. 95–190, § 14(a)(28)–(38), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title VII, § 710(a), Nov. 15, 1990, 104 Stat. 2684.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (a)(2)(B), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

Section 1857c–10 of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(i), was in the original ''section 119 (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)'', meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 1857c–10(c)(1) of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(ii), was in the original ''section 119(c)(1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977).'' See paragraph set out above for explanation of codification.

AMENDMENTS

1990—Subsec. (a)(2)(A). Pub. L. 101–549 inserted reference to sections 7477 and 7603 of this title in cl. (ii), added cl. (iii), and redesignated former cl. (iii) as (iv) and inserted reference to cl. (iii).

1977—Subsec. (a)(2)(A). Pub. L. 95–190, § 14(a)(28), (29), in cls. (i) and (iii) inserted provisions relating to consent decrees wherever appearing.

Subsec. (a)(2)(B). Pub. L. 95–190, § 14(a)(30), (31), in cl. (i) inserted reference to section 7413(d)(5) of this title, and in cls. (i) and (ii) inserted provision relating to orders in effect under section 1857c–10 of this title before Aug. 7, 1977, wherever appearing.

Subsec. (b). Pub. L. 95–190, § 14(a)(34)–(36), in closing provisions inserted provisions relating to notice to the Administrator when a noncompliance penalty is established by a State, and substituted references to noncompliance for references to delayed compliance in two places, ''source'' for ''facility'', and ''receipt of notice of the State penalty assessment'' for ''publication of the proposed penalty''.

Subsec. (b)(2)(A). Pub. L. 95–190, § 14(a)(33), substituted ''(a)(1)(B)(i)'' for ''(e)''.

Subsec. (b)(8). Pub. L. 95–190, § 14(a)(32), substituted ''(4)'' for ''(6)''.

Subsec. (d)(2)(A). Pub. L. 95–190, § 14(a)(37), inserted provisions relating to inclusion of the economic value of a delay in compliance, and substituted ''such a delay'' for ''a delay in compliance beyond July 1, 1979,''.

Subsec. (e). Pub. L. 95–190, § 14(a)(38), substituted ''subsection, shall'' for ''subsection shall''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7421. Consultation

In carrying out the requirements of this chapter requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D of this subchapter (pertaining to nonattainment requirements), or

(B) in part C of this subchapter (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 7413(d)[1] of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. The Administrator shall update as necessary the original regulations required and promulgated under this section (as in effect immediately before November 15, 1990) to ensure adequate consultation. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

(July 14, 1955, ch. 360, title I, § 121, as added Pub. L. 95–95, title I, § 119, Aug. 7, 1977, 91 Stat. 719; amended Pub. L. 101–549, title I, § 108(h), Nov. 15, 1990, 104 Stat. 2467.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in text, was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Pub. L. 101–549 amended penultimate sentence generally. Prior to amendment, penultimate sentence

[1] See References in Text note below.

read as follows: ''Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after August 7, 1977.''

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7422. Listing of certain unregulated pollutants

(a) Radioactive pollutants, cadmium, arsenic, and polycyclic organic matter

Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A)[1] of this title (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A) of this title, or take any combination of such actions.

(b) Revision authority

Nothing in subsection (a) of this section shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) of this section with respect to any substance (whether or not enumerated in subsection (a) of this section).

(c) Consultation with Nuclear Regulatory Commission; interagency agreement; notice and hearing

(1) Before listing any source material, special nuclear,[2] or byproduct material (or component or derivative thereof) as provided in subsection (a) of this section, the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this chapter, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this chapter respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this chapter or by any State (or the Administrator) under any applicable implementation plan under this chapter, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.

(July 14, 1955, ch. 360, title I, § 122, as added Pub. L. 95–95, title I, § 120(a), Aug. 7, 1977, 91 Stat. 720.)

REFERENCES IN TEXT

Section 7412(b)(1), referred to in subsec. (a), was amended generally by Pub. L. 101–549, title III, § 301, Nov. 15, 1990, 104 Stat. 2531, and, as so amended, no longer contains a subpar. (A).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

For transfer of certain functions from Nuclear Regulatory Commission to Chairman thereof, see Reorg. Plan No. 1 of 1980, 45 F.R. 40561, 94 Stat. 3585, set out as a note under section 5841 of this title.

STUDY BY ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY

Section 120(b) of Pub. L. 95–95 directed Administrator of Environmental Protection Agency to conduct a study, in conjunction with other appropriate agencies, concerning effect on public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air, such study to include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, cadmium, arsenic, and polycyclic organic matter.

§ 7423. Stack heights

(a) Heights in excess of good engineering practice; other dispersion techniques

The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter shall not be affected in any manner by—

(1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or

(2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before December 31, 1970, or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric

[1] See References in Text note below.

[2] So in original. The word ''material'' probably should precede the comma.

generating units which are subject to the provisions of section 7418 of this title and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(b) Dispersion technique

For the purpose of this section, the term ''dispersion technique'' includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions.

(c) Regulations; good engineering practice

Not later than six months after August 7, 1977, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section. For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

(July 14, 1955, ch. 360, title I, § 123, as added Pub. L. 95–95, title I, § 121, Aug. 7, 1977, 91 Stat. 721.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7424. Assurance of adequacy of State plans

(a) State review of implementation plans which relate to major fuel burning sources

As expeditiously as practicable but not later than one year after August 7, 1977, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

(1) the extent to which compliance with requirements of such plan is dependent upon the use by major fuel burning stationary sources of petroleum products or natural gas,

(2) the extent to which such plan may reasonably be anticipated to be inadequate to meet the requirements of this chapter in such State on a reliable and long-term basis by reason of its dependence upon the use of such fuels, and

(3) the extent to which compliance with the requirements of such plan is dependent upon use of coal or coal derivatives which is not locally or regionally available.

Each State shall submit the results of its review and its determination under this paragraph to the Administrator promptly upon completion thereof.

(b) Plan revision

(1) Not later than eighteen months after August 7, 1977, the Administrator shall review the submissions of the States under subsection (a) of this section and shall require each State to revise its plan if, in the judgment of the Administrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this chapter in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

(2) Before requiring a plan revision under this subsection, with respect to any State the Administrator shall take into account the report of the review conducted by such State under paragraph (1) and shall consult with the Governor of the State respecting such required revision.

(July 14, 1955, ch. 360, title I, § 124, as added Pub. L. 95–95, title I, § 122, Aug. 7, 1977, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7425. Measures to prevent economic disruption or unemployment

(a) Determination that action is necessary

After notice and opportunity for a public hearing—

(1) the Governor of any State in which a major fuel burning stationary source referred to in this subsection (or class or category thereof) is located,

(2) the Administrator, or

(3) the President (or his designee),

may determine that action under subsection (b) of this section is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C),

to comply with the requirements of a State implementation plan.

(b) Use of locally or regionally available coal or coal derivatives to comply with implementation plan requirements

Upon a determination under subsection (a) of this section—

(1) such Governor, with the written consent of the President or his designee,

(2) the President's designee with the written consent of such Governor, or

(3) the President

may by rule or order prohibit any such major fuel burning stationary source (or class or category thereof) from using fuels other than lo-

cally or regionally available coal or coal derivatives to comply with implementation plan requirements. In taking any action under this subsection, the Governor, the President, or the President's designee as the case may be, shall take into account, the final cost to the consumer of such an action.

(c) Contracts; schedules

The Governor, in the case of action under subsection (b)(1) of this section, or the Administrator, in the case of an action under subsection (b)(2) or (3) of this section shall, by rule or order, require each source to which such action applies to—

(1) enter into long-term contracts of at least ten years in duration (except as the President or his designee may otherwise permit or require by rule or order for good cause) for supplies of regionally available coal or coal derivatives,

(2) enter into contracts to acquire any additional means of emission limitation which the Administrator or the State determines may be necessary to comply with the requirements of this chapter while using such coal or coal derivatives as fuel, and

(3) comply with such schedules (including increments of progress), timetables and other requirements as may be necessary to assure compliance with the requirements of this chapter.

Requirements under this subsection shall be established simultaneously with, and as a condition of, any action under subsection (b) of this section.

(d) Existing or new major fuel burning stationary sources

This section applies only to existing or new major fuel burning stationary sources—

(1) which have the design capacity to produce 250,000,000 Btu's per hour (or its equivalent), as determined by the Administrator, and

(2) which are not in compliance with the requirements of an applicable implementation plan or which are prohibited from burning oil or natural gas, or both, under any other authority of law.

(e) Actions not to be deemed modifications of major fuel burning stationary sources

Except as may otherwise be provided by rule by the State or the Administrator for good cause, any action required to be taken by a major fuel burning stationary source under this section shall not be deemed to constitute a modification for purposes of section 7411(a)(2) and (4) of this title.

(f) Treatment of prohibitions, rules, or orders as requirements or parts of plans under other provisions

For purposes of sections 7413 and 7420 of this title a prohibition under subsection (b) of this section, and a corresponding rule or order under subsection (c) of this section, shall be treated as a requirement of section 7413 of this title. For purposes of any plan (or portion thereof) promulgated under section 7410(c) of this title, any rule or order under subsection (c) of this section corresponding to a prohibition under subsection (b) of this section, shall be treated as a part of such plan. For purposes of section 7413 of this title, a prohibition under subsection (b) of this section, applicable to any source, and a corresponding rule or order under subsection (c) of this section, shall be treated as part of the applicable implementation plan for the State in which subject source is located.

(g) Delegation of Presidential authority

The President may delegate his authority under this section to an officer or employee of the United States designated by him on a case-by-case basis or in any other manner he deems suitable.

(h) "Locally or regionally available coal or coal derivatives" defined

For the purpose of this section the term ''locally or regionally available coal or coal derivatives'' means coal or coal derivatives which is, or can in the judgment of the State or the Administrator feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which the major fuel burning stationary source is located.

(July 14, 1955, ch. 360, title I, § 125, as added Pub. L. 95–95, title I, § 122, Aug. 7, 1977, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7426. Interstate pollution abatement

(a) Written notice to all nearby States

Each applicable implementation plan shall—

(1) require each major proposed new (or modified) source—

(A) subject to part C of this subchapter (relating to significant deterioration of air quality) or

(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification),

to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after August 7, 1977.

(b) Petition for finding that major sources emit or would emit prohibited air pollutants

Any State or political subdivision may petition the Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section. Within 60 days after

receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Violations; allowable continued operation

Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of this section and the applicable implementation plan in such State—

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) of this section to be constructed or to operate in violation of the prohibition of section 7410(a)(2)(D)(ii) of this title or this section, or

(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(D)(ii) of this title or this section as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 7413(d)[1] of this title after the expiration of such period during which the Administrator has permitted continuous operation.

(July 14, 1955, ch. 360, title I, § 126, as added Pub. L. 95–95, title I, § 123, Aug. 7, 1977, 91 Stat. 724; amended Pub. L. 95–190, § 14(a)(39), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title I, § 109(a), Nov. 15, 1990, 104 Stat. 2469.)

REFERENCES IN TEXT

Section 7413(d) of this title, referred to in subsec. (c), was amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders.

AMENDMENTS

1990—Subsec. (b). Pub. L. 101–549, § 109(a)(1), inserted ''or group of stationary sources'' after ''any major source'' and substituted ''section 7410(a)(2)(D)(ii) of this title or this section'' for ''section 7410(a)(2)(E)(i) of this title''.

Subsec. (c). Pub. L. 101–549, § 109(a)(2)(A), which directed the insertion of ''this section and'' after ''violation of'', was executed by making the insertion after first reference to ''violation of'' to reflect the probable intent of Congress.

Pub. L. 101–549, § 109(a)(2)(B), substituted ''section 7410(a)(2)(D)(ii) of this title or this section'' for ''section 7410(a)(2)(E)(i) of this title'' in par. (1) and penultimate sentence.

1977—Subsec. (a)(1). Pub. L. 95–190 substituted ''(relating to significant deterioration of air quality)'' for '', relating to significant deterioration of air quality''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] See References in Text note below.

§ 7427. Public notification

(a) Warning signs; television, radio, or press notices or information

Each State plan shall contain measures which will be effective to notify the public during any calendar[1] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

(b) Grants

The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a) of this section.

(July 14, 1955, ch. 360, title I, § 127, as added Pub. L. 95–95, title I, § 124, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7428. State boards

(a)[1] Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

(July 14, 1955, ch. 360, title I, § 128, as added Pub. L. 95–95, title I, § 125, Aug. 7, 1977, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. Probably should be ''calendar year''.

[1] So in original. Section enacted without a subsec. (b).

§ 7429. Solid waste combustion

(a) New source performance standards

(1) In general

(A) The Administrator shall establish performance standards and other requirements pursuant to section 7411 of this title and this section for each category of solid waste incineration units. Such standards shall include emissions limitations and other requirements applicable to new units and guidelines (under section 7411(d) of this title and this section) and other requirements applicable to existing units.

(B) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity greater than 250 tons per day combusting municipal waste shall be promulgated not later than 12 months after November 15, 1990. Nothing in this subparagraph shall alter any schedule for the promulgation of standards applicable to such units under section 7411 of this title pursuant to any settlement and consent decree entered by the Administrator before November 15, 1990: *Provided*, That, such standards are subsequently modified pursuant to the schedule established in this subparagraph to include each of the requirements of this section.

(C) Standards under section 7411 of this title and this section applicable to solid waste incineration units with capacity equal to or less than 250 tons per day combusting municipal waste and units combusting hospital waste, medical waste and infectious waste shall be promulgated not later than 24 months after November 15, 1990.

(D) Standards under section 7411 of this title and this section applicable to solid waste incineration units combusting commercial or industrial waste shall be proposed not later than 36 months after November 15, 1990, and promulgated not later than 48 months after November 15, 1990.

(E) Not later than 18 months after November 15, 1990, the Administrator shall publish a schedule for the promulgation of standards under section 7411 of this title and this section applicable to other categories of solid waste incineration units.

(2) Emissions standard

Standards applicable to solid waste incineration units promulgated under section 7411 of this title and this section shall reflect the maximum degree of reduction in emissions of air pollutants listed under section[1] (a)(4) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category. The Administrator may distinguish among classes, types (including mass-burn, refuse-derived fuel, modular and other types of units), and sizes of units within a category in establishing such standards. The degree of reduction in emissions that is deemed achievable for new units in a category shall not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, as determined by the Administrator. Emissions standards for existing units in a category may be less stringent than standards for new units in the same category but shall not be less stringent than the average emissions limitation achieved by the best performing 12 percent of units in the category (excluding units which first met lowest achievable emissions rates 18 months before the date such standards are proposed or 30 months before the date such standards are promulgated, whichever is later).

(3) Control methods and technologies

Standards under section 7411 of this title and this section applicable to solid waste incineration units shall be based on methods and technologies for removal or destruction of pollutants before, during, or after combustion, and shall incorporate for new units siting requirements that minimize, on a site specific basis, to the maximum extent practicable, potential risks to public health or the environment.

(4) Numerical emissions limitations

The performance standards promulgated under section 7411 of this title and this section and applicable to solid waste incineration units shall specify numerical emission limitations for the following substances or mixtures: particulate matter (total and fine), opacity (as appropriate), sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans. The Administrator may promulgate numerical emissions limitations or provide for the monitoring of postcombustion concentrations of surrogate substances, parameters or periods of residence time in excess of stated temperatures with respect to pollutants other than those listed in this paragraph.

(5) Review and revision

Not later than 5 years following the initial promulgation of any performance standards and other requirements under this section and section 7411 of this title applicable to a category of solid waste incineration units, and at 5 year intervals thereafter, the Administrator shall review, and in accordance with this section and section 7411 of this title, revise such standards and requirements.

(b) Existing units

(1) Guidelines

Performance standards under this section and section 7411 of this title for solid waste incineration units shall include guidelines promulgated pursuant to section 7411(d) of this title and this section applicable to existing units. Such guidelines shall include, as provided in this section, each of the elements required by subsection (a) of this section (emissions limitations, notwithstanding any restriction in section 7411(d) of this title regarding issuance of such limitations), subsection (c) of this section (monitoring), subsection (d) of this section (operator training), subsection

[1] So in original. Probably should be ''subsection''.

(e) of this section (permits), and subsection (h)(4)[2] of this section (residual risk).

(2) State plans

Not later than 1 year after the Administrator promulgates guidelines for a category of solid waste incineration units, each State in which units in the category are operating shall submit to the Administrator a plan to implement and enforce the guidelines with respect to such units. The State plan shall be at least as protective as the guidelines promulgated by the Administrator and shall provide that each unit subject to the guidelines shall be in compliance with all requirements of this section not later than 3 years after the State plan is approved by the Administrator but not later than 5 years after the guidelines were promulgated. The Administrator shall approve or disapprove any State plan within 180 days of the submission, and if a plan is disapproved, the Administrator shall state the reasons for disapproval in writing. Any State may modify and resubmit a plan which has been disapproved by the Administrator.

(3) Federal plan

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

(c) Monitoring

The Administrator shall, as part of each performance standard promulgated pursuant to subsection (a) of this section and section 7411 of this title, promulgate regulations requiring the owner or operator of each solid waste incineration unit—

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

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

(3) to report the results of such monitoring.

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

(d) Operator training

Not later than 24 months after November 15, 1990, the Administrator shall develop and promote a model State program for the training and certification of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators. The Administrator may authorize any State to implement a model program for the training of solid waste incineration unit operators and high-capacity fossil fuel fired plant operators, if the State has adopted a program which is at least as effective as the model program developed by the Administrator. Beginning on the date 36 months after the date on which performance standards and guidelines are promulgated under subsection (a) of this section and section 7411 of this title for any category of solid waste incineration units it shall be unlawful to operate any unit in the category unless each person with control over processes affecting emissions from such unit has satisfactorily completed a training program meeting the requirements established by the Administrator under this subsection.

(e) Permits

Beginning (1) 36 months after the promulgation of a performance standard under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units, or (2) the effective date of a permit program under subchapter V of this chapter in the State in which the unit is located, whichever is later, each unit in the category shall operate pursuant to a permit issued under this subsection and subchapter V of this chapter. Permits required by this subsection may be renewed according to the provisions of subchapter V of this chapter. Notwithstanding any other provision of this chapter, each permit for a solid waste incineration unit combusting municipal waste issued under this chapter shall be issued for a period of up to 12 years and shall be reviewed every 5 years after date of issuance or reissuance. Each permit shall continue in effect after the date of issuance until the date of termination, unless the Administrator or State determines that the unit is not in compliance with all standards and conditions contained in the permit. Such determination shall be made at regular intervals during the term of the permit, such intervals not to exceed 5 years, and only after public comment and public hearing. No permit for a solid waste incineration unit may be issued under this chapter by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit. Notwithstanding any other provision of this subsection, the Administrator or the State shall require the owner or operator of any unit to comply with emissions limitations or implement any other measures, if the Administrator or the State determines that emissions in the absence of such limitations or measures may reasonably be anticipated to endanger public health or the environment. The

[2] So in original. Probably should be subsection ''(h)(3)''.

Administrator's determination under the preceding sentence is a discretionary decision.

(f) Effective date and enforcement

(1) New units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to new solid waste incineration units shall be effective as of the date 6 months after the date of promulgation.

(2) Existing units

Performance standards and other requirements promulgated pursuant to this section and section 7411 of this title and applicable to existing solid waste incineration units shall be effective as expeditiously as practicable after approval of a State plan under subsection (b)(2) of this section (or promulgation of a plan by the Administrator under subsection (b)(3) of this section) but in no event later than 3 years after the State plan is approved or 5 years after the date such standards or requirements are promulgated, whichever is earlier.

(3) Prohibition

After the effective date of any performance standard, emission limitation or other requirement promulgated pursuant to this section and section 7411 of this title, it shall be unlawful for any owner or operator of any solid waste incineration unit to which such standard, limitation or requirement applies to operate such unit in violation of such limitation, standard or requirement or for any other person to violate an applicable requirement of this section.

(4) Coordination with other authorities

For purposes of sections 7411(e), 7413, 7414, 7416, 7420, 7603, 7604, 7607 of this title and other provisions for the enforcement of this chapter, each performance standard, emission limitation or other requirement established pursuant to this section by the Administrator or a State or local government, shall be treated in the same manner as a standard of performance under section 7411 of this title which is an emission limitation.

(g) Definitions

For purposes of section 306 of the Clean Air Act Amendments of 1990 and this section only—

(1) Solid waste incineration unit

The term ''solid waste incineration unit'' means a distinct operating unit of any facility which combusts any solid waste material from commercial or industrial establishments or the general public (including single and multiple residences, hotels, and motels). Such term does not include incinerators or other units required to have a permit under section 3005 of the Solid Waste Disposal Act [42 U.S.C. 6925]. The term ''solid waste incineration unit'' does not include (A) materials recovery facilities (including primary or secondary smelters) which combust waste for the primary purpose of recovering metals, (B) qualifying small power production facilities, as defined in section 796(17)(C) of title 16, or qualifying cogeneration facilities, as defined in section 796(18)(B) of title 16, which burn homogeneous waste (such as units which burn tires or used oil, but not including refuse-derived fuel) for the production of electric energy or in the case of qualifying cogeneration facilities which burn homogeneous waste for the production of electric energy and steam or forms of useful energy (such as heat) which are used for industrial, commercial, heating or cooling purposes, or (C) air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.

(2) New solid waste incineration unit

The term ''new solid waste incineration unit'' means a solid waste incineration unit the construction of which is commenced after the Administrator proposes requirements under this section establishing emissions standards or other requirements which would be applicable to such unit or a modified solid waste incineration unit.

(3) Modified solid waste incineration unit

The term ''modified solid waste incineration unit'' means a solid waste incineration unit at which modifications have occurred after the effective date of a standard under subsection (a) of this section if (A) the cumulative cost of the modifications, over the life of the unit, exceed 50 per centum of the original cost of construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs, or (B) the modification is a physical change in or change in the method of operation of the unit which increases the amount of any air pollutant emitted by the unit for which standards have been established under this section or section 7411 of this title.

(4) Existing solid waste incineration unit

The term ''existing solid waste incineration unit'' means a solid waste unit which is not a new or modified solid waste incineration unit.

(5) Municipal waste

The term ''municipal waste'' means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (A) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (B) an incineration unit shall not be considered to be combusting municipal waste for purposes of section 7411 of this title or this section if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal waste.

(6) Other terms

The terms ''solid waste'' and ''medical waste'' shall have the meanings established by the Administrator pursuant to the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(h) Other authority

(1) State authority

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

(2) Other authority under this chapter

Nothing in this section shall diminish the authority of the Administrator or a State to establish any other requirements applicable to solid waste incineration units under any other authority of law, including the authority to establish for any air pollutant a national ambient air quality standard, except that no solid waste incineration unit subject to performance standards under this section and section 7411 of this title shall be subject to standards under section 7412(d) of this title.

(3) Residual risk

The Administrator shall promulgate standards under section 7412(f) of this title for a category of solid waste incineration units, if promulgation of such standards is required under section 7412(f) of this title. For purposes of this[3] preceding sentence only—

(A) the performance standards under subsection (a) of this section and section 7411 of this title applicable to a category of solid waste incineration units shall be deemed standards under section 7412(d)(2) of this title, and

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

(4) Acid rain

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

(5) Requirements of parts C and D

No requirement of an applicable implementation plan under section 7475 of this title (relating to construction of facilities in regions identified pursuant to section 7407(d)(1)(A)(ii) or (iii) of this title) or under section 7502(c)(5) of this title (relating to permits for construction and operation in nonattainment areas) may be used to weaken the standards in effect under this section.

(July 14, 1955, ch. 360, title I, § 129, as added Pub. L. 101–549, title III, § 305(a), Nov. 15, 1990, 104 Stat. 2577.)

REFERENCES IN TEXT

Section 306 of the Clean Air Act Amendments of 1990, referred to in subsec. (g), probably means section 306 of Pub. L. 101–549, which is set out as a note under section 6921 of this title.

The Solid Waste Disposal Act, referred to in subsec. (g)(6), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

REVIEW OF ACID GAS SCRUBBING REQUIREMENTS

Section 305(c) of Pub. L. 101–549 provided that: ''Prior to the promulgation of any performance standard for solid waste incineration units combusting municipal waste under section 111 or section 129 of the Clean Air Act [42 U.S.C. 7411, 7429], the Administrator shall review the availability of acid gas scrubbers as a pollution control technology for small new units and for existing units (as defined in 54 Federal Register 52190 (December 20, 1989)[)], taking into account the provisions of subsection (a)(2) of section 129 of the Clean Air Act.''

[3] So in original. Probably should be ''the''.

§ 7430. Emission factors

Within 6 months after November 15, 1990, and at least every 3 years thereafter, the Administrator shall review and, if necessary, revise, the methods (''emission factors'') used for purposes of this chapter to estimate the quantity of emissions of carbon monoxide, volatile organic compounds, and oxides of nitrogen from sources of such air pollutants (including area sources and mobile sources). In addition, the Administrator shall establish emission factors for sources for which no such methods have previously been established by the Administrator. The Administrator shall permit any person to demonstrate improved emissions estimating techniques, and following approval of such techniques, the Administrator shall authorize the use of such techniques. Any such technique may be approved only after appropriate public participation. Until the Administrator has completed the revision required by this section, nothing in this section shall be construed to affect the validity of emission factors established by the Administrator before November 15, 1990.

(July 14, 1955, ch. 360, title I, § 130, as added Pub. L. 101–549, title VIII, § 804, Nov. 15, 1990, 104 Stat. 2689.)

§ 7431. Land use authority

Nothing in this chapter constitutes an infringement on the existing authority of counties and cities to plan or control land use, and nothing in this chapter provides or transfers authority over such land use.

(July 14, 1955, ch. 360, title I, § 131, as added Pub. L. 101–549, title VIII, § 805, Nov. 15, 1990, 104 Stat. 2689.)

PART B—OZONE PROTECTION

§§ 7450 to 7459. Repealed. Pub. L. 101–549, title VI, § 601, Nov. 15, 1990, 104 Stat. 2648

Section 7450, act July 14, 1955, ch. 360, title I, § 150, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 725, set forth Congressional declaration of purpose.

Section 7451, act July 14, 1955, ch. 360, title I, § 151, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, set forth Congressional findings.

Section 7452, act July 14, 1955, ch. 360, title I, § 152, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, set forth definitions applicable to this part.

Section 7453, act July 14, 1955, ch. 360, title I, § 153, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 726, related to studies by Environmental Protection Agency.

Section 7454, act July 14, 1955, ch. 360, title I, § 154, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 728; amended Pub. L. 96–88, title V, § 509(b), Oct. 17, 1979, 93 Stat. 695, related to research and monitoring activities by Federal agencies.

Section 7455, act July 14, 1955, ch. 360, title I, § 155, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, related to reports on progress of regulation.

Section 7456, act July 14, 1955, ch. 360, title I, § 156, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, authorized President to enter into international agreements to foster cooperative research.

Section 7457, act July 14, 1955, ch. 360, title I, § 157, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 729, related to promulgation of regulations.

Section 7458, act July 14, 1955, ch. 360, title I, § 158, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 730, set forth other provisions of law that would be unaffected by this part.

Section 7459, act July 14, 1955, ch. 360, title I, § 159, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 126, 91 Stat. 730, related to authority of States to protect the stratosphere.

SIMILAR PROVISIONS

For provisions relating to stratospheric ozone protection, see section 7671 et seq. of this title.

PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

SUBPART I—CLEAN AIR

§ 7470. Congressional declaration of purpose

The purposes of this part are as follows:

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate[1] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air)[2], notwithstanding attainment and maintenance of all national ambient air quality standards;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

(July 14, 1955, ch. 360, title I, § 160, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731.)

[1] So in original. Probably should be ''anticipated''.

[2] So in original. Section was enacted without an opening parenthesis.

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

GUIDANCE DOCUMENT

Section 127(c) of Pub. L. 95–95 required Administrator, not later than 1 year after Aug. 7, 1977, to publish a guidance document to assist States in carrying out their functions under part C of title I of the Clean Air Act (this part) with respect to pollutants for which national ambient air quality standards are promulgated.

STUDY AND REPORT ON PROGRESS MADE IN PROGRAM RELATING TO SIGNIFICANT DETERIORATION OF AIR QUALITY

Section 127(d) of Pub. L. 95–95 directed Administrator, not later than 2 years after Aug. 7, 1977, to complete a study and report to Congress on progress made in carrying out part C of title I of the Clean Air Act (this part) and the problems associated in carrying out such section.

§ 7471. Plan requirements

In accordance with the policy of section 7401(b)(1) of this title, each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) designated pursuant to section 7407 of this title as attainment or unclassifiable.

(July 14, 1955, ch. 360, title I, § 161, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 101–549, title I, § 110(1), Nov. 15, 1990, 104 Stat. 2470.)

AMENDMENTS

1990—Pub. L. 101–549 substituted ''designated pursuant to section 7407 of this title as attainment or unclassifiable'' for ''identified pursuant to section 7407(d)(1)(D) or (E) of this title''.

§ 7472. Initial classifications

(a) Areas designated as class I

Upon the enactment of this part, all—

(1) international parks,

(2) national wilderness areas which exceed 5,000 acres in size,

(3) national memorial parks which exceed 5,000 acres in size, and

(4) national parks which exceed six thousand acres in size,

and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part. The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.

(b) Areas designated as class II

All areas in such State designated pursuant to section 7407(d) of this title as attainment or unclassifiable which are not established as class I

under subsection (a) of this section shall be class II areas unless redesignated under section 7474 of this title.

(July 14, 1955, ch. 360, title I, § 162, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 731; amended Pub. L. 95–190, § 14(a)(40), Nov. 16, 1977, 91 Stat. 1401; Pub. L. 101–549, title I, §§ 108(m), 110(2), Nov. 15, 1990, 104 Stat. 2469, 2470.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 108(m), inserted at end ''The extent of the areas designated as Class I under this section shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.''

Subsec. (b). Pub. L. 101–549, § 110(2), substituted ''designated pursuant to section 7407(d) of this title as attainment or unclassifiable'' for ''identified pursuant to section 7407(d)(1)(D) or (E) of this title''.

1977—Subsec. (a)(4). Pub. L. 95–190 inserted a comma after ''size''.

§ 7473. Increments and ceilings

(a) Sulfur oxide and particulate matter; requirement that maximum allowable increases and maximum allowable concentrations not be exceeded

In the case of sulfur oxide and particulate matter, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under section 7475(d)(2)(C)(iv) of this title) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

(b) Maximum allowable increases in concentrations over baseline concentrations

(1) For any class I area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

(2) For any class II area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

(3) For any class III area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

(4) The maximum allowable concentration of any air pollutant in any area to which this part applies shall not exceed a concentration for such pollutant for each period of exposure equal to—

(A) the concentration permitted under the national secondary ambient air quality standard, or

(B) the concentration permitted under the national primary ambient air quality standard,

whichever concentration is lowest for such pollutant for such period of exposure.

(c) Orders or rules for determining compliance with maximum allowable increases in ambient concentrations of air pollutants

(1) In the case of any State which has a plan approved by the Administrator for purposes of carrying out this part, the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:

(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 792(a) and (b) of title 15 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order.[1]

(B) the concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act [16 U.S.C. 791a et seq.] over the emissions from such sources before the effective date of such plan,

(C) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities, and

(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the

[1] So in original. The period probably should be a comma.

baseline concentration determined in accordance with section 7479(4) of this title.

(2) No action taken with respect to a source under paragraph (1)(A) or (1)(B) shall apply more than five years after the effective date of the order referred to in paragraph (1)(A) or the plan referred to in paragraph (1)(B), whichever is applicable. If both such order and plan are applicable, no such action shall apply more than five years after the later of such effective dates.

(3) No action under this subsection shall take effect unless the Governor submits the order or rule providing for such exclusion to the Administrator and the Administrator determines that such order or rule is in compliance with the provisions of this subsection.

(July 14, 1955, ch. 360, title I, § 163, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 732; amended Pub. L. 95–190, § 14(a)(41), Nov. 16, 1977, 91 Stat. 1401.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c)(1)(B), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–190 inserted ''section'' before ''7475''.

§ 7474. Area redesignation

(a) Authority of States to redesignate areas

Except as otherwise provided under subsection (c) of this section, a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II:

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

The extent of the areas referred to in paragraph[1] (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990. Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if—

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(C) such redesignation otherwise meets the requirements of this part.

Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

[1] So in original. Probably should be ''paragraphs''.

(c) Indian reservations

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e) of this section.

(d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within[2] supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian tribes

If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

(July 14, 1955, ch. 360, title I, § 164, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 733; amended Pub. L. 95–190, § 14(a)(42), (43), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title I, § 108(n), Nov. 15, 1990, 104 Stat. 2469.)

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, which directed the insertion of ''The extent of the areas referred to in paragraph (1) and (2) shall conform to any changes in the boundaries of such areas which have occurred subsequent to August 7, 1977, or which may occur subsequent to November 15, 1990.'' before ''Any area (other than an area referred to in paragraph (1) or (2))'', was executed by making the insertion before ''Any area (other than an area referred to in paragraph (1) or (2)'', to reflect the probable intent of Congress.

1977—Subsec. (b)(2). Pub. L. 95–190, § 14(a)(42), inserted ''or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section'' after ''this section''.

Subsec. (e). Pub. L. 95–190, § 14(a)(43), inserted ''an'' after ''If any State affected by the redesignation of''.

[2] So in original. Probably should be ''with''.

§ 7475. Preconstruction requirements

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

(2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

(3) the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

(5) the provisions of subsection (d) of this section with respect to protection of class I areas have been complied with for such facility;

(6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable

in a class II area and where no standard under section 7411 of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) of this section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4) of this section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under section 7410 of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

(1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the State may issue a permit.

(iv) In the case of a permit issued pursuant to clause (iii), such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides and particulates from such facility will not cause or contribute to concentrations of such pollutant which exceed the following maximum allowable increases over the baseline concentration for such pollutants:

	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	325

(D)(i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C)(iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the

President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE
(In micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

(iv) For purposes of clause (iii), the term ''high terrain area'' means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term ''low terrain area'' means any area other than a high terrain area.

(e) Analysis; continuous air quality monitoring data; regulations; model adjustments

(1) The review provided for in subsection (a) of this section shall be preceded by an analysis in accordance with regulations of the Administrator, promulgated under this subsection, which may be conducted by the State (or any general purpose unit of local government) or by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under this chapter which will be emitted from such facility.

(2) Effective one year after August 7, 1977, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after August 7, 1977, promulgate regulations respecting the analysis required under this subsection which regulations—

(A) shall not require the use of any automatic or uniform buffer zone or zones,

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this chapter which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

(C) shall require the results of such analysis shall be available at the time of the public hearing on the application for such permit, and

(D) shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part.

Any model or models designated under such regulations may be adjusted upon a determination, after notice and opportunity for public hearing, by the Administrator that such adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this part.

(July 14, 1955, ch. 360, title I, § 165, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 735; amended Pub. L. 95–190, § 14(a)(44)–(51), Nov. 16, 1977, 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95–190, § 14(a)(44), substituted ''part;'' for ''part:''.

Subsec. (a)(3). Pub. L. 95–190, § 14(a)(45), inserted provision making applicable requirement of section 7410(j) of this title.

Subsec. (b). Pub. L. 95–190, § 14(a)(46), inserted ''cause or'' before ''contribute'' and struck out ''actual'' before ''allowable emissions''.

Subsec. (d)(2)(C). Pub. L. 95–190, § 14(a)(47)–(49), in cl. (ii) substituted ''contribute'' for ''contrbute'', in cl. (iii) substituted ''quality-related'' for ''quality related'' and ''concentrations which'' for ''concentrations, which'', and in cl. (iv) substituted ''such facility'' for ''such sources'' and ''will not cause or contribute to concentrations of such pollutant which exceed'' for ''together with all other sources, will not exceed''.

Subsec. (d)(2)(D). Pub. L. 95–190, § 14(a)(50), (51), in cl. (iii) substituted provisions relating to determinations of amounts of emissions of sulfur oxides from facilities, for provisions relating to determinations of amounts of emissions of sulfur oxides from sources operating under permits issued pursuant to this subpar., together with all other sources, and added cl. (iv).

§ 7476. Other pollutants

(a) Hydrocarbons, carbon monoxide, petrochemical oxidants, and nitrogen oxides

In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after August 7, 1977, promulgate regulations to prevent the significant deterioration of air quality

which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after August 7, 1977, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

(b) Effective date of regulations

Regulations referred to in subsection (a) of this section shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or[1] promulgation in the same manner as required under section 7410 of this title.

(c) Contents of regulations

Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 7401 and section 7470 of this title.

(d) Specific measures to fulfill goals and purposes

The regulations of the Administrator under subsection (a) of this section shall provide specific measures at least as effective as the increments established in section 7473 of this title to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

(e) Area classification plan not required

With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 7410(c) of this title contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 7470 of this title at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

(f) PM–10 increments

The Administrator is authorized to substitute, for the maximum allowable increases in particulate matter specified in section 7473(b) of this title and section 7475(d)(2)(C)(iv) of this title, maximum allowable increases in particulate matter with an aerodynamic diameter smaller than or equal to 10 micrometers. Such substituted maximum allowable increases shall be of equal stringency in effect as those specified in the provisions for which they are substituted. Until the Administrator promulgates regulations under the authority of this subsection, the current maximum allowable increases in concentrations of particulate matter shall remain in effect.

(July 14, 1955, ch. 360, title I, § 166, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 739; amended Pub. L. 101–549, title I, § 105(b), Nov. 15, 1990, 104 Stat. 2462.)

AMENDMENTS

1990—Subsec. (f). Pub. L. 101–549 added subsec. (f).

§ 7477. Enforcement

The Administrator shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction or modification of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area designated pursuant to section 7407(d) of this title as attainment or unclassifiable and which is not subject to an implementation plan which meets the requirements of this part.

(July 14, 1955, ch. 360, title I, § 167, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 101–549, title I, § 110(3), title VII, § 708, Nov. 15, 1990, 104 Stat. 2470, 2684.)

AMENDMENTS

1990—Pub. L. 101–549, § 708, substituted ''construction or modification of a major emitting facility'' for ''construction of a major emitting facility''.

Pub. L. 101–549, § 110(3), substituted ''designated pursuant to section 7407(d) as attainment or unclassifiable'' for ''included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 7407 of this title''.

§ 7478. Period before plan approval

(a) Existing regulations to remain in effect

Until such time as an applicable implementation plan is in effect for any area, which plan meets the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this chapter prior to August 7, 1977, shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b) of this section.

(b) Regulations deemed amended; construction commenced after June 1, 1975

If any regulation in effect prior to August 7, 1977, to prevent significant deterioration of air quality would be inconsistent with the requirements of section 7472(a), section 7473(b) or section 7474(a) of this title, then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on which construction was commenced (in accordance with the definition of ''commenced'' in section 7479(2) of this title) after June 1, 1975, and prior to August 7, 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to August 7, 1977.

(July 14, 1955, ch. 360, title I, § 168, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95–190, § 14(a)(52), Nov. 16, 1977, 91 Stat. 1402.)

[1] So in original. Probably should be ''of''.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95–190 substituted ''(in accordance with the definition of 'commenced' in section 7479(2) of this title)'' for ''in accordance with this definition''.

§ 7479. Definitions

For purposes of this part—

(1) The term ''major emitting facility'' means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

(2)(A) The term ''commenced'' as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical onsite construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

(B) The term ''necessary preconstruction approvals or permits'' means those permits or approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

(C) The term ''construction'' when used in connection with any source or facility, includes the modification (as defined in section 7411(a) of this title) of any source or facility.

(3) The term ''best available control technology'' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of ''best available control technology'' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title. Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.

(4) The term ''baseline concentration'' means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this part, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.

(July 14, 1955, ch. 360, title I, § 169, as added Pub. L. 95–95, title I, § 127(a), Aug. 7, 1977, 91 Stat. 740; amended Pub. L. 95–190, § 14(a)(54), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title III, § 305(b), title IV, § 403(d), Nov. 15, 1990, 104 Stat. 2583, 2631.)

AMENDMENTS

1990—Par. (1). Pub. L. 101–549, § 305(b), struck out ''two hundred and'' after ''municipal incinerators capable of charging more than''.

Par. (3). Pub. L. 101–549, § 403(d), directed the insertion of '', clean fuels,'' after ''including fuel cleaning,'', which was executed by making the insertion after ''including fuel cleaning'' to reflect the probable intent of Congress, and inserted at end ''Emissions from any source utilizing clean fuels, or any other means, to comply with this paragraph shall not be allowed to increase above levels that would have been required under this paragraph as it existed prior to November 15, 1990.''

1977—Par. (2)(C). Pub. L. 95–190 added subpar. (C).

STUDY OF MAJOR EMITTING FACILITIES WITH POTENTIAL OF EMITTING 250 TONS PER YEAR

Section 127(b) of Pub. L. 95–95 directed Administrator, within 1 year after Aug. 7, 1977, to report to Congress

on consequences of that portion of definition of ''major emitting facility'' under this subpart which applies to facilities with potential to emit 250 tons per year or more.

SUBPART II—VISIBILITY PROTECTION

CODIFICATION

As originally enacted, subpart II of part C of subchapter I of this chapter was added following section 7478 of this title. Pub. L. 95–190, § 14(a)(53), Nov. 16, 1977, 91 Stat. 1402, struck out subpart II and inserted such subpart following section 7479 of this title.

§ 7491. Visibility protection for Federal class I areas

(a) Impairment of visibility; list of areas; study and report

(1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after August 7, 1977, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

(A) methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in Federal areas referred to in paragraph (1), and

(B) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment, and

(C) methods for preventing and remedying such manmade air pollution and resulting visibility impairment.

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(4) Not later than twenty-four months after August 7, 1977, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations

Regulations under subsection (a)(4) of this section shall—

(1) provide guidelines to the States, taking into account the recommendations under subsection (a)(3) of this section on appropriate techniques and methods for implementing this section (as provided in subparagraphs (A) through (C) of such subsection (a)(3)), and

(2) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a)(2) of this section is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a) of this section, including—

(A) except as otherwise provided pursuant to subsection (c) of this section, a requirement that each major stationary source which is in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

(B) a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal specified in subsection (a) of this section.

In the case of a fossil-fuel fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1).

(c) Exemptions

(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A) of this section, upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) of this section that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

(d) Consultations with appropriate Federal land managers

Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 7410(c) of this title) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) Buffer zones

In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

(f) Nondiscretionary duty

For purposes of section 7604(a)(2) of this title, the meeting of the national goal specified in subsection (a)(1) of this section by any specific date or dates shall not be considered a ''nondiscretionary duty'' of the Administrator.

(g) Definitions

For the purpose of this section—

(1) in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements;

(2) in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

(3) the term ''manmade air pollution'' means air pollution which results directly or indirectly from human activities;

(4) the term ''as expeditiously as practicable'' means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 7410(c) of this title for purposes of this section);

(5) the term ''mandatory class I Federal areas'' means Federal areas which may not be designated as other than class I under this part;

(6) the terms ''visibility impairment'' and ''impairment of visibility'' shall include reduction in visual range and atmospheric discoloration; and

(7) the term ''major stationary source'' means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.

(July 14, 1955, ch. 360, title I, § 169A, as added Pub. L. 95–95, title I, § 128, Aug. 7, 1977, 91 Stat. 742.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7492. Visibility

(a) Studies

(1) The Administrator, in conjunction with the National Park Service and other appropriate Federal agencies, shall conduct research to identify and evaluate sources and source regions of both visibility impairment and regions that provide predominantly clean air in class I areas. A total of $8,000,000 per year for 5 years is authorized to be appropriated for the Environmental Protection Agency and the other Federal agencies to conduct this research. The research shall include—

(A) expansion of current visibility related monitoring in class I areas;

(B) assessment of current sources of visibility impairing pollution and clean air corridors;

(C) adaptation of regional air quality models for the assessment of visibility;

(D) studies of atmospheric chemistry and physics of visibility.

(2) Based on the findings available from the research required in subsection (a)(1) of this section as well as other available scientific and technical data, studies, and other available information pertaining to visibility source-receptor relationships, the Administrator shall conduct an assessment and evaluation that identifies, to the extent possible, sources and source regions of visibility impairment including natural sources as well as source regions of clear air for class I areas. The Administrator shall produce interim findings from this study within 3 years after November 15, 1990.

(b) Impacts of other provisions

Within 24 months after November 15, 1990, the Administrator shall conduct an assessment of the progress and improvements in visibility in class I areas that are likely to result from the implementation of the provisions of the Clean Air Act Amendments of 1990 other than the provisions of this section. Every 5 years thereafter the Administrator shall conduct an assessment of actual progress and improvement in visibility in class I areas. The Administrator shall prepare a written report on each assessment and transmit copies of these reports to the appropriate committees of Congress.

(c) Establishment of visibility transport regions and commissions

(1) Authority to establish visibility transport regions

Whenever, upon the Administrator's motion or by petition from the Governors of at least two affected States, the Administrator has reason to believe that the current or projected interstate transport of air pollutants from one or more States contributes significantly to visibility impairment in class I areas located in the affected States, the Administrator may establish a transport region for such pollutants that includes such States. The Administrator, upon the Administrator's own motion or upon petition from the Governor of any affected State, or upon the recommendations of a transport commission established under subsection (b) of this section[1] may—

(A) add any State or portion of a State to a visibility transport region when the Administrator determines that the interstate transport of air pollutants from such State significantly contributes to visibility impairment in a class I area located within the transport region, or

(B) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the protection or enhancement of visibility in any class I area in the region.

(2) Visibility transport commissions

Whenever the Administrator establishes a transport region under subsection (c)(1) of this section, the Administrator shall establish a transport commission comprised of (as a minimum) each of the following members:

(A) the Governor of each State in the Visibility Transport Region, or the Governor's designee;

(B) The[2] Administrator or the Administrator's designee; and

(C) A[2] representative of each Federal agency charged with the direct management of each class I area or areas within the Visibility Transport Region.

(3) Ex officio members

All representatives of the Federal Government shall be ex officio members.

(4) Federal Advisory Committee Act

The visibility transport commissions shall be exempt from the requirements of the Federal Advisory Committee Act [5 U.S.C. App.].

(d) Duties of visibility transport commissions

A Visibility Transport Commission—

(1) shall assess the scientific and technical data, studies, and other currently available information, including studies conducted pursuant to subsection (a)(1) of this section, pertaining to adverse impacts on visibility from potential or projected growth in emissions from sources located in the Visibility Transport Region; and

(2) shall, within 4 years of establishment, issue a report to the Administrator recommending what measures, if any, should be taken under this chapter to remedy such adverse impacts. The report required by this subsection shall address at least the following measures:

(A) the establishment of clean air corridors, in which additional restrictions on increases in emissions may be appropriate to protect visibility in affected class I areas;

(B) the imposition of the requirements of part D of this subchapter affecting the construction of new major stationary sources or major modifications to existing sources in such clean air corridors specifically including the alternative siting analysis provisions of section 7503(a)(5) of this title; and

(C) the promulgation of regulations under section 7491 of this title to address long range strategies for addressing regional haze which impairs visibility in affected class I areas.

(e) Duties of Administrator

(1) The Administrator shall, taking into account the studies pursuant to subsection (a)(1) of this section and the reports pursuant to subsection (d)(2) of this section and any other relevant information, within eighteen months of receipt of the report referred to in subsection (d)(2) of this section, carry out the Administrator's regulatory responsibilities under section 7491 of this title, including criteria for measuring ''reasonable progress'' toward the national goal.

(2) Any regulations promulgated under section 7491 of this title pursuant to this subsection shall require affected States to revise within 12 months their implementation plans under section 7410 of this title to contain such emission limits, schedules of compliance, and other measures as may be necessary to carry out regulations promulgated pursuant to this subsection.

(f) Grand Canyon visibility transport commission

The Administrator pursuant to subsection (c)(1) of this section shall, within 12 months, establish a visibility transport commission for the region affecting the visibility of the Grand Canyon National Park.

(July 14, 1955, ch. 360, title I, § 169B, as added Pub. L. 101–549, title VIII, § 816, Nov. 15, 1990, 104 Stat. 2695.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15,

[1] So in original. Words ''subsection (b) of this section'' probably should be ''paragraph (2)''.

[2] So in original. Probably should not be capitalized.

1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Advisory Committee Act, referred to in subsec. (c)(4), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

SUBPART 1—NONATTAINMENT AREAS IN GENERAL

§ 7501. Definitions

For the purpose of this part—

(1) REASONABLE FURTHER PROGRESS.—The term ''reasonable further progress'' means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.

(2) NONATTAINMENT AREA.—The term ''nonattainment area'' means, for any air pollutant, an area which is designated ''nonattainment'' with respect to that pollutant within the meaning of section 7407(d) of this title.

(3) The term ''lowest achievable emission rate'' means for any source, that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(4) The terms ''modifications'' and ''modified'' mean the same as the term ''modification'' as used in section 7411(a)(4) of this title.

(July 14, 1955, ch. 360, title I, § 171, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 745; amended Pub. L. 101–549, title I, § 102(a)(2), Nov. 15, 1990, 104 Stat. 2412.)

AMENDMENTS

1990—Pub. L. 101–549, § 102(a)(2)(A), struck out ''and section 7410(a)(2)(I) of this title'' after ''purpose of this part''.

Pars. (1), (2). Pub. L. 101–549, § 102(a)(2)(B), (C), amended pars. (1) and (2) generally. Prior to amendment, pars. (1) and (2) read as follows:

''(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 7410(a)(2)(I) of this title and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 7502(a) of this title.

''(2) The term 'nonattainment area' means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 7407(d)(1) of this title.''

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7502. Nonattainment plan provisions in general

(a) Classifications and attainment dates

(1) Classifications

(A) On or after the date the Administrator promulgates the designation of an area as a nonattainment area pursuant to section 7407(d) of this title with respect to any national ambient air quality standard (or any revised standard, including a revision of any standard in effect on November 15, 1990), the Administrator may classify the area for the purpose of applying an attainment date pursuant to paragraph (2), and for other purposes. In determining the appropriate classification, if any, for a nonattainment area, the Administrator may consider such factors as the severity of nonattainment in such area and the availability and feasibility of the pollution control measures that the Administrator believes may be necessary to provide for attainment of such standard in such area.

(B) The Administrator shall publish a notice in the Federal Register announcing each classification under subparagraph (A), except the Administrator shall provide an opportunity for at least 30 days for written comment. Such classification shall not be subject to the provisions of sections 553 through 557 of title 5 (concerning notice and comment) and shall not be subject to judicial review until the Administrator takes final action under subsection (k) or (*l*) of section 7410 of this title (concerning action on plan submissions) or section 7509 of this title (concerning sanctions) with respect to any plan submissions required by virtue of such classification.

(C) This paragraph shall not apply with respect to nonattainment areas for which classifications are specifically provided under other provisions of this part.

(2) Attainment dates for nonattainment areas

(A) The attainment date for an area designated nonattainment with respect to a national primary ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable, but no later than 5 years from the date such area was designated nonattainment under section 7407(d) of this title, except that the Administrator may extend the attainment date to the extent the Administrator determines appropriate, for a period no greater than 10 years from the date of designation as nonattainment, considering the severity of nonattainment and the availability and feasibility of pollution control measures.

(B) The attainment date for an area designated nonattainment with respect to a sec-

ondary national ambient air quality standard shall be the date by which attainment can be achieved as expeditiously as practicable after the date such area was designated nonattainment under section 7407(d) of this title.

(C) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the attainment date determined by the Administrator under subparagraph (A) or (B) if—

(i) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(ii) in accordance with guidance published by the Administrator, no more than a minimal number of exceedances of the relevant national ambient air quality standard has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this subparagraph for a single nonattainment area.

(D) This paragraph shall not apply with respect to nonattainment areas for which attainment dates are specifically provided under other provisions of this part.

(b) Schedule for plan submissions

At the time the Administrator promulgates the designation of an area as nonattainment with respect to a national ambient air quality standard under section 7407(d) of this title, the Administrator shall establish a schedule according to which the State containing such area shall submit a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title. Such schedule shall at a minimum, include a date or dates, extending no later than 3 years from the date of the nonattainment designation, for the submission of a plan or plan revision (including the plan items) meeting the applicable requirements of subsection (c) of this section and section 7410(a)(2) of this title.

(c) Nonattainment plan provisions

The plan provisions (including plan items) required to be submitted under this part shall comply with each of the following:

(1) In general

Such plan provisions shall provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the national primary ambient air quality standards.

(2) RFP

Such plan provisions shall require reasonable further progress.

(3) Inventory

Such plan provisions shall include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met.

(4) Identification and quantification

Such plan provisions shall expressly identify and quantify the emissions, if any, of any such pollutant or pollutants which will be allowed, in accordance with section 7503(a)(1)(B) of this title, from the construction and operation of major new or modified stationary sources in each such area. The plan shall demonstrate to the satisfaction of the Administrator that the emissions quantified for this purpose will be consistent with the achievement of reasonable further progress and will not interfere with attainment of the applicable national ambient air quality standard by the applicable attainment date.

(5) Permits for new and modified major stationary sources

Such plan provisions shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with section 7503 of this title.

(6) Other measures

Such plan provisions shall include enforceable emission limitations, and such other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emission rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date specified in this part.

(7) Compliance with section 7410(a)(2)

Such plan provisions shall also meet the applicable provisions of section 7410(a)(2) of this title.

(8) Equivalent techniques

Upon application by any State, the Administrator may allow the use of equivalent modeling, emission inventory, and planning procedures, unless the Administrator determines that the proposed techniques are, in the aggregate, less effective than the methods specified by the Administrator.

(9) Contingency measures

Such plan shall provide for the implementation of specific measures to be undertaken if the area fails to make reasonable further progress, or to attain the national primary ambient air quality standard by the attainment date applicable under this part. Such measures shall be included in the plan revision as contingency measures to take effect in any such case without further action by the State or the Administrator.

(d) Plan revisions required in response to finding of plan inadequacy

Any plan revision for a nonattainment area which is required to be submitted in response to a finding by the Administrator pursuant to section 7410(k)(5) of this title (relating to calls for

plan revisions) must correct the plan deficiency (or deficiencies) specified by the Administrator and meet all other applicable plan requirements of section 7410 of this title and this part. The Administrator may reasonably adjust the dates otherwise applicable under such requirements to such revision (except for attainment dates that have not yet elapsed), to the extent necessary to achieve a consistent application of such requirements. In order to facilitate submittal by the States of adequate and approvable plans consistent with the applicable requirements of this chapter, the Administrator shall, as appropriate and from time to time, issue written guidelines, interpretations, and information to the States which shall be available to the public, taking into consideration any such guidelines, interpretations, or information provided before November 15, 1990.

(e) Future modification of standard

If the Administrator relaxes a national primary ambient air quality standard after November 15, 1990, the Administrator shall, within 12 months after the relaxation, promulgate requirements applicable to all areas which have not attained that standard as of the date of such relaxation. Such requirements shall provide for controls which are not less stringent than the controls applicable to areas designated nonattainment before such relaxation.

(July 14, 1955, ch. 360, title I, § 172, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 746; amended Pub. L. 95–190, § 14(a)(55), (56), Nov. 16, 1977, 91 Stat. 1402; Pub. L. 101–549, title I, § 102(b), Nov. 15, 1990, 104 Stat. 2412.)

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), expeditious attainment of national ambient air quality standards; in subsec. (b), requisite provisions of plan; and in subsec. (c), attainment of applicable standard not later than July 1, 1987.

1977—Subsec. (b)(4). Pub. L. 95–190, § 14(a)(55), substituted ''subsection (a) of this section'' for ''paragraph (1)''.

Subsec. (c). Pub. L. 95–190, § 14(a)(56), substituted ''December 31'' for ''July 1''.

NONATTAINMENT AREAS

Section 129(a) of Pub. L. 95–95, as amended by Pub. L. 95–190, § 14(b)(2), (3), Nov. 16, 1977, 91 Stat. 1404, provided that:

''(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524–30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act) [section 7602 of this title].

''(2) Before July 1, 1979, the requirements of the regulation referred to in paragraph (1) shall be waived by the Administrator with respect to any pollutant if he determines that the State has—

''(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act [section 7501 of this title]) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

''(B) an enforceable permit program which—

''(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act [section 7503 of this title] (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and

''(ii) requires existing sources to achieve such reduction in emissions in the area as may be obtained through the adoption, at a minimum of reasonably available control technology, and

''(C) a program which requires reductions in total allowable emissions in the area prior to July 1, 1979, so as to provide for the same level of emission reduction as would result from the application of the regulation referred to in paragraph (1).

The Administrator shall terminate such waiver if in his judgment the reduction in emissions actually being attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph. Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection.

''(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act [Aug. 7, 1977] if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit.''

STATE IMPLEMENTATION PLAN REVISION

Section 129(c) of Pub. L. 95–95, as amended by Pub. L. 95–190, § 14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: ''Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment note under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410(a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section].''

§ 7503. Permit requirements

(a) In general

The permit program required by section 7502(b)(6)[1] of this title shall provide that permits to construct and operate may be issued if—

(1) in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent

[1] See References in Text note below.

with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part, the permitting agency determines that—

(A) by the time the source is to commence operation, sufficient offsetting emissions reductions have been obtained, such that total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources (as determined in accordance with the regulations under this paragraph) prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted, that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(c) of this title;

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and[2]

(4) the Administrator has not determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part; and

(5) an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1) shall be federally enforceable before such permit may be issued.

(b) Prohibition on use of old growth allowances

Any growth allowance included in an applicable implementation plan to meet the requirements of section 7502(b)(5) of this title (as in effect immediately before November 15, 1990) shall not be valid for use in any area that received or receives a notice under section 7410(a)(2)(H)(ii) of this title (as in effect immediately before November 15, 1990) or under section 7410(k)(1) of this title that its applicable implementation plan containing such allowance is substantially inadequate.

(c) Offsets

(1) The owner or operator of a new or modified major stationary source may comply with any offset requirement in effect under this part for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (A) the other area has an equal or higher nonattainment classification than the area in which the source is located and (B) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located. Such emission reductions shall be, by the time a new or modified source commences operation, in effect and enforceable and shall assure that the total tonnage of increased emissions of the air pollutant from the new or modified source shall be offset by an equal or greater reduction, as applicable, in the actual emissions of such air pollutant from the same or other sources in the area.

(2) Emission reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any such offset requirement. Incidental emission reductions which are not otherwise required by this chapter shall be creditable as emission reductions for such purposes if such emission reductions meet the requirements of paragraph (1).

(d) Control technology information

The State shall provide that control technology information from permits issued under this section will be promptly submitted to the Administrator for purposes of making such information available through the RACT/BACT/LAER clearinghouse to other States and to the general public.

(e) Rocket engines or motors

The permitting authority of a State shall allow a source to offset by alternative or innovative means emission increases from rocket engine and motor firing, and cleaning related to such firing, at an existing or modified major source that tests rocket engines or motors under the following conditions:

(1) Any modification proposed is solely for the purpose of expanding the testing of rocket engines or motors at an existing source that is permitted to test such engines on November 15, 1990.

(2) The source demonstrates to the satisfaction of the permitting authority of the State that it has used all reasonable means to obtain and utilize offsets, as determined on an annual basis, for the emissions increases beyond allowable levels, that all available offsets are being used, and that sufficient offsets are not available to the source.

[2] So in original. The word ''and'' probably should not appear.

(3) The source has obtained a written finding from the Department of Defense, Department of Transportation, National Aeronautics and Space Administration or other appropriate Federal agency, that the testing of rocket motors or engines at the facility is required for a program essential to the national security.

(4) The source will comply with an alternative measure, imposed by the permitting authority, designed to offset any emission increases beyond permitted levels not directly offset by the source. In lieu of imposing any alternative offset measures, the permitting authority may impose an emissions fee to be paid to such authority of a State which shall be an amount no greater than 1.5 times the average cost of stationary source control measures adopted in that area during the previous 3 years. The permitting authority shall utilize the fees in a manner that maximizes the emissions reductions in that area.

(July 14, 1955, ch. 360, title I, § 173, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 95–190, § 14(a)(57), (58), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title I, § 102(c), Nov. 15, 1990, 104 Stat. 2415.)

REFERENCES IN TEXT

Section 7502(b) of this title, referred to in subsec. (a), was amended generally by Pub. L. 101–549, title I, § 102(b), Nov. 15, 1990, 104 Stat. 2412, and, as so amended, does not contain a par. (6). See section 7502(c)(5) of this title.

AMENDMENTS

1990—Pub. L. 101–549, § 102(c)(1), made technical amendment to section catchline.

Pub. L. 101–549, § 102(c)(2), (8), designated existing provisions as subsec. (a), inserted heading, and substituted ''(1) shall be federally enforceable'' for ''(1)(A) shall be legally binding'' in last sentence.

Subsec. (a)(1). Pub. L. 101–549, § 102(c)(3), inserted at beginning ''in accordance with regulations issued by the Administrator for the determination of baseline emissions in a manner consistent with the assumptions underlying the applicable implementation plan approved under section 7410 of this title and this part,''.

Subsec. (a)(1)(A). Pub. L. 101–549, § 102(c)(4), inserted ''sufficient offsetting emissions reductions have been obtained, such that'' after ''to commence operation,'' and substituted ''(as determined in accordance with the regulations under this paragraph)'' for ''allowed under the applicable implementation plan''.

Subsec. (a)(1)(B). Pub. L. 101–549, § 102(c)(5), inserted at beginning ''in the case of a new or modified major stationary source which is located in a zone (within the nonattainment area) identified by the Administrator, in consultation with the Secretary of Housing and Urban Development, as a zone to which economic development should be targeted,'' and substituted ''7502(c)'' for ''7502(b)''.

Subsec. (a)(4). Pub. L. 101–549, § 102(c)(6), inserted at beginning ''the Administrator has not determined that'', substituted ''not being adequately implemented'' for ''being carried out'', and substituted ''; and'' for period at end.

Subsec. (a)(5). Pub. L. 101–549, § 102(c)(7), added par. (5).

Subsec. (b). Pub. L. 101–549, § 102(c)(9), added subsec. (b).

Subsecs. (c) to (e). Pub. L. 101–549, § 102(c)(10), added subsecs. (c) to (e).

1977—Par. (1)(A). Pub. L. 95–190, § 14(a)(57), inserted ''or modified'' after ''from new'' and ''applicable'' before ''implementation plan'', and substituted ''source'' for ''facility'' wherever appearing.

Par. (4). Pub. L. 95–190, § 14(a)(58), added par. (4).

FAILURE TO ATTAIN NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARDS UNDER CLEAN AIR ACT

Pub. L. 100–202, § 101(f) [title II], Dec. 22, 1987, 101 Stat. 1329–187, 1329–199, provided that: ''No restriction or prohibition on construction, permitting, or funding under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of the Clean Air Act [sections 7410(a)(2)(I), 7503(4), 7506(a), (b), 7616 of this title] shall be imposed or take effect during the period prior to August 31, 1988, by reason of (1) the failure of any nonattainment area to attain the national primary ambient air quality standard under the Clean Air Act [this chapter] for photochemical oxidants (ozone) or carbon monoxide (or both) by December 31, 1987, (2) the failure of any State to adopt and submit to the Administrator of the Environmental Protection Agency an implementation plan that meets the requirements of part D of title I of such Act [this part] and provides for attainment of such standards by December 31, 1987, (3) the failure of any State or designated local government to implement the applicable implementation plan, or (4) any combination of the foregoing. During such period and consistent with the preceding sentence, the issuance of a permit (including required offsets) under section 173 of such Act [this section] for the construction or modification of a source in a nonattainment area shall not be denied solely or partially by reason of the reference contained in section 171(l) of such Act [section 7501(1) of this title] to the applicable date established in section 172(a) [section 7502(a) of this title]. This subsection [probably means the first 3 sentences of this note] shall not apply to any restriction or prohibition in effect under sections 110(a)(2)(I), 173(4), 176(a), 176(b), or 316 of such Act prior to the enactment of this section [Dec. 22, 1987]. Prior to August 31, 1988, the Administrator of the Environmental Protection Agency shall evaluate air quality data and make determinations with respect to which areas throughout the nation have attained, or failed to attain, either or both of the national primary ambient air quality standards referred to in subsection (a) [probably means the first 3 sentences of this note] and shall take appropriate steps to designate those areas failing to attain either or both of such standards as nonattainment areas within the meaning of part D of title I of the Clean Air Act.''

§ 7504. Planning procedures

(a) In general

For any ozone, carbon monoxide, or PM–10 nonattainment area, the State containing such area and elected officials of affected local governments shall, before the date required for submittal of the inventory described under sections 7511a(a)(1) and 7512a(a)(1) of this title, jointly review and update as necessary the planning procedures adopted pursuant to this subsection as in effect immediately before November 15, 1990, or develop new planning procedures pursuant to this subsection, as appropriate. In preparing such procedures the State and local elected officials shall determine which elements of a revised implementation plan will be developed, adopted, and implemented (through means including enforcement) by the State and which by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. The implementation plan required by this part shall be prepared by an organization certified by the State, in consultation with elected officials of local governments and in accordance with the determination under the second sentence of this subsection. Such organization shall include elected officials of local

governments in the affected area, and representatives of the State air quality planning agency, the State transportation planning agency, the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, the organization responsible for the air quality maintenance planning process under regulations implementing this chapter, and any other organization with responsibilities for developing, submitting, or implementing the plan required by this part. Such organization may be one that carried out these functions before November 15, 1990.

(b) Coordination

The preparation of implementation plan provisions and subsequent plan revisions under the continuing transportation-air quality planning process described in section 7408(e) of this title shall be coordinated with the continuing, cooperative and comprehensive transportation planning process required under section 134 of title 23, and such planning processes shall take into account the requirements of this part.

(c) Joint planning

In the case of a nonattainment area that is included within more than one State, the affected States may jointly, through interstate compact or otherwise, undertake and implement all or part of the planning procedures described in this section.

(July 14, 1955, ch. 360, title I, § 174, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 748; amended Pub. L. 101–549, title I, § 102(d), Nov. 15, 1990, 104 Stat. 2417.)

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), preparation of implementation plan by designated organization; and in subsec. (b), coordination of plan preparation.

§ 7505. Environmental Protection Agency grants

(a) Plan revision development costs

The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 7504(a) of this title for payment of the reasonable costs of developing a plan revision under this part.

(b) Uses of grant funds

The amount granted to any organization under subsection (a) of this section shall be 100 percent of any additional costs of developing a plan revision under this part for the first two fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to such organization for transportation or air quality maintenance planning. Grants under this section shall not be used for construction.

(July 14, 1955, ch. 360, title I, § 175, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 749.)

§ 7505a. Maintenance plans

(a) Plan revision

Each State which submits a request under section 7407(d) of this title for redesignation of a nonattainment area for any air pollutant as an area which has attained the national primary ambient air quality standard for that air pollutant shall also submit a revision of the applicable State implementation plan to provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation. The plan shall contain such additional measures, if any, as may be necessary to ensure such maintenance.

(b) Subsequent plan revisions

8 years after redesignation of any area as an attainment area under section 7407(d) of this title, the State shall submit to the Administrator an additional revision of the applicable State implementation plan for maintaining the national primary ambient air quality standard for 10 years after the expiration of the 10-year period referred to in subsection (a) of this section.

(c) Nonattainment requirements applicable pending plan approval

Until such plan revision is approved and an area is redesignated as attainment for any area designated as a nonattainment area, the requirements of this part shall continue in force and effect with respect to such area.

(d) Contingency provisions

Each plan revision submitted under this section shall contain such contingency provisions as the Administrator deems necessary to assure that the State will promptly correct any violation of the standard which occurs after the redesignation of the area as an attainment area. Such provisions shall include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned which were contained in the State implementation plan for the area before redesignation of the area as an attainment area. The failure of any area redesignated as an attainment area to maintain the national ambient air quality standard concerned shall not result in a requirement that the State revise its State implementation plan unless the Administrator, in the Administrator's discretion, requires the State to submit a revised State implementation plan.

(July 14, 1955, ch. 360, title I, § 175A, as added Pub. L. 101–549, title I, § 102(e), Nov. 15, 1990, 104 Stat. 2418.)

§ 7506. Limitations on certain Federal assistance

(a), (b) Repealed. Pub. L. 101–549, title I, § 110(4), Nov. 15, 1990, 104 Stat. 2470

(c) Activities not conforming to approved or promulgated plans

(1) No department, agency, or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve, any activity which does not conform to an implementation

plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to an implementation plan approved or promulgated under section 7410 of this title. The assurance of conformity to such an implementation plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality. Conformity to an implementation plan means—

(A) conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and

(B) that such activities will not—

(i) cause or contribute to any new violation of any standard in any area;

(ii) increase the frequency or severity of any existing violation of any standard in any area; or

(iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates.

(2) Any transportation plan or program developed pursuant to title 23 or chapter 53 of title 49 shall implement the transportation provisions of any applicable implementation plan approved under this chapter applicable to all or part of the area covered by such transportation plan or program. No Federal agency may approve, accept or fund any transportation plan, program or project unless such plan, program or project has been found to conform to any applicable implementation plan in effect under this chapter. In particular—

(A) no transportation plan or transportation improvement program may be adopted by a metropolitan planning organization designated under title 23 or chapter 53 of title 49, or be found to be in conformity by a metropolitan planning organization until a final determination has been made that emissions expected from implementation of such plans and programs are consistent with estimates of emissions from motor vehicles and necessary emissions reductions contained in the applicable implementation plan, and that the plan or program will conform to the requirements of paragraph (1)(B);

(B) no metropolitan planning organization or other recipient of funds under title 23 or chapter 53 of title 49 shall adopt or approve a transportation improvement program of projects until it determines that such program provides for timely implementation of transportation control measures consistent with schedules included in the applicable implementation plan;

(C) a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 or chapter 53 of title 49, or found in conformity by a metropolitan planning organization or approved, accepted, or funded by the Department of Transportation only if it meets either the requirements of subparagraph (D) or the following requirements—

(i) such a project comes from a conforming plan and program;

(ii) the design concept and scope of such project have not changed significantly since the conformity finding regarding the plan and program from which the project derived; and

(iii) the design concept and scope of such project at the time of the conformity determination for the program was adequate to determine emissions.

(D) Any project not referred to in subparagraph (C) shall be treated as conforming to the applicable implementation plan only if it is demonstrated that the projected emissions from such project, when considered together with emissions projected for the conforming transportation plans and programs within the nonattainment area, do not cause such plans and programs to exceed the emission reduction projections and schedules assigned to such plans and programs in the applicable implementation plan.

(E) The appropriate metropolitan planning organization shall redetermine conformity of existing transportation plans and programs not later than 2 years after the date on which the Administrator—

(i) finds a motor vehicle emissions budget to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004);

(ii) approves an implementation plan that establishes a motor vehicle emissions budget if that budget has not yet been determined to be adequate in accordance with clause (i); or

(iii) promulgates an implementation plan that establishes or revises a motor vehicle emissions budget.

(3) Until such time as the implementation plan revision referred to in paragraph (4)(C)[1] is approved, conformity of such plans, programs, and projects will be demonstrated if—

(A) the transportation plans and programs—

(i) are consistent with the most recent estimates of mobile source emissions;

(ii) provide for the expeditious implementation of transportation control measures in the applicable implementation plan; and

(iii) with respect to ozone and carbon monoxide nonattainment areas, contribute to annual emissions reductions consistent with sections 7511a(b)(1) and 7512a(a)(7) of this title; and

(B) the transportation projects—

(i) come from a conforming transportation plan and program as defined in subparagraph (A) or for 12 months after November 15, 1990, from a transportation program found to conform within 3 years prior to November 15, 1990; and

[1] See References in Text note below.

(ii) in carbon monoxide nonattainment areas, eliminate or reduce the severity and number of violations of the carbon monoxide standards in the area substantially affected by the project.

With regard to subparagraph (B)(ii), such determination may be made as part of either the conformity determination for the transportation program or for the individual project taken as a whole during the environmental review phase of project development.

(4) CRITERIA AND PROCEDURES FOR DETERMINING CONFORMITY.—

(A) IN GENERAL.—The Administrator shall promulgate, and periodically update, criteria and procedures for determining conformity (except in the case of transportation plans, programs, and projects) of, and for keeping the Administrator informed about, the activities referred to in paragraph (1).

(B) TRANSPORTATION PLANS, PROGRAMS, AND PROJECTS.—The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update, criteria and procedures for demonstrating and assuring conformity in the case of transportation plans, programs, and projects.

(C) CIVIL ACTION TO COMPEL PROMULGATION.—A civil action may be brought against the Administrator and the Secretary of Transportation under section 7604 of this title to compel promulgation of such criteria and procedures and the Federal district court shall have jurisdiction to order such promulgation.

(D) The procedures and criteria shall, at a minimum—

(i) address the consultation procedures to be undertaken by metropolitan planning organizations and the Secretary of Transportation with State and local air quality agencies and State departments of transportation before such organizations and the Secretary make conformity determinations;

(ii) address the appropriate frequency for making conformity determinations, but the frequency for making conformity determinations on updated transportation plans and programs shall be every 4 years, except in a case in which—

(I) the metropolitan planning organization elects to update a transportation plan or program more frequently; or

(II) the metropolitan planning organization is required to determine conformity in accordance with paragraph (2)(E); and

(iii) address how conformity determinations will be made with respect to maintenance plans.

(E) INCLUSION OF CRITERIA AND PROCEDURES IN SIP.—Not later than 2 years after August 10, 2005, the procedures under subparagraph (A) shall include a requirement that each State include in the State implementation plan criteria and procedures for consultation required by subparagraph (D)(i), and enforcement and enforceability (pursuant to sections 93.125(c) and 93.122(a)(4)(ii) of title 40, Code of Federal Regulations) in accordance with the Administrator's criteria and procedures for consultation, enforcement and enforceability.

(F) Compliance with the rules of the Administrator for determining the conformity of transportation plans, programs, and projects funded or approved under title 23 or chapter 53 of title 49 to State or Federal implementation plans shall not be required for traffic signal synchronization projects prior to the funding, approval or implementation of such projects. The supporting regional emissions analysis for any conformity determination made with respect to a transportation plan, program, or project shall consider the effect on emissions of any such project funded, approved, or implemented prior to the conformity determination.

(5) APPLICABILITY.—This subsection shall apply only with respect to—

(A) a nonattainment area and each pollutant for which the area is designated as a nonattainment area; and

(B) an area that was designated as a nonattainment area but that was later redesignated by the Administrator as an attainment area and that is required to develop a maintenance plan under section 7505a of this title with respect to the specific pollutant for which the area was designated nonattainment.

(6) Notwithstanding paragraph 5,[2] this subsection shall not apply with respect to an area designated nonattainment under section 7407(d)(1) of this title until 1 year after that area is first designated nonattainment for a specific national ambient air quality standard. This paragraph only applies with respect to the national ambient air quality standard for which an area is newly designated nonattainment and does not affect the area's requirements with respect to all other national ambient air quality standards for which the area is designated nonattainment or has been redesignated from nonattainment to attainment with a maintenance plan pursuant to section 7505a[1] of this title (including any pre-existing national ambient air quality standard for a pollutant for which a new or revised standard has been issued).

(7) CONFORMITY HORIZON FOR TRANSPORTATION PLANS.—

(A) IN GENERAL.—Each conformity determination required under this section for a transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 shall require a demonstration of conformity for the period ending on either the final year of the transportation plan, or at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, the longest of the following periods:

(i) The first 10-year period of any such transportation plan.

(ii) The latest year in the implementation plan applicable to the area that contains a motor vehicle emission budget.

(iii) The year after the completion date of a regionally significant project if the project is included in the transportation improvement program or the project requires ap-

[2] So in original. Probably should be "paragraph (5),".

proval before the subsequent conformity determination.

(B) REGIONAL EMISSIONS ANALYSIS.—The conformity determination shall be accompanied by a regional emissions analysis for the last year of the transportation plan and for any year shown to exceed emission budgets by a prior analysis, if such year extends beyond the applicable period as determined under subparagraph (A).

(C) EXCEPTION.—In any case in which an area has a revision to an implementation plan under section 7505a(b) of this title and the Administrator has found the motor vehicles emissions budgets from that revision to be adequate in accordance with section 93.118(e)(4) of title 40, Code of Federal Regulations (as in effect on October 1, 2004), or has approved the revision, the demonstration of conformity at the election of the metropolitan planning organization, after consultation with the air pollution control agency and solicitation of public comments and consideration of such comments, shall be required to extend only through the last year of the implementation plan required under section 7505a(b) of this title.

(D) EFFECT OF ELECTION.—Any election by a metropolitan planning organization under this paragraph shall continue in effect until the metropolitan planning organization elects otherwise.

(E) AIR POLLUTION CONTROL AGENCY DEFINED.—In this paragraph, the term ''air pollution control agency'' means an air pollution control agency (as defined in section 7602(b) of this title) that is responsible for developing plans or controlling air pollution within the area covered by a transportation plan.

(8) SUBSTITUTION OF TRANSPORTATION CONTROL MEASURES.—

(A) IN GENERAL.—Transportation control measures that are specified in an implementation plan may be replaced or added to the implementation plan with alternate or additional transportation control measures—

(i) if the substitute measures achieve equivalent or greater emissions reductions than the control measure to be replaced, as demonstrated with an emissions impact analysis that is consistent with the current methodology used for evaluating the replaced control measure in the implementation plan;

(ii) if the substitute control measures are implemented—

(I) in accordance with a schedule that is consistent with the schedule provided for control measures in the implementation plan; or

(II) if the implementation plan date for implementation of the control measure to be replaced has passed, as soon as practicable after the implementation plan date but not later than the date on which emission reductions are necessary to achieve the purpose of the implementation plan;

(iii) if the substitute and additional control measures are accompanied with evidence of adequate personnel and funding and authority under State or local law to implement, monitor, and enforce the control measures;

(iv) if the substitute and additional control measures were developed through a collaborative process that included—

(I) participation by representatives of all affected jurisdictions (including local air pollution control agencies, the State air pollution control agency, and State and local transportation agencies);

(II) consultation with the Administrator; and

(III) reasonable public notice and opportunity for comment; and

(v) if the metropolitan planning organization, State air pollution control agency, and the Administrator concur with the equivalency of the substitute or additional control measures.

(B) ADOPTION.—(i) Concurrence by the metropolitan planning organization, State air pollution control agency and the Administrator as required by subparagraph (A)(v) shall constitute adoption of the substitute or additional control measures so long as the requirements of subparagraphs (A)(i), (A)(ii), (A)(iii) and (A)(iv) are met.

(ii) Once adopted, the substitute or additional control measures become, by operation of law, part of the State implementation plan and become federally enforceable.

(iii) Within 90 days of its concurrence under subparagraph (A)(v), the State air pollution control agency shall submit the substitute or additional control measure to the Administrator for incorporation in the codification of the applicable implementation plan. Nothwithstanding[3] any other provision of this chapter, no additional State process shall be necessary to support such revision to the applicable plan.

(C) NO REQUIREMENT FOR EXPRESS PERMISSION.—The substitution or addition of a transportation control measure in accordance with this paragraph and the funding or approval of such a control measure shall not be contingent on the existence of any provision in the applicable implementation plan that expressly permits such a substitution or addition.

(D) NO REQUIREMENT FOR NEW CONFORMITY DETERMINATION.—The substitution or addition of a transportation control measure in accordance with this paragraph shall not require—

(i) a new conformity determination for the transportation plan; or

(ii) a revision of the implementation plan.

(E) CONTINUATION OF CONTROL MEASURE BEING REPLACED.—A control measure that is being replaced by a substitute control measure under this paragraph shall remain in effect until the substitute control measure is adopted by the State pursuant to subparagraph (B).

(F) EFFECT OF ADOPTION.—Adoption of a substitute control measure shall constitute rescission of the previously applicable control measure.

(9) LAPSE OF CONFORMITY.—If a conformity determination required under this subsection for a

[3] So in original. Probably should be ''Notwithstanding''.

transportation plan under section 134(i) of title 23 or section 5303(i) of title 49 or a transportation improvement program under section 134(j) of such title 23 or under section 5303(j) of such title 49 is not made by the applicable deadline and such failure is not corrected by additional measures to either reduce motor vehicle emissions sufficient to demonstrate compliance with the requirements of this subsection within 12 months after such deadline or other measures sufficient to correct such failures, the transportation plan shall lapse.

(10) LAPSE.—In this subsection, the term ''lapse'' means that the conformity determination for a transportation plan or transportation improvement program has expired, and thus there is no currently conforming transportation plan or transportation improvement program.

(d) Priority of achieving and maintaining national primary ambient air quality standards

Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air-quality standard. This paragraph extends to, but is not limited to, authority exercised under chapter 53 of title 49, title 23, and the Housing and Urban Development Act.

(July 14, 1955, ch. 360, title I, § 176, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 749; amended Pub. L. 95–190, § 14(a)(59), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title I, §§ 101(f), 110(4), Nov. 15, 1990, 104 Stat. 2409, 2470; Pub. L. 104–59, title III, § 305(b), Nov. 28, 1995, 109 Stat. 580; Pub. L. 104–260, § 1, Oct. 9, 1996, 110 Stat. 3175; Pub. L. 106–377, § 1(a)(1) [title III], Oct. 27, 2000, 114 Stat. 1441, 1441A–44; Pub. L. 109–59, title VI, § 6011(a)–(f), Aug. 10, 2005, 119 Stat. 1878–1881.)

REFERENCES IN TEXT

Paragraph (4) of subsec. (c), referred to in subsec. (c)(3), was amended by Pub. L. 109–59, title VI, § 6011(f), Aug. 10, 2005, 119 Stat. 1881, to redesignate subpar. (C) as (E), strike it out, and add new subpars. (C) and (E). See 2005 Amendment notes below.

Section 7505a of this title, referred to in subsec. (c)(6), was in the original ''section 175(A)'' and was translated as reading ''section 175A'', meaning section 175A of act July 14, 1955, which is classified to section 7505a of this title, to reflect the probable intent of Congress.

The Housing and Urban Development Act, referred to in subsec. (d), may be the name for a series of acts sharing the same name but enacted in different years by Pub. L. 89–117, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90–448, Aug. 1, 1968, 82 Stat. 476; Pub. L. 91–152, Dec. 24, 1969, 83 Stat. 379; and Pub. L. 91–609, Dec. 31, 1970, 84 Stat. 1770, respectively. For complete classification of these Acts to the Code, see Short Title notes set out under section 1701 of Title 12, Banks and Banking, and Tables.

CODIFICATION

In subsecs. (c)(2) and (d), ''chapter 53 of title 49'' substituted for ''the Urban Mass Transportation Act [49 App. U.S.C. 1601 et seq.]'' and in subsec. (c)(4)(F) substituted for ''Federal Transit Act'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378 (the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation), and of Pub. L. 102–240, title III, § 3003(b), Dec. 18, 1991, 105 Stat. 2088, which provided that references in laws to the Urban Mass Transportation Act of 1964 be deemed to be references to the Federal Transit Act.

AMENDMENTS

2005—Subsec. (c)(2)(E). Pub. L. 109–59, § 6011(a), added subpar. (E).

Subsec. (c)(4). Pub. L. 109–59, § 6011(f)(1)–(3), inserted par. (4) and subpar. (A) headings, in first sentence substituted ''The Administrator shall promulgate, and periodically update,'' for ''No later than one year after November 15, 1990, the Administrator shall promulgate'', designated second sentence as subpar. (B), inserted heading, substituted ''The Administrator, with the concurrence of the Secretary of Transportation, shall promulgate, and periodically update,'' for ''No later than one year after November 15, 1990, the Administrator, with the concurrence of the Secretary of Transportation, shall promulgate'', designated third sentence as subpar. (C), inserted heading, substituted ''A civil action'' for ''A suit'', and redesignated former subpars. (B) to (D) as (D) to (F), respectively.

Subsec. (c)(4)(B)(ii). Pub. L. 109–59, § 6011(b), amended cl. (ii) generally. Prior to amendment, cl. (ii) read as follows: ''address the appropriate frequency for making conformity determinations, but in no case shall such determinations for transportation plans and programs be less frequent than every three years; and''.

Subsec. (c)(4)(E). Pub. L. 109–59, § 6011(f)(4), added subpar. (E) and struck out former subpar. (E) which read as follows: ''Such procedures shall also include a requirement that each State shall submit to the Administrator and the Secretary of Transportation within 24 months of November 15, 1990, a revision to its implementation plan that includes criteria and procedures for assessing the conformity of any plan, program, or project subject to the conformity requirements of this subsection.''

Subsec. (c)(7) to (10). Pub. L. 109–59, § 6011(c)–(e), added pars. (7) to (10).

2000—Subsec. (c)(6). Pub. L. 106–377 added par. (6).

1996—Subsec. (c)(4)(D). Pub. L. 104–260 added subpar. (D).

1995—Subsec. (c)(5). Pub. L. 104–59 added par. (5).

1990—Subsecs. (a), (b). Pub. L. 101–549, § 110(4), struck out subsec. (a) which related to approval of projects or award of grants, and subsec. (b) which related to implementation of approved or promulgated plans.

Subsec. (c). Pub. L. 101–549, § 101(f), designated existing provisions as par. (1), struck out ''(1)'', ''(2)'', ''(3)'', and ''(4)'' before ''engage in'', ''support in'', ''license or'', and ''approve, any'', respectively, substituted ''conform to an implementation plan after it'' for ''conform to a plan after it'', ''conform to an implementation plan approved'' for ''conform to a plan approved'', and ''conformity to such an implementation plan shall'' for ''conformity to such a plan shall'', inserted ''Conformity to an implementation plan means—'' followed immediately by subpars. (A) and (B) and closing provisions relating to determination of conformity being based on recent estimates of emissions and the determination of such estimates, and added pars. (2) to (4).

1977—Subsec. (a)(1). Pub. L. 95–190 inserted ''national'' before ''primary''.

REGULATIONS

Pub. L. 109–59, title VI, § 6011(g), Aug. 10, 2005, 119 Stat. 1882, provided that: ''Not later than 2 years after the date of enactment of this Act [Aug. 10, 2005], the Administrator of the Environmental Protection Agency shall promulgate revised regulations to implement the changes made by this section [amending this section].''

§ 7506a. Interstate transport commissions

(a) Authority to establish interstate transport regions

Whenever, on the Administrator's own motion or by petition from the Governor of any State, the Administrator has reason to believe that the interstate transport of air pollutants from one or more States contributes significantly to a violation of a national ambient air quality standard in one or more other States, the Administrator may establish, by rule, a transport region for such pollutant that includes such States. The Administrator, on the Administrator's own motion or upon petition from the Governor of any State, or upon the recommendation of a transport commission established under subsection (b) of this section, may—

(1) add any State or portion of a State to any region established under this subsection whenever the Administrator has reason to believe that the interstate transport of air pollutants from such State significantly contributes to a violation of the standard in the transport region, or

(2) remove any State or portion of a State from the region whenever the Administrator has reason to believe that the control of emissions in that State or portion of the State pursuant to this section will not significantly contribute to the attainment of the standard in any area in the region.

The Administrator shall approve or disapprove any such petition or recommendation within 18 months of its receipt. The Administrator shall establish appropriate proceedings for public participation regarding such petitions and motions, including notice and comment.

(b) Transport commissions

(1) Establishment

Whenever the Administrator establishes a transport region under subsection (a) of this section, the Administrator shall establish a transport commission comprised of (at a minimum) each of the following members:

(A) The Governor of each State in the region or the designee of each such Governor.

(B) The Administrator or the Administrator's designee.

(C) The Regional Administrator (or the Administrator's designee) for each Regional Office for each Environmental Protection Agency Region affected by the transport region concerned.

(D) An air pollution control official representing each State in the region, appointed by the Governor.

Decisions of, and recommendations and requests to, the Administrator by each transport commission may be made only by a majority vote of all members other than the Administrator and the Regional Administrators (or designees thereof).

(2) Recommendations

The transport commission shall assess the degree of interstate transport of the pollutant or precursors to the pollutant throughout the transport region, assess strategies for mitigating the interstate pollution, and recommend to the Administrator such measures as the Commission determines to be necessary to ensure that the plans for the relevant States meet the requirements of section 7410(a)(2)(D) of this title. Such commission shall not be subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.).

(c) Commission requests

A transport commission established under subsection (b) of this section may request the Administrator to issue a finding under section 7410(k)(5) of this title that the implementation plan for one or more of the States in the transport region is substantially inadequate to meet the requirements of section 7410(a)(2)(D) of this title. The Administrator shall approve, disapprove, or partially approve and partially disapprove such a request within 18 months of its receipt and, to the extent the Administrator approves such request, issue the finding under section 7410(k)(5) of this title at the time of such approval. In acting on such request, the Administrator shall provide an opportunity for public participation and shall address each specific recommendation made by the commission. Approval or disapproval of such a request shall constitute final agency action within the meaning of section 7607(b) of this title.

(July 14, 1955, ch. 360, title I, § 176A, as added Pub. L. 101–549, title I, § 102(f)(1), Nov. 15, 1990, 104 Stat. 2419.)

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b)(2), is Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

§ 7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

Nothing in this section or in subchapter II of this chapter shall be construed as authorizing any such State to prohibit or limit, directly or indirectly, the manufacture or sale of a new motor vehicle or motor vehicle engine that is certified in California as meeting California standards, or to take any action of any kind to create, or have the effect of creating, a motor vehicle or motor vehicle engine different than a motor vehicle or engine certified in California under California standards (a ''third vehicle'') or otherwise create such a ''third vehicle''.

(July 14, 1955, ch. 360, title I, § 177, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750;

amended Pub. L. 101–549, title II, § 232, Nov. 15, 1990, 104 Stat. 2529.)

AMENDMENTS

1990—Pub. L. 101–549 added sentence at end prohibiting States from limiting or prohibiting sale or manufacture of new vehicles or engines certified in California as having met California standards and from taking any actions where effect of those actions would be to create a ''third vehicle''.

§ 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, § 178, as added Pub. L. 95–95, title I, § 129(b), Aug. 7, 1977, 91 Stat. 750.)

§ 7509. Sanctions and consequences of failure to attain

(a) State failure

For any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 7410(k)(5) of this title), if the Administrator—

(1) finds that a State has failed, for an area designated nonattainment under section 7407(d) of this title, to submit a plan, or to submit 1 or more of the elements (as determined by the Administrator) required by the provisions of this chapter applicable to such an area, or has failed to make a submission for such an area that satisfies the minimum criteria established in relation to any such element under section 7410(k) of this title,

(2) disapproves a submission under section 7410(k) of this title, for an area designated nonattainment under section 7407 of this title, based on the submission's failure to meet one or more of the elements required by the provisions of this chapter applicable to such an area,

(3)(A) determines that a State has failed to make any submission as may be required under this chapter, other than one described under paragraph (1) or (2), including an adequate maintenance plan, or has failed to make any submission, as may be required under this chapter, other than one described under paragraph (1) or (2), that satisfies the minimum criteria established in relation to such submission under section 7410(k)(1)(A) of this title, or

(B) disapproves in whole or in part a submission described under subparagraph (A), or

(4) finds that any requirement of an approved plan (or approved part of a plan) is not being implemented,

unless such deficiency has been corrected within 18 months after the finding, disapproval, or determination referred to in paragraphs (1), (2), (3), and (4), one of the sanctions referred to in subsection (b) of this section shall apply, as selected by the Administrator, until the Administrator determines that the State has come into compliance, except that if the Administrator finds a lack of good faith, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. If the Administrator has selected one of such sanctions and the deficiency has not been corrected within 6 months thereafter, sanctions under both paragraph (1) and paragraph (2) of subsection (b) of this section shall apply until the Administrator determines that the State has come into compliance. In addition to any other sanction applicable as provided in this section, the Administrator may withhold all or part of the grants for support of air pollution planning and control programs that the Administrator may award under section 7405 of this title.

(b) Sanctions

The sanctions available to the Administrator as provided in subsection (a) of this section are as follows:

(1) Highway sanctions

(A) The Administrator may impose a prohibition, applicable to a nonattainment area, on the approval by the Secretary of Transportation of any projects or the awarding by the Secretary of any grants, under title 23 other than projects or grants for safety where the Secretary determines, based on accident or other appropriate data submitted by the State, that the principal purpose of the project is an improvement in safety to resolve a demonstrated safety problem and likely will result in a significant reduction in, or avoidance of, accidents. Such prohibition shall become effective upon the selection by the Administrator of this sanction.

(B) In addition to safety, projects or grants that may be approved by the Secretary, notwithstanding the prohibition in subparagraph (A), are the following—

(i) capital programs for public transit;

(ii) construction or restriction of certain roads or lanes solely for the use of passenger buses or high occupancy vehicles;

(iii) planning for requirements for employers to reduce employee work-trip-related vehicle emissions;

(iv) highway ramp metering, traffic signalization, and related programs that improve traffic flow and achieve a net emission reduction;

(v) fringe and transportation corridor parking facilities serving multiple occupancy vehicle programs or transit operations;

(vi) programs to limit or restrict vehicle use in downtown areas or other areas of emission concentration particularly during periods of peak use, through road use charges, tolls, parking surcharges, or other pricing mechanisms, vehicle restricted zones or periods, or vehicle registration programs;

(vii) programs for breakdown and accident scene management, nonrecurring congestion, and vehicle information systems, to reduce congestion and emissions; and

(viii) such other transportation-related programs as the Administrator, in consulta-

tion with the Secretary of Transportation, finds would improve air quality and would not encourage single occupancy vehicle capacity.

In considering such measures, the State should seek to ensure adequate access to downtown, other commercial, and residential areas, and avoid increasing or relocating emissions and congestion rather than reducing them.

(2) Offsets

In applying the emissions offset requirements of section 7503 of this title to new or modified sources or emissions units for which a permit is required under this part, the ratio of emission reductions to increased emissions shall be at least 2 to 1.

(c) Notice of failure to attain

(1) As expeditiously as practicable after the applicable attainment date for any nonattainment area, but not later than 6 months after such date, the Administrator shall determine, based on the area's air quality as of the attainment date, whether the area attained the standard by that date.

(2) Upon making the determination under paragraph (1), the Administrator shall publish a notice in the Federal Register containing such determination and identifying each area that the Administrator has determined to have failed to attain. The Administrator may revise or supplement such determination at any time based on more complete information or analysis concerning the area's air quality as of the attainment date.

(d) Consequences for failure to attain

(1) Within 1 year after the Administrator publishes the notice under subsection (c)(2) of this section (relating to notice of failure to attain), each State containing a nonattainment area shall submit a revision to the applicable implementation plan meeting the requirements of paragraph (2) of this subsection.

(2) The revision required under paragraph (1) shall meet the requirements of section 7410 of this title and section 7502 of this title. In addition, the revision shall include such additional measures as the Administrator may reasonably prescribe, including all measures that can be feasibly implemented in the area in light of technological achievability, costs, and any nonair quality and other air quality-related health and environmental impacts.

(3) The attainment date applicable to the revision required under paragraph (1) shall be the same as provided in the provisions of section 7502(a)(2) of this title, except that in applying such provisions the phrase ''from the date of the notice under section 7509(c)(2) of this title'' shall be substituted for the phrase ''from the date such area was designated nonattainment under section 7407(d) of this title'' and for the phrase ''from the date of designation as nonattainment''.

(July 14, 1955, ch. 360, title I, § 179, as added Pub. L. 101–549, title I, § 102(g), Nov. 15, 1990, 104 Stat. 2420.)

§ 7509a. International border areas

(a) Implementation plans and revisions

Notwithstanding any other provision of law, an implementation plan or plan revision required under this chapter shall be approved by the Administrator if—

(1) such plan or revision meets all the requirements applicable to it under the[1] chapter other than a requirement that such plan or revision demonstrate attainment and maintenance of the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, and

(2) the submitting State establishes to the satisfaction of the Administrator that the implementation plan of such State would be adequate to attain and maintain the relevant national ambient air quality standards by the attainment date specified under the applicable provision of this chapter, or in a regulation promulgated under such provision, but for emissions emanating from outside of the United States.

(b) Attainment of ozone levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to an ozone nonattainment area in such State, such State would have attained the national ambient air quality standard for ozone by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7511(a)(2) or (5) of this title or section 7511d of this title.

(c) Attainment of carbon monoxide levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator, with respect to a carbon monoxide nonattainment area in such State, that such State has attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside of the United States, shall not be subject to the provisions of section 7512(b)(2) or (9)[2] of this title.

(d) Attainment of PM–10 levels

Notwithstanding any other provision of law, any State that establishes to the satisfaction of the Administrator that, with respect to a PM–10 nonattainment area in such State, such State would have attained the national ambient air quality standard for carbon monoxide by the applicable attainment date, but for emissions emanating from outside the United States, shall not be subject to the provisions of section 7513(b)(2) of this title.

(July 14, 1955, ch. 360, title I, § 179B, as added Pub. L. 101–549, title VIII, § 818, Nov. 15, 1990, 104 Stat. 2697.)

ESTABLISHMENT OF PROGRAM TO MONITOR AND IMPROVE AIR QUALITY IN REGIONS ALONG BORDER BETWEEN UNITED STATES AND MEXICO

Section 815 of Pub. L. 101–549 provided that:

[1] So in original. Probably should be ''this''.

[2] So in original. Section 7512(b) of this title does not contain a par. (9).

''(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter referred to as the 'Administrator') is authorized, in cooperation with the Department of State and the affected States, to negotiate with representatives of Mexico to authorize a program to monitor and improve air quality in regions along the border between the United States and Mexico. The program established under this section shall not extend beyond July 1, 1995.

''(b) MONITORING AND REMEDIATION.—

''(1) MONITORING.—The monitoring component of the program conducted under this section shall identify and determine sources of pollutants for which national ambient air quality standards (hereinafter referred to as 'NAAQS') and other air quality goals have been established in regions along the border between the United States and Mexico. Any such monitoring component of the program shall include, but not be limited to, the collection of meteorological data, the measurement of air quality, the compilation of an emissions inventory, and shall be sufficient to the extent necessary to successfully support the use of a state-of-the-art mathematical air modeling analysis. Any such monitoring component of the program shall collect and produce data projecting the level of emission reductions necessary in both Mexico and the United States to bring about attainment of both primary and secondary NAAQS, and other air quality goals, in regions along the border in the United States. Any such monitoring component of the program shall include to the extent possible, data from monitoring programs undertaken by other parties.

''(2) REMEDIATION.—The Administrator is authorized to negotiate with appropriate representatives of Mexico to develop joint remediation measures to reduce the level of airborne pollutants to achieve and maintain primary and secondary NAAQS, and other air quality goals, in regions along the border between the United States and Mexico. Such joint remediation measures may include, but not be limited to measures included in the Environmental Protection Agency's Control Techniques and Control Technology documents. Any such remediation program shall also identify those control measures implementation of which in Mexico would be expedited by the use of material and financial assistance of the United States.

''(c) ANNUAL REPORTS.—The Administrator shall, each year the program authorized in this section is in operation, report to Congress on the progress of the program in bringing nonattainment areas along the border of the United States into attainment with primary and secondary NAAQS. The report issued by the Administrator under this paragraph shall include recommendations on funding mechanisms to assist in implementation of monitoring and remediation efforts.

''(d) FUNDING AND PERSONNEL.—The Administrator may, where appropriate, make available, subject to the appropriations, such funds, personnel, and equipment as may be necessary to implement the provisions of this section. In those cases where direct financial assistance of the United States is provided to implement monitoring and remediation programs in Mexico, the Administrator shall develop grant agreements with appropriate representatives of Mexico to assure the accuracy and completeness of monitoring data and the performance of remediation measures which are financed by the United States. With respect to any control measures within Mexico funded by the United States, the Administrator shall, to the maximum extent practicable, utilize resources of Mexico where such utilization would reduce costs to the United States. Such funding agreements shall include authorization for the Administrator to—

''(1) review and agree to plans for monitoring and remediation;

''(2) inspect premises, equipment and records to insure compliance with the agreements established under and the purposes set forth in this section; and

''(3) where necessary, develop grant agreements with affected States to carry out the provisions of this section.''

SUBPART 2—ADDITIONAL PROVISIONS FOR OZONE NONATTAINMENT AREAS

§ 7511. Classifications and attainment dates

(a) Classification and attainment dates for 1989 nonattainment areas

(1) Each area designated nonattainment for ozone pursuant to section 7407(d) of this title shall be classified at the time of such designation, under table 1, by operation of law, as a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for ozone shall be as expeditiously as practicable but not later than the date provided in table 1.

TABLE 1

Area class	Design value*	Primary standard attainment date**
Marginal ..	0.121 up to 0.138 ...	3 years after November 15, 1990
Moderate ..	0.138 up to 0.160 ...	6 years after November 15, 1990
Serious	0.160 up to 0.180 ...	9 years after November 15, 1990
Severe	0.180 up to 0.280 ...	15 years after November 15, 1990
Extreme ...	0.280 and above ...	20 years after November 15, 1990

*The design value is measured in parts per million (ppm).

**The primary standard attainment date is measured from November 15, 1990.

(2) Notwithstanding table 1, in the case of a severe area with a 1988 ozone design value between 0.190 and 0.280 ppm, the attainment date shall be 17 years (in lieu of 15 years) after November 15, 1990.

(3) At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each ozone nonattainment area, the Administrator shall publish a notice announcing the classification of such ozone nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice and comment and judicial review) shall apply to such classification.

(4) If an area classified under paragraph (1) (Table 1) would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after the initial classification, by the procedure required under paragraph (3), adjust the classification to place the area in such other category. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for ozone in the area, the level of pollution transport between the area and other affected areas, including both intrastate and interstate transport, and the mix of sources and air pollutants in the area.

(5) Upon application by any State, the Administrator may extend for 1 additional year (here-

inafter referred to as the ''Extension Year'') the date specified in table 1 of paragraph (1) of this subsection if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for ozone under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for ozone under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in accordance with table 1 under subsection (a) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(3) of this section, except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified under this paragraph.

(2) Reclassification upon failure to attain

(A) Within 6 months following the applicable attainment date (including any extension thereof) for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date. Except for any Severe or Extreme area, any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a) of this section to the higher of—

(i) the next higher classification for the area, or

(ii) the classification applicable to the area's design value as determined at the time of the notice required under subparagraph (B).

No area shall be reclassified as Extreme under clause (ii).

(B) The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined under subparagraph (A) as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(3) Voluntary reclassification

The Administrator shall grant the request of any State to reclassify a nonattainment area in that State in accordance with table 1 of subsection (a) of this section to a higher classification. The Administrator shall publish a notice in the Federal Register of any such request and of action by the Administrator granting the request.

(4) Failure of Severe Areas to attain standard

(A) If any Severe Area fails to achieve the national primary ambient air quality standard for ozone by the applicable attainment date (including any extension thereof), the fee provisions under section 7511d of this title shall apply within the area, the percent reduction requirements of section 7511a(c)(2)(B) and (C) of this title (relating to reasonable further progress demonstration and NO_x control) shall continue to apply to the area, and the State shall demonstrate that such percent reduction has been achieved in each 3-year interval after such failure until the standard is attained. Any failure to make such a demonstration shall be subject to the sanctions provided under this part.

(B) In addition to the requirements of subparagraph (A), if the ozone design value for a Severe Area referred to in subparagraph (A) is above 0.140 ppm for the year of the applicable attainment date, or if the area has failed to achieve its most recent milestone under section 7511a(g) of this title, the new source review requirements applicable under this subpart in Extreme Areas shall apply in the area and the term[1] ''major source'' and ''major stationary source'' shall have the same meaning as in Extreme Areas.

(C) In addition to the requirements of subparagraph (A) for those areas referred to in subparagraph (A) and not covered by subparagraph (B), the provisions referred to in subparagraph (B) shall apply after 3 years from the applicable attainment date unless the area has attained the standard by the end of such 3-year period.

(D) If, after November 15, 1990, the Administrator modifies the method of determining compliance with the national primary ambient air quality standard, a design value or other indicator comparable to 0.140 in terms of its relationship to the standard shall be used in lieu of 0.140 for purposes of applying the provisions of subparagraphs (B) and (C).

(c) References to terms

(1) Any reference in this subpart to a ''Marginal Area'', a ''Moderate Area'', a ''Serious Area'', a ''Severe Area'', or an ''Extreme Area'' shall be considered a reference to a Marginal Area, a Moderate Area, a Serious Area, a Severe Area, or an Extreme Area as respectively classified under this section.

(2) Any reference in this subpart to ''next higher classification'' or comparable terms shall be considered a reference to the classification related to the next higher set of design values in table 1.

(July 14, 1955, ch. 360, title I, § 181, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2423.)

[1] So in original. Probably should be ''terms''.

EXEMPTIONS FOR STRIPPER WELLS

Section 819 of Pub. L. 101–549 provided that: ''Notwithstanding any other provision of law, the amendments to the Clean Air Act made by section 103 of the Clean Air Act Amendments of 1990 [enacting this section and sections 7511a to 7511f of this title] (relating to additional provisions for ozone nonattainment areas), by section 104 of such amendments [enacting sections 7512 and 7512a of this title] (relating to additional provisions for carbon monoxide nonattainment areas), by section 105 of such amendments [enacting sections 7513 to 7513b of this title and amending section 7476 of this title] (relating to additional provisions for PM–10 nonattainment areas), and by section 106 of such amendments [enacting sections 7514 and 7514a of this title] (relating to additional provisions for areas designated as nonattainment for sulfur oxides, nitrogen dioxide, and lead) shall not apply with respect to the production of and equipment used in the exploration, production, development, storage or processing of—

''(1) oil from a stripper well property, within the meaning of the June 1979 energy regulations (within the meaning of section 4996(b)(7) of the Internal Revenue Code of 1986 [26 U.S.C. 4996(b)(7)], as in effect before the repeal of such section); and

''(2) stripper well natural gas, as defined in section 108(b) of the Natural Gas Policy Act of 1978 (15 U.S.C. 3318(b)).[,]

except to the extent that provisions of such amendments cover areas designated as Serious pursuant to part D of title I of the Clean Air Act [this part] and having a population of 350,000 or more, or areas designated as Severe or Extreme pursuant to such part D.''

§ 7511a. Plan submissions and requirements

(a) Marginal Areas

Each State in which all or part of a Marginal Area is located shall, with respect to the Marginal Area (or portion thereof, to the extent specified in this subsection), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection except to the extent the State has made such submissions as of November 15, 1990.

(1) Inventory

Within 2 years after November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2) Corrections to the State implementation plan

Within the periods prescribed in this paragraph, the State shall submit a revision to the State implementation plan that meets the following requirements—

(A) Reasonably available control technology corrections

For any Marginal Area (or, within the Administrator's discretion, portion thereof) the State shall submit, within 6 months of the date of classification under section 7511(a) of this title, a revision that includes such provisions to correct requirements in (or add requirements to) the plan concerning reasonably available control technology as were required under section 7502(b) of this title (as in effect immediately before November 15, 1990), as interpreted in guidance issued by the Administrator under section 7408 of this title before November 15, 1990.

(B) Savings clause for vehicle inspection and maintenance

(i) For any Marginal Area (or, within the Administrator's discretion, portion thereof), the plan for which already includes, or was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included, a specific schedule for implementation of a vehicle emission control inspection and maintenance program, the State shall submit, immediately after November 15, 1990, a revision that includes any provisions necessary to provide for a vehicle inspection and maintenance program of no less stringency than that of either the program defined in House Report Numbered 95–294, 95th Congress, 1st Session, 281–291 (1977) as interpreted in guidance of the Administrator issued pursuant to section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) or the program already included in the plan, whichever is more stringent.

(ii) Within 12 months after November 15, 1990, the Administrator shall review, revise, update, and republish in the Federal Register the guidance for the States for motor vehicle inspection and maintenance programs required by this chapter, taking into consideration the Administrator's investigations and audits of such program. The guidance shall, at a minimum, cover the frequency of inspections, the types of vehicles to be inspected (which shall include leased vehicles that are registered in the nonattainment area), vehicle maintenance by owners and operators, audits by the State, the test method and measures, including whether centralized or decentralized, inspection methods and procedures, quality of inspection, components covered, assurance that a vehicle subject to a recall notice from a manufacturer has complied with that notice, and effective implementation and enforcement, including ensuring that any retesting of a vehicle after a failure shall include proof of corrective action and providing for denial of vehicle registration in the case of tampering or misfueling. The guidance which shall be incorporated in the applicable State implementation plans by the States shall provide the States with continued reasonable flexibility to fashion effective, reasonable, and fair programs for the affected consumer. No later than 2 years after the Administrator promulgates regulations under section 7521(m)(3) of this title (relating to emission control diagnostics), the State shall submit a revision to such program to meet any requirements that the Administrator may prescribe under that section.

(C) Permit programs

Within 2 years after November 15, 1990, the State shall submit a revision that includes each of the following:

(i) Provisions to require permits, in accordance with sections 7502(c)(5) and 7503 of this title, for the construction and operation of each new or modified major sta-

tionary source (with respect to ozone) to be located in the area.

(ii) Provisions to correct requirements in (or add requirements to) the plan concerning permit programs as were required under section 7502(b)(6) of this title (as in effect immediately before November 15, 1990), as interpreted in regulations of the Administrator promulgated as of November 15, 1990.

(3) Periodic inventory

(A) General requirement

No later than the end of each 3-year period after submission of the inventory under paragraph (1) until the area is redesignated to attainment, the State shall submit a revised inventory meeting the requirements of subsection (a)(1) of this section.

(B) Emissions statements

(i) Within 2 years after November 15, 1990, the State shall submit a revision to the State implementation plan to require that the owner or operator of each stationary source of oxides of nitrogen or volatile organic compounds provide the State with a statement, in such form as the Administrator may prescribe (or accept an equivalent alternative developed by the State), for classes or categories of sources, showing the actual emissions of oxides of nitrogen and volatile organic compounds from that source. The first such statement shall be submitted within 3 years after November 15, 1990. Subsequent statements shall be submitted at least every year thereafter. The statement shall contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement.

(ii) The State may waive the application of clause (i) to any class or category of stationary sources which emit less than 25 tons per year of volatile organic compounds or oxides of nitrogen if the State, in its submissions under subparagraphs[1] (1) or (3)(A), provides an inventory of emissions from such class or category of sources, based on the use of the emission factors established by the Administrator or other methods acceptable to the Administrator.

(4) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increased emissions of such air pollutant shall be at least 1.1 to 1.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. The requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area. Section 7502(c)(9) of this title (relating to contingency measures) shall not apply to Marginal Areas.

(b) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area, make the submissions described under subsection (a) of this section (relating to Marginal Areas), and shall also submit the revisions to the applicable implementation plan described under this subsection.

(1) Plan provisions for reasonable further progress

(A) General rule

(i) By no later than 3 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions, within 6 years after November 15, 1990, of at least 15 percent from baseline emissions, accounting for any growth in emissions after 1990. Such plan shall provide for such specific annual reductions in emissions of volatile organic compounds and oxides of nitrogen as necessary to attain the national primary ambient air quality standard for ozone by the attainment date applicable under this chapter. This subparagraph shall not apply in the case of oxides of nitrogen for those areas for which the Administrator determines (when the Administrator approves the plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment.

(ii) A percentage less than 15 percent may be used for purposes of clause (i) in the case of any State which demonstrates to the satisfaction of the Administrator that—

(I) new source review provisions are applicable in the nonattainment areas in the same manner and to the same extent as required under subsection (e) of this section in the case of Extreme Areas (with the exception that, in applying such provisions, the terms ''major source'' and ''major stationary source'' shall include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 5 tons per year of volatile organic compounds);

(II) reasonably available control technology is required for all existing major sources (as defined in subclause (I)); and

(III) the plan reflecting a lesser percentage than 15 percent includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To qualify for a lesser percentage under this clause, a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher category.

(B) Baseline emissions

For purposes of subparagraph (A), the term ''baseline emissions'' means the total

[1] So in original. Probably should be ''subparagraph''.

amount of actual VOC or NO_x emissions from all anthropogenic sources in the area during the calendar year 1990, excluding emissions that would be eliminated under the regulations described in clauses (i) and (ii) of subparagraph (D).

(C) General rule for creditability of reductions

Except as provided under subparagraph (D), emissions reductions are creditable toward the 15 percent required under subparagraph (A) to the extent they have actually occurred, as of 6 years after November 15, 1990, from the implementation of measures required under the applicable implementation plan, rules promulgated by the Administrator, or a permit under subchapter V of this chapter.

(D) Limits on creditability of reductions

Emission reductions from the following measures are not creditable toward the 15 percent reductions required under subparagraph (A):

(i) Any measure relating to motor vehicle exhaust or evaporative emissions promulgated by the Administrator by January 1, 1990.

(ii) Regulations concerning Reid Vapor Pressure promulgated by the Administrator by November 15, 1990, or required to be promulgated under section 7545(h) of this title.

(iii) Measures required under subsection (a)(2)(A) of this section (concerning corrections to implementation plans prescribed under guidance by the Administrator).

(iv) Measures required under subsection (a)(2)(B) of this section to be submitted immediately after November 15, 1990 (concerning corrections to motor vehicle inspection and maintenance programs).

(2) Reasonably available control technology

The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology under section 7502(c)(1) of this title with respect to each of the following:

(A) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between November 15, 1990, and the date of attainment.

(B) All VOC sources in the area covered by any CTG issued before November 15, 1990.

(C) All other major stationary sources of VOCs that are located in the area.

Each revision described in subparagraph (A) shall be submitted within the period set forth by the Administrator in issuing the relevant CTG document. The revisions with respect to sources described in subparagraphs (B) and (C) shall be submitted by 2 years after November 15, 1990, and shall provide for the implementation of the required measures as expeditiously as practicable but no later than May 31, 1995.

(3) Gasoline vapor recovery

(A) General rule

Not later than 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to require all owners or operators of gasoline dispensing systems to install and operate, by the date prescribed under subparagraph (B), a system for gasoline vapor recovery of emissions from the fueling of motor vehicles. The Administrator shall issue guidance as appropriate as to the effectiveness of such system. This subparagraph shall apply only to facilities which sell more than 10,000 gallons of gasoline per month (50,000 gallons per month in the case of an independent small business marketer of gasoline as defined in section 7625–1[2] of this title).

(B) Effective date

The date required under subparagraph (A) shall be—

(i) 6 months after the adoption date, in the case of gasoline dispensing facilities for which construction commenced after November 15, 1990;

(ii) one year after the adoption date, in the case of gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the 2-year period before the adoption date; or

(iii) 2 years after the adoption date, in the case of all other gasoline dispensing facilities.

Any gasoline dispensing facility described under both clause (i) and clause (ii) shall meet the requirements of clause (i).

(C) Reference to terms

For purposes of this paragraph, any reference to the term ''adoption date'' shall be considered a reference to the date of adoption by the State of requirements for the installation and operation of a system for gasoline vapor recovery of emissions from the fueling of motor vehicles.

(4) Motor vehicle inspection and maintenance

For all Moderate Areas, the State shall submit, immediately after November 15, 1990, a revision to the applicable implementation plan that includes provisions necessary to provide for a vehicle inspection and maintenance program as described in subsection (a)(2)(B) of this section (without regard to whether or not the area was required by section 7502(b)(11)(B) of this title (as in effect immediately before November 15, 1990) to have included a specific schedule for implementation of such a program).

(5) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase[3] emissions of such air pollutant shall be at least 1.15 to 1.

(c) Serious Areas

Except as otherwise specified in paragraph (4), each State in which all or part of a Serious Area is located shall, with respect to the Serious Area

[2] So in original. Probably should be section ''7625''.

[3] So in original. Probably should be ''increased''.

(or portion thereof, to the extent specified in this subsection), make the submissions described under subsection (b) of this section (relating to Moderate Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Serious Area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 50 tons per year of volatile organic compounds.

(1) Enhanced monitoring

In order to obtain more comprehensive and representative data on ozone air pollution, not later than 18 months after November 15, 1990, the Administrator shall promulgate rules, after notice and public comment, for enhanced monitoring of ozone, oxides of nitrogen, and volatile organic compounds. The rules shall, among other things, cover the location and maintenance of monitors. Immediately following the promulgation of rules by the Administrator relating to enhanced monitoring, the State shall commence such actions as may be necessary to adopt and implement a program based on such rules, to improve monitoring for ambient concentrations of ozone, oxides of nitrogen and volatile organic compounds and to improve monitoring of emissions of oxides of nitrogen and volatile organic compounds. Each State implementation plan for the area shall contain measures to improve the ambient monitoring of such air pollutants.

(2) Attainment and reasonable further progress demonstrations

Within 4 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan that includes each of the following:

(A) Attainment demonstration

A demonstration that the plan, as revised, will provide for attainment of the ozone national ambient air quality standard by the applicable attainment date. This attainment demonstration must be based on photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective.

(B) Reasonable further progress demonstration

A demonstration that the plan, as revised, will result in VOC emissions reductions from the baseline emissions described in subsection (b)(1)(B) of this section equal to the following amount averaged over each consecutive 3-year period beginning 6 years after November 15, 1990, until the attainment date:

(i) at least 3 percent of baseline emissions each year; or

(ii) an amount less than 3 percent of such baseline emissions each year, if the State demonstrates to the satisfaction of the Administrator that the plan reflecting such lesser amount includes all measures that can feasibly be implemented in the area, in light of technological achievability.

To lessen the 3 percent requirement under clause (ii), a State must demonstrate to the satisfaction of the Administrator that the plan for the area includes the measures that are achieved in practice by sources in the same source category in nonattainment areas of the next higher classification. Any determination to lessen the 3 percent requirement shall be reviewed at each milestone under subsection (g) of this section and revised to reflect such new measures (if any) achieved in practice by sources in the same category in any State, allowing a reasonable time to implement such measures. The emission reductions described in this subparagraph shall be calculated in accordance with subsection (b)(1)(C) and (D) of this section (concerning creditability of reductions). The reductions creditable for the period beginning 6 years after November 15, 1990, shall include reductions that occurred before such period, computed in accordance with subsection (b)(1) of this section, that exceed the 15-percent amount of reductions required under subsection (b)(1)(A) of this section.

(C) NO_x control

The revision may contain, in lieu of the demonstration required under subparagraph (B), a demonstration to the satisfaction of the Administrator that the applicable implementation plan, as revised, provides for reductions of emissions of VOC's and oxides of nitrogen (calculated according to the creditability provisions of subsection (b)(1)(C) and (D) of this section), that would result in a reduction in ozone concentrations at least equivalent to that which would result from the amount of VOC emission reductions required under subparagraph (B). Within 1 year after November 15, 1990, the Administrator shall issue guidance concerning the conditions under which NO_x control may be substituted for VOC control or may be combined with VOC control in order to maximize the reduction in ozone air pollution. In accord with such guidance, a lesser percentage of VOCs may be accepted as an adequate demonstration for purposes of this subsection.

(3) Enhanced vehicle inspection and maintenance program

(A) Requirement for submission

Within 2 years after November 15, 1990, the State shall submit a revision to the applicable implementation plan to provide for an enhanced program to reduce hydrocarbon emissions and NO_x emissions from in-use motor vehicles registered in each urbanized area (in the nonattainment area), as defined by the Bureau of the Census, with a 1980 population of 200,000 or more.

(B) Effective date of State programs; guidance

The State program required under subparagraph (A) shall take effect no later than

2 years from November 15, 1990, and shall comply in all respects with guidance published in the Federal Register (and from time to time revised) by the Administrator for enhanced vehicle inspection and maintenance programs. Such guidance shall include—

(i) a performance standard achievable by a program combining emission testing, including on-road emission testing, with inspection to detect tampering with emission control devices and misfueling for all light-duty vehicles and all light-duty trucks subject to standards under section 7521 of this title; and

(ii) program administration features necessary to reasonably assure that adequate management resources, tools, and practices are in place to attain and maintain the performance standard.

Compliance with the performance standard under clause (i) shall be determined using a method to be established by the Administrator.

(C) State program

The State program required under subparagraph (A) shall include, at a minimum, each of the following elements—

(i) Computerized emission analyzers, including on-road testing devices.

(ii) No waivers for vehicles and parts covered by the emission control performance warranty as provided for in section 7541(b) of this title unless a warranty remedy has been denied in writing, or for tampering-related repairs.

(iii) In view of the air quality purpose of the program, if, for any vehicle, waivers are permitted for emissions-related repairs not covered by warranty, an expenditure to qualify for the waiver of an amount of $450 or more for such repairs (adjusted annually as determined by the Administrator on the basis of the Consumer Price Index in the same manner as provided in subchapter V of this chapter).

(iv) Enforcement through denial of vehicle registration (except for any program in operation before November 15, 1990, whose enforcement mechanism is demonstrated to the Administrator to be more effective than the applicable vehicle registration program in assuring that noncomplying vehicles are not operated on public roads).

(v) Annual emission testing and necessary adjustment, repair, and maintenance, unless the State demonstrates to the satisfaction of the Administrator that a biennial inspection, in combination with other features of the program which exceed the requirements of this chapter, will result in emission reductions which equal or exceed the reductions which can be obtained through such annual inspections.

(vi) Operation of the program on a centralized basis, unless the State demonstrates to the satisfaction of the Administrator that a decentralized program will be equally effective. An electronically connected testing system, a licensing system, or other measures (or any combination thereof) may be considered, in accordance with criteria established by the Administrator, as equally effective for such purposes.

(vii) Inspection of emission control diagnostic systems and the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems.

Each State shall biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based on data collected during inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator.

(4) Clean-fuel vehicle programs

(A) Except to the extent that substitute provisions have been approved by the Administrator under subparagraph (B), the State shall submit to the Administrator, within 42 months of November 15, 1990, a revision to the applicable implementation plan for each area described under part C of subchapter II of this chapter to include such measures as may be necessary to ensure the effectiveness of the applicable provisions of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, including all measures necessary to make the use of clean alternative fuels in clean-fuel vehicles (as defined in part C of subchapter II of this chapter) economic from the standpoint of vehicle owners. Such a revision shall also be submitted for each area that opts into the clean fuel-vehicle program as provided in part C of subchapter II of this chapter.

(B) The Administrator shall approve, as a substitute for all or a portion of the clean-fuel vehicle program prescribed under part C of subchapter II of this chapter, any revision to the relevant applicable implementation plan that in the Administrator's judgment will achieve long-term reductions in ozone-producing and toxic air emissions equal to those achieved under part C of subchapter II of this chapter, or the percentage thereof attributable to the portion of the clean-fuel vehicle program for which the revision is to substitute. The Administrator may approve such revision only if it consists exclusively of provisions other than those required under this chapter for the area. Any State seeking approval of such revision must submit the revision to the Administrator within 24 months of November 15, 1990. The Administrator shall approve or disapprove any such revision within 30 months of November 15, 1990. The Administrator shall publish the revision submitted by a State in the Federal Register upon receipt. Such notice shall constitute a notice of proposed rulemaking on whether or not to approve such revision and shall be deemed to comply with the requirements concerning notices of proposed rulemaking contained in sections 553 through 557 of title 5 (related to notice and comment). Where the Administrator approves such revision for any area, the State

need not submit the revision required by subparagraph (A) for the area with respect to the portions of the Federal clean-fuel vehicle program for which the Administrator has approved the revision as a substitute.

(C) If the Administrator determines, under section 7509 of this title, that the State has failed to submit any portion of the program required under subparagraph (A), then, in addition to any sanctions available under section 7509 of this title, the State may not receive credit, in any demonstration of attainment or reasonable further progress for the area, for any emission reductions from implementation of the corresponding aspects of the Federal clean-fuel vehicle requirements established in part C of subchapter II of this chapter.

(5) Transportation control

(A)[4] Beginning 6 years after November 15, 1990, and each third year thereafter, the State shall submit a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's demonstration of attainment. Where such parameters and emissions levels exceed the levels projected for purposes of the area's attainment demonstration, the State shall within 18 months develop and submit a revision of the applicable implementation plan that includes a transportation control measures program consisting of measures from, but not limited to, section 7408(f) of this title that will reduce emissions to levels that are consistent with emission levels projected in such demonstration. In considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(e) of this title and with the requirements of section 7504(b) of this title and shall include implementation and funding schedules that achieve expeditious emissions reductions in accordance with implementation plan projections.

(6) De minimis rule

The new source review provisions under this part shall ensure that increased emissions of volatile organic compounds resulting from any physical change in, or change in the method of operation of, a stationary source located in the area shall not be considered de minimis for purposes of determining the applicability of the permit requirements established by this chapter unless the increase in net emissions of such air pollutant from such source does not exceed 25 tons when aggregated with all other net increases in emissions from the source over any period of 5 consecutive calendar years which includes the calendar year in which such increase occurred.

[4] So in original. No subpar. (B) has been enacted.

(7) Special rule for modifications of sources emitting less than 100 tons

In the case of any major stationary source of volatile organic compounds located in the area (other than a source which emits or has the potential to emit 100 tons or more of volatile organic compounds per year), whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that such increase shall not be considered a modification for such purposes if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds concerned from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, such change shall be considered a modification for such purposes, but in applying section 7503(a)(2) of this title in the case of any such modification, the best available control technology (BACT), as defined in section 7479 of this title, shall be substituted for the lowest achievable emission rate (LAER). The Administrator shall establish and publish policies and procedures for implementing the provisions of this paragraph.

(8) Special rule for modifications of sources emitting 100 tons or more

In the case of any major stationary source of volatile organic compounds located in the area which emits or has the potential to emit 100 tons or more of volatile organic compounds per year, whenever any change (as described in section 7411(a)(4) of this title) at that source results in any increase (other than a de minimis increase) in emissions of volatile organic compounds from any discrete operation, unit, or other pollutant emitting activity at the source, such increase shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of volatile organic compounds from other operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1, the requirements of section 7503(a)(2) of this title (concerning the lowest achievable emission rate (LAER)) shall not apply.

(9) Contingency provisions

In addition to the contingency provisions required under section 7502(c)(9) of this title, the plan revision shall provide for the implementation of specific measures to be undertaken if the area fails to meet any applicable milestone. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator upon a failure by the State to meet the applicable milestone.

(10) General offset requirement

For purposes of satisfying the emission offset requirements of this part, the ratio of total emission reductions of volatile organic compounds to total increase emissions of such air pollutant shall be at least 1.2 to 1.

Any reference to ''attainment date'' in subsection (b) of this section, which is incorporated by reference into this subsection, shall refer to the attainment date for serious areas.

(d) Severe Areas

Each State in which all or part of a Severe Area is located shall, with respect to the Severe Area, make the submissions described under subsection (c) of this section (relating to Serious Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. For any Severe Area, the terms ''major source'' and ''major stationary source'' include (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 25 tons per year of volatile organic compounds.

(1) Vehicle miles traveled

(A) Within 2 years after November 15, 1990, the State shall submit a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or numbers of vehicle trips in such area and to attain reduction in motor vehicle emissions as necessary, in combination with other emission reduction requirements of this subpart, to comply with the requirements of subsection[5] (b)(2)(B) and (c)(2)(B) of this section (pertaining to periodic emissions reduction requirements). The State shall consider measures specified in section 7408(f) of this title, and choose from among and implement such measures as necessary to demonstrate attainment with the national ambient air quality standards; in considering such measures, the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them.

(B) The State may also, in its discretion, submit a revision at any time requiring employers in such area to implement programs to reduce work-related vehicle trips and miles travelled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and may require that employers in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy rates and the availability of high occupancy modes. Any State required to submit a revision under this subparagraph (as in effect before December 23, 1995) containing provisions requiring employers to reduce work-related vehicle trips and miles travelled by employees may, in accordance with State law, remove such provisions from the implementation plan, or withdraw its submission, if the State notifies the Administrator, in writing, that the State has undertaken, or will undertake, one or more alternative methods that will achieve emission reductions equivalent to those to be achieved by the removed or withdrawn provisions.

(2) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased emissions of such air pollutant shall be at least 1.3 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(3) Enforcement under section 7511d

By December 31, 2000, the State shall submit a plan revision which includes the provisions required under section 7511d of this title.

Any reference to the term ''attainment date'' in subsection (b) or (c) of this section, which is incorporated by reference into this subsection (d), shall refer to the attainment date for Severe Areas.

(e) Extreme Areas

Each State in which all or part of an Extreme Area is located shall, with respect to the Extreme Area, make the submissions described under subsection (d) of this section (relating to Severe Areas), and shall also submit the revisions to the applicable implementation plan (including the plan items) described under this subsection. The provisions of clause (ii) of subsection (c)(2)(B) of this section (relating to reductions of less than 3 percent), the provisions of paragaphs[6] (6), (7) and (8) of subsection (c) of this section (relating to de minimus[7] rule and modification of sources), and the provisions of clause (ii) of subsection (b)(1)(A) of this section (relating to reductions of less than 15 percent) shall not apply in the case of an Extreme Area. For any Extreme Area, the terms ''major source'' and ''major stationary source'' includes[8] (in addition to the sources described in section 7602 of this title) any stationary source or group of sources located within a contiguous area and under common control that emits, or has the potential to emit, at least 10 tons per year of volatile organic compounds.

(1) Offset requirement

For purposes of satisfying the offset requirements pursuant to this part, the ratio of total emission reductions of VOCs to total increased

[5] So in original. Probably should be ''subsections''.

[6] So in original. Probably should be ''paragraphs''.

[7] So in original. Probably should be ''de minimis''.

[8] So in original. Probably should be ''include''.

emissions of such air pollutant shall be at least 1.5 to 1, except that if the State plan requires all existing major sources in the nonattainment area to use best available control technology (as defined in section 7479(3) of this title) for the control of volatile organic compounds, the ratio shall be at least 1.2 to 1.

(2) Modifications

Any change (as described in section 7411(a)(4) of this title) at a major stationary source which results in any increase in emissions from any discrete operation, unit, or other pollutant emitting activity at the source shall be considered a modification for purposes of section 7502(c)(5) of this title and section 7503(a) of this title, except that for purposes of complying with the offset requirement pursuant to section 7503(a)(1) of this title, any such increase shall not be considered a modification if the owner or operator of the source elects to offset the increase by a greater reduction in emissions of the air pollutant concerned from other discrete operations, units, or activities within the source at an internal offset ratio of at least 1.3 to 1. The offset requirements of this part shall not be applicable in Extreme Areas to a modification of an existing source if such modification consists of installation of equipment required to comply with the applicable implementation plan, permit, or this chapter.

(3) Use of clean fuels or advanced control technology

For Extreme Areas, a plan revision shall be submitted within 3 years after November 15, 1990, to require, effective 8 years after November 15, 1990, that each new, modified, and existing electric utility and industrial and commercial boiler which emits more than 25 tons per year of oxides of nitrogen—

(A) burn as its primary fuel natural gas, methanol, or ethanol (or a comparably low polluting fuel), or

(B) use advanced control technology (such as catalytic control technology or other comparably effective control methods) for reduction of emissions of oxides of nitrogen.

For purposes of this subsection, the term ''primary fuel'' means the fuel which is used 90 percent or more of the operating time. This paragraph shall not apply during any natural gas supply emergency (as defined in title III of the Natural Gas Policy Act of 1978 [15 U.S.C. 3361 et seq.]).

(4) Traffic control measures during heavy traffic hours

For Extreme Areas, each implementation plan revision under this subsection may contain provisions establishing traffic control measures applicable during heavy traffic hours to reduce the use of high polluting vehicles or heavy-duty vehicles, notwithstanding any other provision of law.

(5) New technologies

The Administrator may, in accordance with section 7410 of this title, approve provisions of an implementation plan for an Extreme Area which anticipate development of new control techniques or improvement of existing control technologies, and an attainment demonstration based on such provisions, if the State demonstrates to the satisfaction of the Administrator that—

(A) such provisions are not necessary to achieve the incremental emission reductions required during the first 10 years after November 15, 1990; and

(B) the State has submitted enforceable commitments to develop and adopt contingency measures to be implemented as set forth herein if the anticipated technologies do not achieve planned reductions.

Such contingency measures shall be submitted to the Administrator no later than 3 years before proposed implementation of the plan provisions and approved or disapproved by the Administrator in accordance with section 7410 of this title. The contingency measures shall be adequate to produce emission reductions sufficient, in conjunction with other approved plan provisions, to achieve the periodic emission reductions required by subsection (b)(1) or (c)(2) of this section and attainment by the applicable dates. If the Administrator determines that an Extreme Area has failed to achieve an emission reduction requirement set forth in subsection (b)(1) or (c)(2) of this section, and that such failure is due in whole or part to an inability to fully implement provisions approved pursuant to this subsection, the Administrator shall require the State to implement the contingency measures to the extent necessary to assure compliance with subsections (b)(1) and (c)(2) of this section.

Any reference to the term ''attainment date'' in subsection (b), (c), or (d) of this section which is incorporated by reference into this subsection, shall refer to the attainment date for Extreme Areas.

(f) NO_x requirements

(1) The plan provisions required under this subpart for major stationary sources of volatile organic compounds shall also apply to major stationary sources (as defined in section 7602 of this title and subsections (c), (d), and (e) of this section) of oxides of nitrogen. This subsection shall not apply in the case of oxides of nitrogen for those sources for which the Administrator determines (when the Administrator approves a plan or plan revision) that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the sources concerned. This subsection shall also not apply in the case of oxides of nitrogen for—

(A) nonattainment areas not within an ozone transport region under section 7511c of this title, if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(B) nonattainment areas within such an ozone transport region if the Administrator determines (when the Administrator approves a plan or plan revision) that additional reductions of oxides of nitrogen would not produce net ozone air quality benefits in such region.

The Administrator shall, in the Administrator's determinations, consider the study required under section 7511f of this title.

(2)(A) If the Administrator determines that excess reductions in emissions of NO_x would be achieved under paragraph (1), the Administrator may limit the application of paragraph (1) to the extent necessary to avoid achieving such excess reductions.

(B) For purposes of this paragraph, excess reductions in emissions of NO_x are emission reductions for which the Administrator determines that net air quality benefits are greater in the absence of such reductions. Alternatively, for purposes of this paragraph, excess reductions in emissions of NO_x are, for—

(i) nonattainment areas not within an ozone transport region under section 7511c of this title, emission reductions that the Administrator determines would not contribute to attainment of the national ambient air quality standard for ozone in the area, or

(ii) nonattainment areas within such ozone transport region, emission reductions that the Administrator determines would not produce net ozone air quality benefits in such region.

(3) At any time after the final report under section 7511f of this title is submitted to Congress, a person may petition the Administrator for a determination under paragraph (1) or (2) with respect to any nonattainment area or any ozone transport region under section 7511c of this title. The Administrator shall grant or deny such petition within 6 months after its filing with the Administrator.

(g) Milestones

(1) Reductions in emissions

6 years after November 15, 1990, and at intervals of every 3 years thereafter, the State shall determine whether each nonattainment area (other than an area classified as Marginal or Moderate) has achieved a reduction in emissions during the preceding intervals equivalent to the total emission reductions required to be achieved by the end of such interval pursuant to subsection (b)(1) of this section and the corresponding requirements of subsections (c)(2)(B) and (C), (d), and (e) of this section. Such reduction shall be referred to in this section as an applicable milestone.

(2) Compliance demonstration

For each nonattainment area referred to in paragraph (1), not later than 90 days after the date on which an applicable milestone occurs (not including an attainment date on which a milestone occurs in cases where the standard has been attained), each State in which all or part of such area is located shall submit to the Administrator a demonstration that the milestone has been met. A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require, by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Serious and Severe Areas; State election

If a State fails to submit a demonstration under paragraph (2) for any Serious or Severe Area within the required period or if the Administrator determines that the area has not met any applicable milestone, the State shall elect, within 90 days after such failure or determination—

(A) to have the area reclassified to the next higher classification,

(B) to implement specific additional measures adequate, as determined by the Administrator, to meet the next milestone as provided in the applicable contingency plan, or

(C) to adopt an economic incentive program as described in paragraph (4).

If the State makes an election under subparagraph (B), the Administrator shall, within 90 days after the election, review such plan and shall, if the Administrator finds the contingency plan inadequate, require further measures necessary to meet such milestone. Once the State makes an election, it shall be deemed accepted by the Administrator as meeting the election requirement. If the State fails to make an election required under this paragraph within the required 90-day period or within 6 months thereafter, the area shall be reclassified to the next higher classification by operation of law at the expiration of such 6-month period. Within 12 months after the date required for the State to make an election, the State shall submit a revision of the applicable implementation plan for the area that meets the requirements of this paragraph. The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(4) Economic incentive program

(A) An economic incentive program under this paragraph shall be consistent with rules published by the Administrator and sufficient, in combination with other elements of the State plan, to achieve the next milestone. The State program may include a nondiscriminatory system, consistent with applicable law regarding interstate commerce, of State established emissions fees or a system of marketable permits, or a system of State fees on sale or manufacture of products the use of which contributes to ozone formation, or any combination of the foregoing or other similar measures. The program may also include incentives and requirements to reduce vehicle emissions and vehicle miles traveled in the area, including any of the transportation control measures identified in section 7408(f) of this title.

(B) Within 2 years after November 15, 1990, the Administrator shall publish rules for the programs to be adopted pursuant to subparagraph (A). Such rules shall include model plan provisions which may be adopted for reducing emissions from permitted stationary sources, area sources, and mobile sources. The guidelines shall require that any revenues generated by the plan provisions adopted pursuant to subparagraph (A) shall be used by the State for any of the following:

(i) Providing incentives for achieving emission reductions.

(ii) Providing assistance for the development of innovative technologies for the control of ozone air pollution and for the development of lower-polluting solvents and surface coatings. Such assistance shall not provide for the payment of more than 75 percent of either the costs of any project to develop such a technology or the costs of development of a lower-polluting solvent or surface coating.

(iii) Funding the administrative costs of State programs under this chapter. Not more than 50 percent of such revenues may be used for purposes of this clause.

(5) Extreme Areas

If a State fails to submit a demonstration under paragraph (2) for any Extreme Area within the required period, or if the Administrator determines that the area has not met any applicable milestone, the State shall, within 9 months after such failure or determination, submit a plan revision to implement an economic incentive program which meets the requirements of paragraph (4). The Administrator shall review such plan revision and approve or disapprove the revision within 9 months after the date of its submission.

(h) Rural transport areas

(1) Notwithstanding any other provision of section 7511 of this title or this section, a State containing an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census), which area is treated by the Administrator, in the Administrator's discretion, as a rural transport area within the meaning of paragraph (2), shall be treated by operation of law as satisfying the requirements of this section if it makes the submissions required under subsection (a) of this section (relating to marginal areas).

(2) The Administrator may treat an ozone nonattainment area as a rural transport area if the Administrator finds that sources of VOC (and, where the Administrator determines relevant, NO_x) emissions within the area do not make a significant contribution to the ozone concentrations measured in the area or in other areas.

(i) Reclassified areas

Each State containing an ozone nonattainment area reclassified under section 7511(b)(2) of this title shall meet such requirements of subsections (b) through (d) of this section as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions.

(j) Multi-State ozone nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single ozone nonattainment area which covers more than one State (hereinafter in this section referred to as a ''multi-State ozone nonattainment area'') shall—

(A) take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned; and

(B) use photochemical grid modeling or any other analytical method determined by the Administrator, in his discretion, to be at least as effective.

The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State ozone nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State ozone nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for ozone in that portion within the required period, the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions and requirements for ozone nonattainment areas). If the Administrator makes such finding, the provisions of section 7509 of this title (relating to sanctions) shall not apply, by reason of the failure to make such demonstration, in the portion of the multi-State ozone nonattainment area within the State submitting such petition.

(July 14, 1955, ch. 360, title I, § 182, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2426; amended Pub. L. 104–70, § 1, Dec. 23, 1995, 109 Stat. 773.)

REFERENCES IN TEXT

The Natural Gas Policy Act of 1978, referred to in subsec. (e)(3), is Pub. L. 95–621, Nov. 9, 1978, 92 Stat. 3350, as amended. Title III of the Act is classified generally to subchapter III (§ 3361 et seq.) of chapter 60 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1995—Subsec. (d)(1)(B). Pub. L. 104–70 amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: ''Within 2 years after November 15, 1990, the State shall submit a revision requiring employers in such area to implement programs to reduce work-related vehicle trips and miles traveled by employees. Such revision shall be developed in accordance with guidance issued by the Administrator pursuant to section 7408(f) of this title and shall, at a minimum, require that each employer of 100 or more persons in such area increase average passenger occupancy per vehicle in commuting trips between home and the workplace during peak travel periods by not less than 25 percent above the average vehicle occupancy for all such trips in the area at the time the revision is submitted. The guidance of the Administrator may specify average vehicle occupancy rates which vary for locations within a nonattainment area (suburban, center city, business district) or among nonattainment areas reflecting existing occupancy

rates and the availability of high occupancy modes. The revision shall provide that each employer subject to a vehicle occupancy requirement shall submit a compliance plan within 2 years after the date the revision is submitted which shall convincingly demonstrate compliance with the requirements of this paragraph not later than 4 years after such date.''

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

Pub. L. 104–59, title III, § 348, Nov. 28, 1995, 109 Stat. 617, provided that:

''(a) IN GENERAL.—The Administrator of the Environmental Protection Agency (hereinafter in this section referred to as the 'Administrator') shall not require adoption or implementation by a State of a test-only I/M240 enhanced vehicle inspection and maintenance program as a means of compliance with section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a), but the Administrator may approve such a program if a State chooses to adopt the program as a means of compliance with such section.

''(b) LIMITATION ON PLAN DISAPPROVAL.—The Administrator shall not disapprove or apply an automatic discount to a State implementation plan revision under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a) on the basis of a policy, regulation, or guidance providing for a discount of emissions credits because the inspection and maintenance program in such plan revision is decentralized or a test-and-repair program.

''(c) EMISSIONS REDUCTION CREDITS.—

''(1) STATE PLAN REVISION; APPROVAL.—Within 120 days of the date of the enactment of this subsection [Nov. 28, 1995], a State may submit an implementation plan revision proposing an interim inspection and maintenance program under section 182 or 187 of the Clean Air Act (42 U.S.C. 7511a; 7512a). The Administrator shall approve the program based on the full amount of credits proposed by the State for each element of the program if the proposed credits reflect good faith estimates by the State and the revision is otherwise in compliance with such Act. If, within such 120-day period, the State submits to the Administrator proposed revisions to the implementation plan, has all of the statutory authority necessary to implement the revisions, and has proposed a regulation to make the revisions, the Administrator may approve the revisions without regard to whether or not such regulation has been issued as a final regulation by the State.

''(2) EXPIRATION OF INTERIM APPROVAL.—The interim approval shall expire on the earlier of (A) the last day of the 18-month period beginning on the date of the interim approval, or (B) the date of final approval. The interim approval may not be extended.

''(3) FINAL APPROVAL.—The Administrator shall grant final approval of the revision based on the credits proposed by the State during or after the period of interim approval if data collected on the operation of the State program demonstrates that the credits are appropriate and the revision is otherwise in compliance with the Clean Air Act [42 U.S.C. 7401 et seq.].

''(4) BASIS OF APPROVAL; NO AUTOMATIC DISCOUNT.—Any determination with respect to interim or full approval shall be based on the elements of the program and shall not apply any automatic discount because the program is decentralized or a test-and-repair program.''

§ 7511b. Federal ozone measures

(a) Control techniques guidelines for VOC sources

Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines, in accordance with section 7408 of this title, for 11 categories of stationary sources of VOC emissions for which such guidelines have not been issued as of November 15, 1990, not including the categories referred to in paragraphs (3) and (4) of subsection (b) of this section. The Administrator may issue such additional control techniques guidelines as the Administrator deems necessary.

(b) Existing and new CTGS

(1) Within 36 months after November 15, 1990, and periodically thereafter, the Administrator shall review and, if necessary, update control technique guidance issued under section 7408 of this title before November 15, 1990.

(2) In issuing the guidelines the Administrator shall give priority to those categories which the Administrator considers to make the most significant contribution to the formation of ozone air pollution in ozone nonattainment areas, including hazardous waste treatment, storage, and disposal facilities which are permitted under subtitle C of the Solid Waste Disposal Act [42 U.S.C. 6921 et seq.]. Thereafter the Administrator shall periodically review and, if necessary, revise such guidelines.

(3) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds into the ambient air from aerospace coatings and solvents. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds into the ambient air from the application of such coatings and solvents to such level as the Administrator determines may be achieved through the adoption of best available control measures. Such control technology guidance shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years after the final issuance of such control technology guidance. In developing control technology guidance under this subsection, the Administrator shall consult with the Secretary of Defense, the Secretary of Transportation, and the Administrator of the National Aeronautics and Space Administration with regard to the establishment of specifications for such coatings. In evaluating VOC reduction strategies, the guidance shall take into account the applicable requirements of section 7412 of this title and the need to protect stratospheric ozone.

(4) Within 3 years after November 15, 1990, the Administrator shall issue control techniques guidelines in accordance with section 7408 of this title to reduce the aggregate emissions of volatile organic compounds and PM–10 into the ambient air from paints, coatings, and solvents used in shipbuilding operations and ship repair. Such control techniques guidelines shall, at a minimum, be adequate to reduce aggregate emissions of volatile organic compounds and PM–10 into the ambient air from the removal or application of such paints, coatings, and solvents to such level as the Administrator determines may be achieved through the adoption of the best available control measures. Such control techniques guidelines shall provide for such reductions in such increments and on such schedules as the Administrator determines to be reasonable, but in no event later than 10 years

after the final issuance of such control technology guidance. In developing control techniques guidelines under this subsection, the Administrator shall consult with the appropriate Federal agencies.

(c) Alternative control techniques

Within 3 years after November 15, 1990, the Administrator shall issue technical documents which identify alternative controls for all categories of stationary sources of volatile organic compounds and oxides of nitrogen which emit, or have the potential to emit 25 tons per year or more of such air pollutant. The Administrator shall revise and update such documents as the Administrator determines necessary.

(d) Guidance for evaluating cost-effectiveness

Within 1 year after November 15, 1990, the Administrator shall provide guidance to the States to be used in evaluating the relative cost-effectiveness of various options for the control of emissions from existing stationary sources of air pollutants which contribute to nonattainment of the national ambient air quality standards for ozone.

(e) Control of emissions from certain sources

(1) Definitions

For purposes of this subsection—

(A) Best available controls

The term ''best available controls'' means the degree of emissions reduction that the Administrator determines, on the basis of technological and economic feasibility, health, environmental, and energy impacts, is achievable through the application of the most effective equipment, measures, processes, methods, systems or techniques, including chemical reformulation, product or feedstock substitution, repackaging, and directions for use, consumption, storage, or disposal.

(B) Consumer or commercial product

The term ''consumer or commercial product'' means any substance, product (including paints, coatings, and solvents), or article (including any container or packaging) held by any person, the use, consumption, storage, disposal, destruction, or decomposition of which may result in the release of volatile organic compounds. The term does not include fuels or fuel additives regulated under section 7545 of this title, or motor vehicles, non-road vehicles, and non-road engines as defined under section 7550 of this title.

(C) Regulated entities

The term ''regulated entities'' means—

(i) manufacturers, processors, wholesale distributors, or importers of consumer or commercial products for sale or distribution in interstate commerce in the United States; or

(ii) manufacturers, processors, wholesale distributors, or importers that supply the entities listed under clause (i) with such products for sale or distribution in interstate commerce in the United States.

(2) Study and report

(A) Study

The Administrator shall conduct a study of the emissions of volatile organic compounds into the ambient air from consumer and commercial products (or any combination thereof) in order to—

(i) determine their potential to contribute to ozone levels which violate the national ambient air quality standard for ozone; and

(ii) establish criteria for regulating consumer and commercial products or classes or categories thereof which shall be subject to control under this subsection.

The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990.

(B) Consideration of certain factors

In establishing the criteria under subparagraph (A)(ii), the Administrator shall take into consideration each of the following:

(i) The uses, benefits, and commercial demand of consumer and commercial products.

(ii) The health or safety functions (if any) served by such consumer and commercial products.

(iii) Those consumer and commercial products which emit highly reactive volatile organic compounds into the ambient air.

(iv) Those consumer and commercial products which are subject to the most cost-effective controls.

(v) The availability of alternatives (if any) to such consumer and commercial products which are of comparable costs, considering health, safety, and environmental impacts.

(3) Regulations to require emission reductions

(A) In general

Upon submission of the final report under paragraph (2), the Administrator shall list those categories of consumer or commercial products that the Administrator determines, based on the study, account for at least 80 percent of the VOC emissions, on a reactivity-adjusted basis, from consumer or commercial products in areas that violate the NAAQS for ozone. Credit toward the 80 percent emissions calculation shall be given for emission reductions from consumer or commercial products made after November 15, 1990. At such time, the Administrator shall divide the list into 4 groups establishing priorities for regulation based on the criteria established in paragraph (2). Every 2 years after promulgating such list, the Administrator shall regulate one group of categories until all 4 groups are regulated. The regulations shall require best available controls as defined in this section. Such regulations may exempt health use products for which the Administrator determines there is no suitable substitute. In order to carry out this section, the Administrator may, by regulation, control or prohibit any activity, in-

cluding the manufacture or introduction into commerce, offering for sale, or sale of any consumer or commercial product which results in emission of volatile organic compounds into the ambient air.

(B) Regulated entities

Regulations under this subsection may be imposed only with respect to regulated entities.

(C) Use of CTGS

For any consumer or commercial product the Administrator may issue control techniques guidelines under this chapter in lieu of regulations required under subparagraph (A) if the Administrator determines that such guidance will be substantially as effective as regulations in reducing emissions of volatile organic compounds which contribute to ozone levels in areas which violate the national ambient air quality standard for ozone.

(4) Systems of regulation

The regulations under this subsection may include any system or systems of regulation as the Administrator may deem appropriate, including requirements for registration and labeling, self-monitoring and reporting, prohibitions, limitations, or economic incentives (including marketable permits and auctions of emissions rights) concerning the manufacture, processing, distribution, use, consumption, or disposal of the product.

(5) Special fund

Any amounts collected by the Administrator under such regulations shall be deposited in a special fund in the United States Treasury for licensing and other services, which thereafter shall be available until expended, subject to annual appropriation Acts, solely to carry out the activities of the Administrator for which such fees, charges, or collections are established or made.

(6) Enforcement

Any regulation established under this subsection shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such regulation shall be treated as a violation of a requirement of section 7411(e) of this title.

(7) State administration

Each State may develop and submit to the Administrator a procedure under State law for implementing and enforcing regulations promulgated under this subsection. If the Administrator finds the State procedure is adequate, the Administrator shall approve such procedure. Nothing in this paragraph shall prohibit the Administrator from enforcing any applicable regulations under this subsection.

(8) Size, etc.

No regulations regarding the size, shape, or labeling of a product may be promulgated, unless the Administrator determines such regulations to be useful in meeting any national ambient air quality standard.

(9) State consultation

Any State which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other State or local subdivision has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected as requested by State or local subdivisions.

(f) Tank vessel standards

(1) Schedule for standards

(A) Within 2 years after November 15, 1990, the Administrator, in consultation with the Secretary of the Department in which the Coast Guard is operating, shall promulgate standards applicable to the emission of VOCs and any other air pollutant from loading and unloading of tank vessels (as that term is defined in section 2101 of title 46) which the Administrator finds causes, or contributes to, air pollution that may be reasonably anticipated to endanger public health or welfare. Such standards shall require the application of reasonably available control technology, considering costs, any nonair-quality benefits, environmental impacts, energy requirements and safety factors associated with alternative control techniques. To the extent practicable such standards shall apply to loading and unloading facilities and not to tank vessels.

(B) Any regulation prescribed under this subsection (and any revision thereof) shall take effect after such period as the Administrator finds (after consultation with the Secretary of the department[1] in which the Coast Guard is operating) necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period, except that the effective date shall not be more than 2 years after promulgation of such regulations.

(2) Regulations on equipment safety

Within 6 months after November 15, 1990, the Secretary of the Department in which the Coast Guard is operating shall issue regulations to ensure the safety of the equipment and operations which are to control emissions from the loading and unloading of tank vessels, under section 3703 of title 46 and section 1225 of title 33. The standards promulgated by the Administrator under paragraph (1) and the regulations issued by a State or political subdivision regarding emissions from the loading and unloading of tank vessels shall be consistent with the regulations regarding safety of the Department in which the Coast Guard is operating.

(3) Agency authority

(A) The Administrator shall ensure compliance with the tank vessel emission standards prescribed under paragraph (1)(A). The Secretary of the Department in which the Coast Guard is operating shall also ensure compliance with the tank vessel standards prescribed under paragraph (1)(A).

[1] So in original. Probably should be capitalized.

(B) The Secretary of the Department in which the Coast Guard is operating shall ensure compliance with the regulations issued under paragraph (2).

(4) State or local standards

After the Administrator promulgates standards under this section, no State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions from tank vessels subject to regulation under paragraph (1) unless such standard is no less stringent than the standards promulgated under paragraph (1).

(5) Enforcement

Any standard established under paragraph (1)(A) shall be treated, for purposes of enforcement of this chapter, as a standard under section 7411 of this title and any violation of such standard shall be treated as a violation of a requirement of section 7411(e) of this title.

(g) Ozone design value study

The Administrator shall conduct a study of whether the methodology in use by the Environmental Protection Agency as of November 15, 1990, for establishing a design value for ozone provides a reasonable indicator of the ozone air quality of ozone nonattainment areas. The Administrator shall obtain input from States, local subdivisions thereof, and others. The study shall be completed and a report submitted to Congress not later than 3 years after November 15, 1990. The results of the study shall be subject to peer and public review before submitting it to Congress.

(h) Vehicles entering ozone nonattainment areas

(1) Authority regarding ozone inspection and maintenance testing

(A) In general

No noncommercial motor vehicle registered in a foreign country and operated by a United States citizen or by an alien who is a permanent resident of the United States, or who holds a visa for the purposes of employment or educational study in the United States, may enter a covered ozone nonattainment area from a foreign country bordering the United States and contiguous to the nonattainment area more than twice in a single calendar-month period, if State law has requirements for the inspection and maintenance of such vehicles under the applicable implementation plan in the nonattainment area.

(B) Applicability

Subparagraph (A) shall not apply if the operator presents documentation at the United States border entry point establishing that the vehicle has complied with such inspection and maintenance requirements as are in effect and are applicable to motor vehicles of the same type and model year.

(2) Sanctions for violations

The President may impose and collect from the operator of any motor vehicle who violates, or attempts to violate, paragraph (1) a civil penalty of not more than $200 for the second violation or attempted violation and $400 for the third and each subsequent violation or attempted violation.

(3) State election

The prohibition set forth in paragraph (1) shall not apply in any State that elects to be exempt from the prohibition. Such an election shall take effect upon the President's receipt of written notice from the Governor of the State notifying the President of such election.

(4) Alternative approach

The prohibition set forth in paragraph (1) shall not apply in a State, and the President may implement an alternative approach, if—

(A) the Governor of the State submits to the President a written description of an alternative approach to facilitate the compliance, by some or all foreign-registered motor vehicles, with the motor vehicle inspection and maintenance requirements that are—

(i) related to emissions of air pollutants;

(ii) in effect under the applicable implementation plan in the covered ozone nonattainment area; and

(iii) applicable to motor vehicles of the same types and model years as the foreign-registered motor vehicles; and

(B) the President approves the alternative approach as facilitating compliance with the motor vehicle inspection and maintenance requirements referred to in subparagraph (A).

(5) Definition of covered ozone nonattainment area

In this section, the term ''covered ozone nonattainment area'' means a Serious Area, as classified under section 7511 of this title as of October 27, 1998.

(July 14, 1955, ch. 360, title I, § 183, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2443; amended Pub. L. 105–286, § 2, Oct. 27, 1998, 112 Stat. 2773.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (b)(2), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle C of the Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

AMENDMENTS

1998—Subsec. (h). Pub. L. 105–286 added subsec. (h).

EFFECTIVE DATE OF 1998 AMENDMENT; PUBLICATION OF PROHIBITION

Pub. L. 105–286, § 3, Oct. 27, 1998, 112 Stat. 2774, provided that:

''(a) IN GENERAL.—The amendment made by section 2 [amending this section] takes effect 180 days after the date of the enactment of this Act [Oct. 27, 1998]. Nothing in that amendment shall require action that is inconsistent with the obligations of the United States under any international agreement.

''(b) INFORMATION.—As soon as practicable after the date of the enactment of this Act, the appropriate agency of the United States shall distribute informa-

tion to publicize the prohibition set forth in the amendment made by section 2.''

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7511c. Control of interstate ozone air pollution

(a) Ozone transport regions

A single transport region for ozone (within the meaning of section 7506a(a) of this title), comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia, is hereby established by operation of law. The provisions of section 7506a(a)(1) and (2) of this title shall apply with respect to the transport region established under this section and any other transport region established for ozone, except to the extent inconsistent with the provisions of this section. The Administrator shall convene the commission required (under section 7506a(b) of this title) as a result of the establishment of such region within 6 months of November 15, 1990.

(b) Plan provisions for States in ozone transport regions

(1) In accordance with section 7410 of this title, not later than 2 years after November 15, 1990 (or 9 months after the subsequent inclusion of a State in a transport region established for ozone), each State included within a transport region established for ozone shall submit a State implementation plan or revision thereof to the Administrator which requires the following—

(A) that each area in such State that is in an ozone transport region, and that is a metropolitan statistical area or part thereof with a population of 100,000 or more comply with the provisions of section 7511a(c)(2)(A) of this title (pertaining to enhanced vehicle inspection and maintenance programs); and

(B) implementation of reasonably available control technology with respect to all sources of volatile organic compounds in the State covered by a control techniques guideline issued before or after November 15, 1990.

(2) Within 3 years after November 15, 1990, the Administrator shall complete a study identifying control measures capable of achieving emission reductions comparable to those achievable through vehicle refueling controls contained in section 7511a(b)(3) of this title, and such measures or such vehicle refueling controls shall be implemented in accordance with the provisions of this section. Notwithstanding other deadlines in this section, the applicable implementation plan shall be revised to reflect such measures within 1 year of completion of the study. For purposes of this section any stationary source that emits or has the potential to emit at least 50 tons per year of volatile organic compounds shall be considered a major stationary source and subject to the requirements which would be applicable to major stationary sources if the area were classified as a Moderate nonattainment area.

(c) Additional control measures

(1) Recommendations

Upon petition of any State within a transport region established for ozone, and based on a majority vote of the Governors on the Commission[1] (or their designees), the Commission[1] may, after notice and opportunity for public comment, develop recommendations for additional control measures to be applied within all or a part of such transport region if the commission determines such measures are necessary to bring any area in such region into attainment by the dates provided by this subpart. The commission shall transmit such recommendations to the Administrator.

(2) Notice and review

Whenever the Administrator receives recommendations prepared by a commission pursuant to paragraph (1) (the date of receipt of which shall hereinafter in this section be referred to as the ''receipt date''), the Administrator shall—

(A) immediately publish in the Federal Register a notice stating that the recommendations are available and provide an opportunity for public hearing within 90 days beginning on the receipt date; and

(B) commence a review of the recommendations to determine whether the control measures in the recommendations are necessary to bring any area in such region into attainment by the dates provided by this subpart and are otherwise consistent with this chapter.

(3) Consultation

In undertaking the review required under paragraph (2)(B), the Administrator shall consult with members of the commission of the affected States and shall take into account the data, views, and comments received pursuant to paragraph (2)(A).

(4) Approval and disapproval

Within 9 months after the receipt date, the Administrator shall (A) determine whether to approve, disapprove, or partially disapprove and partially approve the recommendations; (B) notify the commission in writing of such approval, disapproval, or partial disapproval; and (C) publish such determination in the Federal Register. If the Administrator disapproves or partially disapproves the recommendations, the Administrator shall specify—

(i) why any disapproved additional control measures are not necessary to bring any area in such region into attainment by the dates provided by this subpart or are otherwise not consistent with the[2] chapter; and

(ii) recommendations concerning equal or more effective actions that could be taken

[1] So in original. Probably should not be capitalized.

[2] So in original. Probably should be ''this''.

by the commission to conform the disapproved portion of the recommendations to the requirements of this section.

(5) Finding

Upon approval or partial approval of recommendations submitted by a commission, the Administrator shall issue to each State which is included in the transport region and to which a requirement of the approved plan applies, a finding under section 7410(k)(5) of this title that the implementation plan for such State is inadequate to meet the requirements of section 7410(a)(2)(D) of this title. Such finding shall require each such State to revise its implementation plan to include the approved additional control measures within one year after the finding is issued.

(d) Best available air quality monitoring and modeling

For purposes of this section, not later than 6 months after November 15, 1990, the Administrator shall promulgate criteria for purposes of determining the contribution of sources in one area to concentrations of ozone in another area which is a nonattainment area for ozone. Such criteria shall require that the best available air quality monitoring and modeling techniques be used for purposes of making such determinations.

(July 14, 1955, ch. 360, title I, § 184, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2448.)

§ 7511d. Enforcement for Severe and Extreme ozone nonattainment areas for failure to attain

(a) General rule

Each implementation plan revision required under section 7511a(d) and (e) of this title (relating to the attainment plan for Severe and Extreme ozone nonattainment areas) shall provide that, if the area to which such plan revision applies has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date, each major stationary source of VOCs located in the area shall, except as otherwise provided under subsection (c) of this section, pay a fee to the State as a penalty for such failure, computed in accordance with subsection (b) of this section, for each calendar year beginning after the attainment date, until the area is redesignated as an attainment area for ozone. Each such plan revision should include procedures for assessment and collection of such fees.

(b) Computation of fee

(1) Fee amount

The fee shall equal $5,000, adjusted in accordance with paragraph (3), per ton of VOC emitted by the source during the calendar year in excess of 80 percent of the baseline amount, computed under paragraph (2).

(2) Baseline amount

For purposes of this section, the baseline amount shall be computed, in accordance with such guidance as the Administrator may provide, as the lower of the amount of actual VOC emissions (''actuals'') or VOC emissions allowed under the permit applicable to the source (or, if no such permit has been issued for the attainment year, the amount of VOC emissions allowed under the applicable implementation plan (''allowables'')) during the attainment year. Notwithstanding the preceding sentence, the Administrator may issue guidance authorizing the baseline amount to be determined in accordance with the lower of average actuals or average allowables, determined over a period of more than one calendar year. Such guidance may provide that such average calculation for a specific source may be used if that source's emissions are irregular, cyclical, or otherwise vary significantly from year to year.

(3) Annual adjustment

The fee amount under paragraph (1) shall be adjusted annually, beginning in the year beginning after 1990, in accordance with section 7661a(b)(3)(B)(v) of this title (relating to inflation adjustment).

(c) Exception

Notwithstanding any provision of this section, no source shall be required to pay any fee under subsection (a) of this section with respect to emissions during any year that is treated as an Extension Year under section 7511(a)(5) of this title.

(d) Fee collection by Administrator

If the Administrator has found that the fee provisions of the implementation plan do not meet the requirements of this section, or if the Administrator makes a finding that the State is not administering and enforcing the fee required under this section, the Administrator shall, in addition to any other action authorized under this subchapter, collect, in accordance with procedures promulgated by the Administrator, the unpaid fees required under subsection (a) of this section. If the Administrator makes such a finding under section 7509(a)(4) of this title, the Administrator may collect fees for periods before the determination, plus interest computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes), to the extent the Administrator finds such fees have not been paid to the State. The provisions of clauses (ii) through (iii) of section 7661a(b)(3)(C) of this title (relating to penalties and use of the funds, respectively) shall apply with respect to fees collected under this subsection.

(e) Exemptions for certain small areas

For areas with a total population under 200,000 which fail to attain the standard by the applicable attainment date, no sanction under this section or under any other provision of this chapter shall apply if the area can demonstrate, consistent with guidance issued by the Administrator, that attainment in the area is prevented because of ozone or ozone precursors transported from other areas. The prohibition applies only in cases in which the area has met all requirements and implemented all measures applicable to the area under this chapter.

(July 14, 1955, ch. 360, title I, § 185, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2450.)

§ 7511e. Transitional areas

If an area designated as an ozone nonattainment area as of November 15, 1990, has not violated the national primary ambient air quality standard for ozone for the 36-month period commencing on January 1, 1987, and ending on December 31, 1989, the Administrator shall suspend the application of the requirements of this subpart to such area until December 31, 1991. By June 30, 1992, the Administrator shall determine by order, based on the area's design value as of the attainment date, whether the area attained such standard by December 31, 1991. If the Administrator determines that the area attained the standard, the Administrator shall require, as part of the order, the State to submit a maintenance plan for the area within 12 months of such determination. If the Administrator determines that the area failed to attain the standard, the Administrator shall, by June 30, 1992, designate the area as nonattainment under section 7407(d)(4) of this title.

(July 14, 1955, ch. 360, title I, § 185A, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2451.)

§ 7511f. NO_x and VOC study

The Administrator, in conjunction with the National Academy of Sciences, shall conduct a study on the role of ozone precursors in tropospheric ozone formation and control. The study shall examine the roles of NO_x and VOC emission reductions, the extent to which NO_x reductions may contribute (or be counterproductive) to achievement of attainment in different nonattainment areas, the sensitivity of ozone to the control of NO_x, the availability and extent of controls for NO_x, the role of biogenic VOC emissions, and the basic information required for air quality models. The study shall be completed and a proposed report made public for 30 days comment within 1 year of November 15, 1990, and a final report shall be submitted to Congress within 15 months after November 15, 1990. The Administrator shall utilize all available information and studies, as well as develop additional information, in conducting the study required by this section.

(July 14, 1955, ch. 360, title I, § 185B, as added Pub. L. 101–549, title I, § 103, Nov. 15, 1990, 104 Stat. 2452.)

SUBPART 3—ADDITIONAL PROVISIONS FOR CARBON MONOXIDE NONATTAINMENT AREAS

§ 7512. Classification and attainment dates

(a) Classification by operation of law and attainment dates for nonattainment areas

(1) Each area designated nonattainment for carbon monoxide pursuant to section 7407(d) of this title shall be classified at the time of such designation under table 1, by operation of law, as a Moderate Area or a Serious Area based on the design value for the area. The design value shall be calculated according to the interpretation methodology issued by the Administrator most recently before November 15, 1990. For each area classified under this subsection, the primary standard attainment date for carbon monoxide shall be as expeditiously as practicable but not later than the date provided in table 1:

TABLE 3[1]

Area classification	Design value	Primary standard attainment date
Moderate	9.1–16.4 ppm	December 31, 1995
Serious	16.5 and above	December 31, 2000

(2) At the time of publication of the notice required under section 7407 of this title (designating carbon monoxide nonattainment areas), the Administrator shall publish a notice announcing the classification of each such carbon monoxide nonattainment area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(3) If an area classified under paragraph (1), table 1, would have been classified in another category if the design value in the area were 5 percent greater or 5 percent less than the level on which such classification was based, the Administrator may, in the Administrator's discretion, within 90 days after November 15, 1990, by the procedure required under paragraph (2), adjust the classification of the area. In making such adjustment, the Administrator may consider the number of exceedances of the national primary ambient air quality standard for carbon monoxide in the area, the level of pollution transport between the area and the other affected areas, and the mix of sources and air pollutants in the area. The Administrator may make the same adjustment for purposes of paragraphs (2), (3), (6), and (7) of section 7512a(a) of this title.

(4) Upon application by any State, the Administrator may extend for 1 additional year (hereinafter in this subpart referred to as the "Extension Year") the date specified in table 1 of subsection (a) of this section if—

(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and

(B) no more than one exceedance of the national ambient air quality standard level for carbon monoxide has occurred in the area in the year preceding the Extension Year.

No more than 2 one-year extensions may be issued under this paragraph for a single nonattainment area.

(b) New designations and reclassifications

(1) New designations to nonattainment

Any area that is designated attainment or unclassifiable for carbon monoxide under section 7407(d)(4) of this title, and that is subsequently redesignated to nonattainment for carbon monoxide under section 7407(d)(3) of this title, shall, at the time of the redesignation, be classified by operation of law in ac-

[1] So in original. Probably should be "TABLE 1".

cordance with table 1 under subsections (a)(1) and (a)(4) of this section. Upon its classification, the area shall be subject to the same requirements under section 7410 of this title, subpart 1 of this part, and this subpart that would have applied had the area been so classified at the time of the notice under subsection (a)(2) of this section, except that any absolute, fixed date applicable in connection with any such requirement is extended by operation of law by a period equal to the length of time between November 15, 1990, and the date the area is classified.

(2) Reclassification of Moderate Areas upon failure to attain

(A) General rule

Within 6 months following the applicable attainment date for a carbon monoxide nonattainment area, the Administrator shall determine, based on the area's design value as of the attainment date, whether the area has attained the standard by that date. Any Moderate Area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law in accordance with table 1 of subsection (a)(1) of this section as a Serious Area.

(B) Publication of notice

The Administrator shall publish a notice in the Federal Register, no later than 6 months following the attainment date, identifying each area that the Administrator has determined, under subparagraph (A), as having failed to attain and identifying the reclassification, if any, described under subparagraph (A).

(c) References to terms

Any reference in this subpart to a ''Moderate Area'' or a ''Serious Area'' shall be considered a reference to a Moderate Area or a Serious Area, respectively, as classified under this section.

(July 14, 1955, ch. 360, title I, § 186, as added Pub. L. 101–549, title I, § 104, Nov. 15, 1990, 104 Stat. 2452.)

§ 7512a. Plan submissions and requirements

(a) Moderate Areas

Each State in which all or part of a Moderate Area is located shall, with respect to the Moderate Area (or portion thereof, to the extent specified in guidance of the Administrator issued before November 15, 1990), submit to the Administrator the State implementation plan revisions (including the plan items) described under this subsection, within such periods as are prescribed under this subsection, except to the extent the State has made such submissions as of November 15, 1990:

(1) Inventory

No later than 2 years from November 15, 1990, the State shall submit a comprehensive, accurate, current inventory of actual emissions from all sources, as described in section 7502(c)(3) of this title, in accordance with guidance provided by the Administrator.

(2)(A) Vehicle miles traveled

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall contain a forecast of vehicle miles traveled in the nonattainment area concerned for each year before the year in which the plan projects the national ambient air quality standard for carbon monoxide to be attained in the area. The forecast shall be based on guidance which shall be published by the Administrator, in consultation with the Secretary of Transportation, within 6 months after November 15, 1990. The plan revision shall provide for annual updates of the forecasts to be submitted to the Administrator together with annual reports regarding the extent to which such forecasts proved to be accurate. Such annual reports shall contain estimates of actual vehicle miles traveled in each year for which a forecast was required.

(B) Special rule for Denver

Within 2 years after November 15, 1990, in the case of Denver, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1)(A) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. If the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Contingency provisions

No later than 2 years after November 15, 1990, for areas with a design value above 12.7 ppm at the time of classification, the plan revision shall provide for the implementation of specific measures to be undertaken if any estimate of vehicle miles traveled in the area which is submitted in an annual report under paragraph (2) exceeds the number predicted in the most recent prior forecast or if the area fails to attain the national primary ambient air quality standard for carbon monoxide by the primary standard attainment date. Such measures shall be included in the plan revision as contingency measures to take effect without further action by the State or the Administrator if the prior forecast has been exceeded by an updated forecast or if the national standard is not attained by such deadline.

(4) Savings clause for vehicle inspection and maintenance provisions of the State implementation plan

Immediately after November 15, 1990, for any Moderate Area (or, within the Administrator's discretion, portion thereof), the plan for which is of the type described in section 7511a(a)(2)(B) of this title any provisions necessary to ensure that the applicable implementation plan includes the vehicle inspection and maintenance program described in section 7511a(a)(2)(B) of this title.

(5) Periodic inventory

No later than September 30, 1995, and no later than the end of each 3 year period there-

after, until the area is redesignated to attainment, a revised inventory meeting the requirements of subsection (a)(1) of this section.

(6) Enhanced vehicle inspection and maintenance

No later than 2 years after November 15, 1990, in the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, a revision that includes provisions for an enhanced vehicle inspection and maintenance program as required in section 7511a(c)(3) of this title (concerning serious ozone nonattainment areas), except that such program shall be for the purpose of reducing carbon monoxide rather than hydrocarbon emissions.

(7) Attainment demonstration and specific annual emission reductions

In the case of Moderate Areas with a design value greater than 12.7 ppm at the time of classification, no later than 2 years after November 15, 1990, a revision to provide, and a demonstration that the plan as revised will provide, for attainment of the carbon monoxide NAAQS by the applicable attainment date and provisions for such specific annual emission reductions as are necessary to attain the standard by that date.

The Administrator may, in the Administrator's discretion, require States to submit a schedule for submitting any of the revisions or other items required under this subsection. In the case of Moderate Areas with a design value of 12.7 ppm or lower at the time of classification, the requirements of this subsection shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the carbon monoxide standard by the applicable attainment date.

(b) Serious Areas

(1) In general

Each State in which all or part of a Serious Area is located shall, with respect to the Serious Area, make the submissions (other than those required under subsection (a)(1)(B)[1] of this section) applicable under subsection (a) of this section to Moderate Areas with a design value of 12.7 ppm or greater at the time of classification, and shall also submit the revision and other items described under this subsection.

(2) Vehicle miles traveled

Within 2 years after November 15, 1990, the State shall submit a revision that includes the transportation control measures as required in section 7511a(d)(1) of this title except that such revision shall be for the purpose of reducing CO emissions rather than volatile organic compound emissions. In the case of any such area (other than an area in New York State) which is a covered area (as defined in section 7586(a)(2)(B) of this title) for purposes of the Clean Fuel Fleet program under part C of subchapter II of this chapter, if the State fails to include any such measure, the implementation plan shall contain an explanation of why such measure was not adopted and what emissions reduction measure was adopted to provide a comparable reduction in emissions, or reasons why such reduction is not necessary to attain the national primary ambient air quality standard for carbon monoxide.

(3) Oxygenated gasoline

(A) Within 2 years after November 15, 1990, the State shall submit a revision to require that gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the larger of—

(i) the Consolidated Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) (CMSA) in which the area is located, or

(ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (as defined by the United States Office of Management and Budget) in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide (as determined by the Administrator), with fuels containing such level of oxygen as is necessary, in combination with other measures, to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area. The revision shall provide that such requirement shall take effect no later than October 1, 1993, and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(B) Notwithstanding subparagraph (A), the revision described in this paragraph shall not be required for an area if the State demonstrates to the satisfaction of the Administrator that the revision is not necessary to provide for attainment of the carbon monoxide national ambient air quality standard by the applicable attainment date and maintenance of the national ambient air quality standard thereafter in the area.

(c) Areas with significant stationary source emissions of CO

(1) Serious Areas

In the case of Serious Areas in which stationary sources contribute significantly to carbon monoxide levels (as determined under rules issued by the Administrator), the State shall submit a plan revision within 2 years after November 15, 1990, which provides that the term ''major stationary source'' includes (in addition to the sources described in section 7602 of this title) any stationary source which emits, or has the potential to emit, 50 tons per year or more of carbon monoxide.

(2) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirements that pertain to transportation controls, inspection and maintenance, or oxygenated fuels where the Ad-

[1] So in original. Subsec. (a)(1) of this section does not contain a subpar. (B).

ministrator determines by rule that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in the area.

(3) Guidelines

Within 6 months after November 15, 1990, the Administrator shall issue guidelines for and rules determining whether stationary sources contribute significantly to carbon monoxide levels in an area.

(d) CO milestone

(1) Milestone demonstration

By March 31, 1996, each State in which all or part of a Serious Area is located shall submit to the Administrator a demonstration that the area has achieved a reduction in emissions of CO equivalent to the total of the specific annual emission reductions required by December 31, 1995. Such reductions shall be referred to in this subsection as the milestone.

(2) Adequacy of demonstration

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) Failure to meet emission reduction milestone

If a State fails to submit a demonstration under paragraph (1) within the required period, or if the Administrator notifies the State that the State has not met the milestone, the State shall, within 9 months after such a failure or notification, submit a plan revision to implement an economic incentive and transportation control program as described in section 7511a(g)(4) of this title. Such revision shall be sufficient to achieve the specific annual reductions in carbon monoxide emissions set forth in the plan by the attainment date.

(e) Multi-State CO nonattainment areas

(1) Coordination among States

Each State in which there is located a portion of a single nonattainment area for carbon monoxide which covers more than one State (''multi-State nonattainment area'') shall take all reasonable steps to coordinate, substantively and procedurally, the revisions and implementation of State implementation plans applicable to the nonattainment area concerned. The Administrator may not approve any revision of a State implementation plan submitted under this part for a State in which part of a multi-State nonattainment area is located if the plan revision for that State fails to comply with the requirements of this subsection.

(2) Failure to demonstrate attainment

If any State in which there is located a portion of a multi-State nonattainment area fails to provide a demonstration of attainment of the national ambient air quality standard for carbon monoxide in that portion within the period required under this part the State may petition the Administrator to make a finding that the State would have been able to make such demonstration but for the failure of one or more other States in which other portions of the area are located to commit to the implementation of all measures required under this section (relating to plan submissions for carbon monoxide nonattainment areas). If the Administrator makes such finding, in the portion of the nonattainment area within the State submitting such petition, no sanction shall be imposed under section 7509 of this title or under any other provision of this chapter, by reason of the failure to make such demonstration.

(f) Reclassified areas

Each State containing a carbon monoxide nonattainment area reclassified under section 7512(b)(2) of this title shall meet the requirements of subsection (b) of this section, as may be applicable to the area as reclassified, according to the schedules prescribed in connection with such requirements, except that the Administrator may adjust any applicable deadlines (other than the attainment date) where such deadlines are shown to be infeasible.

(g) Failure of Serious Area to attain standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that a program of incentives and requirements as described in section 7511a(g)(4) of this title shall be applicable in the area, and such program, in combination with other elements of the revised plan, shall be adequate to reduce the total tonnage of emissions of carbon monoxide in the area by at least 5 percent per year in each year after approval of the plan revision and before attainment of the national primary ambient air quality standard for carbon monoxide.

(July 14, 1955, ch. 360, title I, § 187, as added Pub. L. 101–549, title I, § 104, Nov. 15, 1990, 104 Stat. 2454.)

MORATORIUM ON CERTAIN EMISSIONS TESTING REQUIREMENTS

For provisions prohibiting Administrator of Environmental Protection Agency from requiring adoption or implementation by State of test-only I/M240 enhanced vehicle inspection and maintenance program as means of compliance with this section, with further provisions relating to plan disapproval and emissions reduction credits, see section 348 of Pub. L. 104–59, set out as a note under section 7511a of this title.

SUBPART 4—ADDITIONAL PROVISIONS FOR PARTICULATE MATTER NONATTAINMENT AREAS

§ 7513. Classifications and attainment dates

(a) Initial classifications

Every area designated nonattainment for PM–10 pursuant to section 7407(d) of this title shall be classified at the time of such designa-

tion, by operation of law, as a moderate PM–10 nonattainment area (also referred to in this subpart as a ''Moderate Area'') at the time of such designation. At the time of publication of the notice under section 7407(d)(4) of this title (relating to area designations) for each PM–10 nonattainment area, the Administrator shall publish a notice announcing the classification of such area. The provisions of section 7502(a)(1)(B) of this title (relating to lack of notice-and-comment and judicial review) shall apply with respect to such classification.

(b) Reclassification as Serious

(1) Reclassification before attainment date

The Administrator may reclassify as a Serious PM–10 nonattainment area (identified in this subpart also as a ''Serious Area'') any area that the Administrator determines cannot practicably attain the national ambient air quality standard for PM–10 by the attainment date (as prescribed in subsection (c) of this section) for Moderate Areas. The Administrator shall reclassify appropriate areas as Serious by the following dates:

(A) For areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the Administrator shall propose to reclassify appropriate areas by June 30, 1991, and take final action by December 31, 1991.

(B) For areas subsequently designated nonattainment, the Administrator shall reclassify appropriate areas within 18 months after the required date for the State's submission of a SIP for the Moderate Area.

(2) Reclassification upon failure to attain

Within 6 months following the applicable attainment date for a PM–10 nonattainment area, the Administrator shall determine whether the area attained the standard by that date. If the Administrator finds that any Moderate Area is not in attainment after the applicable attainment date—

(A) the area shall be reclassified by operation of law as a Serious Area; and

(B) the Administrator shall publish a notice in the Federal Register no later than 6 months following the attainment date, identifying the area as having failed to attain and identifying the reclassification described under subparagraph (A).

(c) Attainment dates

Except as provided under subsection (d) of this section, the attainment dates for PM–10 nonattainment areas shall be as follows:

(1) Moderate Areas

For a Moderate Area, the attainment date shall be as expeditiously as practicable but no later than the end of the sixth calendar year after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the attainment date shall not extend beyond December 31, 1994.

(2) Serious Areas

For a Serious Area, the attainment date shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment, except that, for areas designated nonattainment for PM–10 under section 7407(d)(4) of this title, the date shall not extend beyond December 31, 2001.

(d) Extension of attainment date for Moderate Areas

Upon application by any State, the Administrator may extend for 1 additional year (hereinafter referred to as the ''Extension Year'') the date specified in paragraph[1] (c)(1) if—

(1) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan; and

(2) no more than one exceedance of the 24-hour national ambient air quality standard level for PM–10 has occurred in the area in the year preceding the Extension Year, and the annual mean concentration of PM–10 in the area for such year is less than or equal to the standard level.

No more than 2 one-year extensions may be issued under the subsection for a single nonattainment area.

(e) Extension of attainment date for Serious Areas

Upon application by any State, the Administrator may extend the attainment date for a Serious Area beyond the date specified under subsection (c) of this section, if attainment by the date established under subsection (c) of this section would be impracticable, the State has complied with all requirements and commitments pertaining to that area in the implementation plan, and the State demonstrates to the satisfaction of the Administrator 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, and can feasibly be implemented in the area. At the time of such application, the State must submit a revision to the implementation plan that includes a demonstration of attainment by the most expeditious alternative date practicable. In determining whether to grant an extension, and the appropriate length of time for any such extension, the Administrator may consider the nature and extent of nonattainment, the types and numbers of sources or other emitting activities in the area (including the influence of uncontrollable natural sources and transboundary emissions from foreign countries), the population exposed to concentrations in excess of the standard, the presence and concentration of potentially toxic substances in the mix of particulate emissions in the area, and the technological and economic feasibility of various control measures. The Administrator may not approve an extension until the State submits an attainment demonstration for the area. The Administrator may grant at most one such extension for an area, of no more than 5 years.

(f) Waivers for certain areas

The Administrator may, on a case-by-case basis, waive any requirement applicable to any

[1] So in original. Probably should be ''subsection''.

Serious Area under this subpart where the Administrator determines that anthropogenic sources of PM–10 do not contribute significantly to the violation of the PM–10 standard in the area. The Administrator may also waive a specific date for attainment of the standard where the Administrator determines that non-anthropogenic sources of PM–10 contribute significantly to the violation of the PM–10 standard in the area.

(July 14, 1955, ch. 360, title I, § 188, as added Pub. L. 101–549, title I, § 105(a), Nov. 15, 1990, 104 Stat. 2458.)

§ 7513a. Plan provisions and schedules for plan submissions

(a) Moderate Areas

(1) Plan provisions

Each State in which all or part of a Moderate Area is located shall submit, according to the applicable schedule under paragraph (2), an implementation plan that includes each of the following:

(A) For the purpose of meeting the requirements of section 7502(c)(5) of this title, a permit program providing that permits meeting the requirements of section 7503 of this title are required for the construction and operation of new and modified major stationary sources of PM–10.

(B) Either (i) a demonstration (including air quality modeling) that the plan will provide for attainment by the applicable attainment date; or (ii) a demonstration that attainment by such date is impracticable.

(C) Provisions to assure that reasonably available control measures for the control of PM–10 shall be implemented no later than December 10, 1993, or 4 years after designation in the case of an area classified as moderate after November 15, 1990.

(2) Schedule for plan submissions

A State shall submit the plan required under subparagraph (1) no later than the following:

(A) Within 1 year of November 15, 1990, for areas designated nonattainment under section 7407(d)(4) of this title, except that the provision required under subparagraph (1)(A) shall be submitted no later than June 30, 1992.

(B) 18 months after the designation as nonattainment, for those areas designated nonattainment after the designations prescribed under section 7407(d)(4) of this title.

(b) Serious Areas

(1) Plan provisions

In addition to the provisions submitted to meet the requirements of paragraph[1] (a)(1) (relating to Moderate Areas), each State in which all or part of a Serious Area is located shall submit an implementation plan for such area that includes each of the following:

(A) A demonstration (including air quality modeling)—

(i) that the plan provides for attainment of the PM–10 national ambient air quality standard by the applicable attainment date, or

(ii) for any area for which the State is seeking, pursuant to section 7513(e) of this title, an extension of the attainment date beyond the date set forth in section 7513(c) of this title, that attainment by that date would be impracticable, and that the plan provides for attainment by the most expeditious alternative date practicable.

(B) Provisions to assure that the best available control measures for the control of PM–10 shall be implemented no later than 4 years after the date the area is classified (or reclassified) as a Serious Area.

(2) Schedule for plan submissions

A State shall submit the demonstration required for an area under paragraph (1)(A) no later than 4 years after reclassification of the area to Serious, except that for areas reclassified under section 7513(b)(2) of this title, the State shall submit the attainment demonstration within 18 months after reclassification to Serious. A State shall submit the provisions described under paragraph (1)(B) no later than 18 months after reclassification of the area as a Serious Area.

(3) Major sources

For any Serious Area, the terms ''major source'' and ''major stationary source'' include 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.

(c) Milestones

(1) Plan revisions demonstrating attainment submitted to the Administrator for approval under this subpart shall contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress, as defined in section 7501(1) of this title, toward attainment by the applicable date.

(2) Not later than 90 days after the date on which a milestone applicable to the area occurs, each State in which all or part of such area is located shall submit to the Administrator a demonstration that all measures in the plan approved under this section have been implemented and that the milestone has been met. A demonstration under this subsection shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require. The Administrator shall determine whether or not a State's demonstration under this subsection is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

(3) If a State fails to submit a demonstration under paragraph (2) with respect to a milestone within the required period or if the Administrator determines that the area has not met any applicable milestone, the Administrator shall require the State, within 9 months after such failure or determination to submit a plan revision that assures that the State will achieve the next milestone (or attain the national ambient

[1] So in original. Probably should be ''subsection''.

air quality standard for PM–10, if there is no next milestone) by the applicable date.

(d) Failure to attain

In the case of a Serious PM–10 nonattainment area in which the PM–10 standard is not attained by the applicable attainment date, the State in which such area is located shall, after notice and opportunity for public comment, submit within 12 months after the applicable attainment date, plan revisions which provide for attainment of the PM–10 air quality standard and, from the date of such submission until attainment, for an annual reduction in PM–10 or PM–10 precursor emissions within the area of not less than 5 percent of the amount of such emissions as reported in the most recent inventory prepared for such area.

(e) PM–10 precursors

The control requirements applicable under plans in effect under this part for major stationary sources of PM–10 shall also apply to major stationary sources of PM–10 precursors, except where the Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the standard in the area. The Administrator shall issue guidelines regarding the application of the preceding sentence.

(July 14, 1955, ch. 360, title I, § 189, as added Pub. L. 101–549, title I, § 105(a), Nov. 15, 1990, 104 Stat. 2460.)

§ 7513b. Issuance of RACM and BACM guidance

The Administrator shall issue, in the same manner and according to the same procedure as guidance is issued under section 7408(c) of this title, technical guidance on reasonably available control measures and best available control measures for urban fugitive dust, and emissions from residential wood combustion (including curtailments and exemptions from such curtailments) and prescribed silvicultural and agricultural burning, no later than 18 months following November 15, 1990. The Administrator shall also examine other categories of sources contributing to nonattainment of the PM–10 standard, and determine whether additional guidance on reasonably available control measures and best available control measures is needed, and issue any such guidance no later than 3 years after November 15, 1990. In issuing guidelines and making determinations under this section, the Administrator (in consultation with the State) shall take into account emission reductions achieved, or expected to be achieved, under subchapter IV–A of this chapter and other provisions of this chapter.

(July 14, 1955, ch. 360, title I, § 190, as added Pub. L. 101–549, title I, § 105(a), Nov. 15, 1990, 104 Stat. 2462.)

SUBPART 5—ADDITIONAL PROVISIONS FOR AREAS DESIGNATED NONATTAINMENT FOR SULFUR OXIDES, NITROGEN DIOXIDE, OR LEAD

§ 7514. Plan submission deadlines

(a) Submission

Any State containing an area designated or redesignated under section 7407(d) of this title as nonattainment with respect to the national primary ambient air quality standards for sulfur oxides, nitrogen dioxide, or lead subsequent to November 15, 1990, shall submit to the Administrator, within 18 months of the designation, an applicable implementation plan meeting the requirements of this part.

(b) States lacking fully approved State implementation plans

Any State containing an area designated nonattainment with respect to national primary ambient air quality standards for sulfur oxides or nitrogen dioxide under section 7407(d)(1)(C)(i) of this title, but lacking a fully approved implementation plan complying with the requirements of this chapter (including this part) as in effect immediately before November 15, 1990, shall submit to the Administrator, within 18 months of November 15, 1990, an implementation plan meeting the requirements of subpart 1 (except as otherwise prescribed by section 7514a of this title).

(July 14, 1955, ch. 360, title I, § 191, as added Pub. L. 101–549, title I, § 106, Nov. 15, 1990, 104 Stat. 2463.)

§ 7514a. Attainment dates

(a) Plans under section 7514(a)

Implementation plans required under section 7514(a) of this title shall provide for attainment of the relevant primary standard as expeditiously as practicable but no later than 5 years from the date of the nonattainment designation.

(b) Plans under section 7514(b)

Implementation plans required under section 7514(b) of this title shall provide for attainment of the relevant primary national ambient air quality standard within 5 years after November 15, 1990.

(c) Inadequate plans

Implementation plans for nonattainment areas for sulfur oxides or nitrogen dioxide with plans that were approved by the Administrator before November 15, 1990, but, subsequent to such approval, were found by the Administrator to be substantially inadequate, shall provide for attainment of the relevant primary standard within 5 years from the date of such finding.

(July 14, 1955, ch. 360, title I, § 192, as added Pub. L. 101–549, title I, § 106, Nov. 15, 1990, 104 Stat. 2463.)

SUBPART 6—SAVINGS PROVISIONS

§ 7515. General savings clause

Each regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this chapter, as in effect before November 15, 1990, shall remain in effect according to its terms, except to the extent otherwise provided under this chapter, inconsistent with any provision of this chapter, or revised by the Administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be

modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.

(July 14, 1955, ch. 360, title I, § 193, as added Pub. L. 101–549, title I, § 108(*l*), Nov. 15, 1990, 104 Stat. 2469.)

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

PART A—MOTOR VEHICLE EMISSION AND FUEL STANDARDS

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A) IN GENERAL.—(i) Unless the standard is changed as provided in subparagraph (B), regulations under paragraph (1) of this subsection applicable to emissions of hydrocarbons, carbon monoxide, oxides of nitrogen, and particulate matter from classes or categories of heavy-duty vehicles or engines manufactured during or after model year 1983 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety factors associated with the application of such technology.

(ii) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, type of fuel used, or other appropriate factors.

(B) REVISED STANDARDS FOR HEAVY DUTY TRUCKS.—(i) On the basis of information available to the Administrator concerning the effects of air pollutants emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare, and taking costs into account, the Administrator may promulgate regulations under paragraph (1) of this subsection revising any standard promulgated under, or before the date of, the enactment of the Clean Air Act Amendments of 1990 (or previously revised under this subparagraph) and applicable to classes or categories of heavy-duty vehicles or engines.

(ii) Effective for the model year 1998 and thereafter, the regulations under paragraph (1) of this subsection applicable to emissions of oxides of nitrogen (NO_x) from gasoline and diesel-fueled heavy duty trucks shall contain standards which provide that such emissions may not exceed 4.0 grams per brake horsepower hour (gbh).

(C) LEAD TIME AND STABILITY.—Any standard promulgated or revised under this paragraph and applicable to classes or categories of heavy-duty vehicles or engines shall apply for a period of no less than 3 model years beginning no earlier than the model year commencing 4 years after such revised standard is promulgated.

(D) REBUILDING PRACTICES.—The Administrator shall study the practice of rebuilding heavy-duty engines and the impact rebuilding has on engine emissions. On the basis of that study and other information available to the Administrator, the Administrator may prescribe requirements to control rebuilding practices, including standards applicable to emissions from any rebuilt heavy-duty engines (whether or not the engine is past its statutory useful life), which in the Administrator's judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare taking costs into account. Any regulation shall take effect after a period the Administrator finds necessary to permit the development and application of the requisite control measures, giving appropriate consideration to the cost of compliance within the period and energy and safety factors.

(E) MOTORCYCLES.—For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1)[1] of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with requirements prescribed under this subchapter if such device, system, or element of design will cause or contribute to an unreason-

[1] See References in Text note below.

able risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to requirements prescribed under this subchapter without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term ''fill pipe'' shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) ONBOARD VAPOR RECOVERY.—Within 1 year after November 15, 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based (''onboard'') systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems. The standards required under this paragraph shall apply to a percentage of each manufacturer's fleet of new light-duty vehicles beginning with the fourth model year after the model year in which the standards are promulgated. The percentage shall be as specified in the following table:

IMPLEMENTATION SCHEDULE FOR ONBOARD VAPOR RECOVERY REQUIREMENTS

Model year commencing after standards promulgated	Percentage*
Fourth	40
Fifth	80
After Fifth	100

*Percentages in the table refer to a percentage of the manufacturer's sales volume.

The standards shall require that such systems provide a minimum evaporative emission capture efficiency of 95 percent. The requirements of section 7511a(b)(3) of this title (relating to stage II gasoline vapor recovery) for areas classified under section 7511 of this title as moderate for ozone shall not apply after promulgation of such standards and the Administrator may, by rule, revise or waive the application of the requirements of such section 7511a(b)(3) of this title for areas classified under section 7511 of this title as Serious, Severe, or Extreme for ozone, as appropriate, after such time as the Administrator determines that onboard emissions control systems required under this paragraph are in widespread use throughout the motor vehicle fleet.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5),[1] regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable

under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) The Administrator may promulgate regulations under subsection (a)(1) of this section revising any standard prescribed or previously revised under this subsection, as needed to protect public health or welfare, taking costs, energy, and safety into account. Any revised standard shall require a reduction of emissions from the standard that was previously applicable. Any such revision under this subchapter may provide for a phase-in of the standard. It is the intent of Congress that the numerical emission standards specified in subsections (a)(3)(B)(ii), (g), (h), and (i) of this section shall not be modified by the Administrator after November 15, 1990, for any model year before the model year 2004.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to November 15, 1990), shall be promulgated by regulation within 180 days after November 15, 1990.

(3) For purposes of this part—

(A)(i) The term ''model year'' with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term ''model year'' shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining ''model year'' otherwise than as provided in clause (i).

(B) Repealed. Pub. L. 101–549, title II, § 230(1), Nov. 15, 1990, 104 Stat. 2529.

(C) The term ''heavy duty vehicle'' means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(3)[2] Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(A) that such waiver would not endanger public health,

(B) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(C) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph[3] granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such

[2] So in original. Probably should be ''(4)''.

[3] So in original. Probably should be ''paragraph''.

amounts as are required shall be available to carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that except where a different useful life period is specified in this subchapter useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs, except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a) of this section.

(f)[4] High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b) of this section. This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(g) Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles; standards for model years after 1993

(1) NMHC, CO, and NO_x

Effective with respect to the model year 1994 and thereafter, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), and oxides of nitrogen (NO_x) from light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles (LDVs) shall contain standards which provide that emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall comply with the levels specified in table G. The percentage shall be as specified in the implementation schedule below:

[4] Another subsec. (f) is set out after subsec. (m).

TABLE G—EMISSION STANDARDS FOR NMHC, CO, AND NO_x FROM LIGHT-DUTY TRUCKS OF UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	Column A (5 yrs/50,000 mi)			Column B (10 yrs/100,000 mi)		
	NMHC	CO	NO_x	NMHC	CO	NO_x
LDTs (0–3,750 lbs. LVW) and light-duty vehicles	0.25	3.4	0.4*	0.31	4.2	0.6*
LDTs (3,751–5,750 lbs. LVW)	0.32	4.4	0.7**	0.40	5.5	0.97

Standards are expressed in grams per mile (gpm).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs.

*In the case of diesel-fueled LDTs (0–3,750 lvw) and light-duty vehicles, before the model year 2004, in lieu of the 0.4 and 0.6 standards for NO_x, the applicable standards for NO_x shall be 1.0 gpm for a useful life of 5 years or 50,000 miles (or the equivalent), whichever first occurs, and 1.25 gpm for a useful life of 10 years or 100,000 miles (or the equivalent) whichever first occurs.

**This standard does not apply to diesel-fueled LDTs (3,751–5,750 lbs. LVW).

IMPLEMENTATION SCHEDULE FOR TABLE G STANDARDS

Model year	Percentage*
1994	40
1995	80
after 1995	100

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(2) PM Standard

Effective with respect to model year 1994 and thereafter in the case of light-duty vehicles, and effective with respect to the model year 1995 and thereafter in the case of light-duty trucks (LDTs) of up to 6,000 lbs. gross vehicle weight rating (GVWR), the regulations under subsection (a) of this section applicable to emissions of particulate matter (PM) from such vehicles and trucks shall contain standards which provide that such emissions from a percentage of each manufacturer's sales volume of such vehicles and trucks shall not exceed the levels specified in the table below. The percentage shall be as specified in the Implementation Schedule below.

PM STANDARD FOR LDTS OF UP TO 6,000 LBS. GVWR

Useful life period	Standard
5/50,000	0.08 gpm
10/100,000	0.10 gpm

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 5 years or 50,000 miles (or the equivalent), whichever first occurs, in the case of the 5/50,000 standard.

The applicable useful life, for purposes of certification under section 7525 of this title and for purposes of in-use compliance under section 7541 of this title, shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case of the 10/100,000 standard.

IMPLEMENTATION SCHEDULE FOR PM STANDARDS

Model year	Light-duty vehicles	LDTs
1994	40%*	
1995	80%*	40%*
1996	100%*	80%*
after 1996	100%*	100%*

*Percentages in the table refer to a percentage of each manufacturer's sales volume.

(h) Light-duty trucks of more than 6,000 lbs. GVWR; standards for model years after 1995

Effective with respect to the model year 1996 and thereafter, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), carbon monoxide (CO), oxides of nitrogen (NO_x), and particulate matter (PM) from light-duty trucks (LDTs) of more than 6,000 lbs. gross vehicle weight rating (GVWR) shall contain standards which provide that emissions from a specified percentage of each manufacturer's sales volume of such trucks shall comply with the levels specified in table H. The specified percentage shall be 50 percent in model year 1996 and 100 percent thereafter.

TABLE H—EMISSION STANDARDS FOR NMHC AND CO FROM GASOLINE AND DIESEL FUELED LIGHT-DUTY TRUCKS OF MORE THAN 6,000 LBS. GVWR

LDT Test weight	Column A (5 yrs/50,000 mi)			Column B (11 yrs/120,000 mi)			
	NMHC	CO	NO_x	NMHC	CO	NO_x	PM
3,751–5,750 lbs. TW	0.32	4.4	0.7*	0.46	6.4	0.98	0.10
Over 5,750 lbs. TW	0.39	5.0	1.1*	0.56	7.3	1.53	0.12

Standards are expressed in grams per mile (GPM).

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 5 years or 50,000 miles (or the equivalent) whichever first occurs.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 11 years or 120,000 miles (or the equivalent), whichever first occurs.
*Not applicable to diesel-fueled LDTs.

(i) Phase II study for certain light-duty vehicles and light-duty trucks

(1) The Administrator, with the participation of the Office of Technology Assessment, shall study whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required pursuant to this subchapter. The study shall consider whether to establish with respect to model years commencing after January 1, 2003, the standards and useful life period for gasoline and diesel-fueled light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less specified in the following table:

TABLE 3—PENDING EMISSION STANDARDS FOR GASOLINE AND DIESEL FUELED LIGHT-DUTY VEHICLES AND LIGHT-DUTY TRUCKS 3,750 LBS. LVW OR LESS

Pollutant	Emission level*
NMHC	0.125 GPM
NO_x	0.2 GPM
CO	1.7 GPM

*Emission levels are expressed in grams per mile (GPM). For vehicles and engines subject to this subsection for purposes of subsection (d) of this section and any reference thereto, the useful life of such vehicles and engines shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs.

Such study shall also consider other standards and useful life periods which are more stringent or less stringent than those set forth in table 3 (but more stringent than those referred to in subsections (g) and (h) of this section).

(2)(A) As part of the study under paragraph (1), the Administrator shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards, taking into consideration the waiver provisions of section 7543(b) of this title. As part of such study, the Administrator shall also examine—

(i) the availability of technology (including the costs thereof), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for meeting more stringent emission standards than those provided in subsections (g) and (h) of this section for model years commencing not earlier than after January 1, 2003, and not later than model year 2006, including the lead time and safety and energy impacts of meeting more stringent emission standards; and

(ii) the need for, and cost effectiveness of, obtaining further reductions in emissions from such light-duty vehicles and light-duty trucks, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards pursuant to State implementation plans and other requirements of this chapter, including their feasibility and cost effectiveness.

(B) The Administrator shall submit a report to Congress no later than June 1, 1997, containing the results of the study under this subsection, including the results of the examination conducted under subparagraph (A). Before submittal of such report the Administrator shall provide a reasonable opportunity for public comment and shall include a summary of such comments in the report to Congress.

(3)(A) Based on the study under paragraph (1) the Administrator shall determine, by rule, within 3 calendar years after the report is submitted to Congress, but not later than December 31, 1999, whether—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii).

The rulemaking under this paragraph shall commence within 3 months after submission of the report to Congress under paragraph (2)(B).

(B) If the Administrator determines under subparagraph (A) that—

(i) there is no need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will not be available as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); or

(iii) obtaining further reductions in emissions from such vehicles will not be needed or cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall not promulgate more stringent standards than those in effect pursuant to subsections (g) and (h) of this section. Nothing in this paragraph shall prohibit the Administrator from exercising the Administrator's authority under subsection (a) of this section to promulgate more stringent standards for light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less at any other time thereafter in accordance with subsection (a) of this section.

(C) If the Administrator determines under subparagraph (A) that—

(i) there is a need for further reductions in emissions as provided in paragraph (2)(A);

(ii) the technology for meeting more stringent emission standards will be available, as provided in paragraph (2)(A)(i), in the case of light-duty vehicles and light-duty trucks with a loaded vehicle weight (LVW) of 3,750 lbs. or less, for model years commencing not earlier than January 1, 2003, and not later than model year 2006, considering the factors listed in paragraph (2)(A)(i); and

(iii) obtaining further reductions in emissions from such vehicles will be needed and cost effective, taking into consideration alternatives as provided in paragraph (2)(A)(ii),

the Administrator shall either promulgate the standards (and useful life periods) set forth in Table 3 in paragraph (1) or promulgate alternative standards (and useful life periods) which are more stringent than those referred to in subsections (g) and (h) of this section. Any such standards (or useful life periods) promulgated by the Administrator shall take effect with respect to any such vehicles or engines no earlier than the model year 2003 but not later than model year 2006, as determined by the Administrator in the rule.

(D) Nothing in this paragraph shall be construed by the Administrator or by a court as a presumption that any standards (or useful life period) set forth in Table 3 shall be promulgated in the rulemaking required under this paragraph. The action required of the Administrator in accordance with this paragraph shall be treated as a nondiscretionary duty for purposes of section 7604(a)(2) of this title (relating to citizen suits).

(E) Unless the Administrator determines not to promulgate more stringent standards as provided in subparagraph (B) or to postpone the effective date of standards referred to in Table 3 in paragraph (1) or to establish alternative standards as provided in subparagraph (C), effective with respect to model years commencing after January 1, 2003, the regulations under subsection (a) of this section applicable to emissions of nonmethane hydrocarbons (NMHC), oxides of nitrogen (NO_x), and carbon monoxide (CO) from motor vehicles and motor vehicle engines in the classes specified in Table 3 in paragraph (1) above shall contain standards which provide that emissions may not exceed the pending emission levels specified in Table 3 in paragraph (1).

(j) Cold CO standard

(1) Phase I

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section applicable to emissions of carbon monoxide from 1994 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit. The regulations shall contain standards which provide that emissions of carbon monoxide from a manufacturer's vehicles when operated at 20 degrees Fahrenheit may not exceed, in the case of light-duty vehicles, 10.0 grams per mile, and in the case of light-duty trucks, a level comparable in stringency to the standard applicable to light-duty vehicles. The standards shall take effect after model year 1993 according to a phase-in schedule which requires a percentage of each manufacturer's sales volume of light-duty vehicles and light-duty trucks to comply with applicable standards after model year 1993. The percentage shall be as specified in the following table:

PHASE-IN SCHEDULE FOR COLD START STANDARDS

Model Year	Percentage
1994	40
1995	80
1996 and after	100

(2) Phase II

(A) Not later than June 1, 1997, the Administrator shall complete a study assessing the need for further reductions in emissions of carbon monoxide and the maximum reductions in such emissions achievable from model year 2001 and later model year light-duty vehicles and light-duty trucks when operated at 20 degrees Fahrenheit.

(B)(i) If as of June 1, 1997, 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from model year 2002 and later model year light-duty vehicles and light-duty trucks shall contain standards which provide that emissions of carbon monoxide from such vehicles and trucks when operated at 20 degrees Fahrenheit may not exceed 3.4 grams per mile (gpm) in the case of light-duty vehicles and 4.4 grams per mile (gpm) in the case of light-duty trucks up to 6,000 GVWR and a level comparable in stringency in the case of light-duty trucks 6,000 GVWR and above.

(ii) In determining for purposes of this subparagraph whether 6 or more nonattainment areas have a carbon monoxide design value of 9.5 ppm or greater, the Administrator shall exclude the areas of Steubenville, Ohio, and Oshkosh, Wisconsin.

(3) Useful-life for phase I and phase II standards

In the case of the standards referred to in paragraphs (1) and (2), for purposes of certification under section 7525 of this title and in-use compliance under section 7541 of this title, the applicable useful life period shall be 5 years or 50,000 miles, whichever first occurs, except that the Administrator may extend such useful life period (for purposes of section 7525 of this title, or section 7541 of this title, or both) if he determines that it is feasible for vehicles and engines subject to such standards to meet such standards for a longer useful life. If the Administrator extends such useful life period, the Administrator may make an appropriate adjustment of applicable standards for such extended useful life. No such extended useful life shall extend beyond the useful life period provided in regulations under subsection (d) of this section.

(4) Heavy-duty vehicles and engines

The Administrator may also promulgate regulations under subsection (a)(1) of this section applicable to emissions of carbon monoxide from heavy-duty vehicles and engines when operated at cold temperatures.

(k) Control of evaporative emissions

The Administrator shall promulgate (and from time to time revise) regulations applicable to

evaporative emissions of hydrocarbons from all gasoline-fueled motor vehicles—

(1) during operation; and

(2) over 2 or more days of nonuse;

under ozone-prone summertime conditions (as determined by regulations of the Administrator). The regulations shall take effect as expeditiously as possible and shall require the greatest degree of emission reduction achievable by means reasonably expected to be available for production during any model year to which the regulations apply, giving appropriate consideration to fuel volatility, and to cost, energy, and safety factors associated with the application of the appropriate technology. The Administrator shall commence a rulemaking under this subsection within 12 months after November 15, 1990. If final regulations are not promulgated under this subsection within 18 months after November 15, 1990, the Administrator shall submit a statement to the Congress containing an explanation of the reasons for the delay and a date certain for promulgation of such final regulations in accordance with this chapter. Such date certain shall not be later than 15 months after the expiration of such 18 month deadline.

(*l*) Mobile source-related air toxics

(1) Study

Not later than 18 months after November 15, 1990, the Administrator shall complete a study of the need for, and feasibility of, controlling emissions of toxic air pollutants which are unregulated under this chapter and associated with motor vehicles and motor vehicle fuels, and the need for, and feasibility of, controlling such emissions and the means and measures for such controls. The study shall focus on those categories of emissions that pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3 butadiene. The proposed report shall be available for public review and comment and shall include a summary of all comments.

(2) Standards

Within 54 months after November 15, 1990, the Administrator shall, based on the study under paragraph (1), promulgate (and from time to time revise) regulations under subsection (a)(1) of this section or section 7545(c)(1) of this title containing reasonable requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels. The regulations shall contain standards for such fuels or vehicles, or both, which the Administrator determines reflect the greatest degree of emission reduction achievable through the application of technology which will be available, taking into consideration the standards established under subsection (a) of this section, the availability and costs of the technology, and noise, energy, and safety factors, and lead time. Such regulations shall not be inconsistent with standards under subsection (a) of this section. The regulations shall, at a minimum, apply to emissions of benzene and formaldehyde.

(m) Emissions control diagnostics

(1) Regulations

Within 18 months after November 15, 1990, the Administrator shall promulgate regulations under subsection (a) of this section requiring manufacturers to install on all new light duty vehicles and light duty trucks diagnostics systems capable of—

(A) accurately identifying for the vehicle's useful life as established under this section, emission-related systems deterioration or malfunction, including, at a minimum, the catalytic converter and oxygen sensor, which could cause or result in failure of the vehicles to comply with emission standards established under this section,

(B) alerting the vehicle's owner or operator to the likely need for emission-related components or systems maintenance or repair,

(C) storing and retrieving fault codes specified by the Administrator, and

(D) providing access to stored information in a manner specified by the Administrator.

The Administrator may, in the Administrator's discretion, promulgate regulations requiring manufacturers to install such onboard diagnostic systems on heavy-duty vehicles and engines.

(2) Effective date

The regulations required under paragraph (1) of this subsection shall take effect in model year 1994, except that the Administrator may waive the application of such regulations for model year 1994 or 1995 (or both) with respect to any class or category of motor vehicles if the Administrator determines that it would be infeasible to apply the regulations to that class or category in such model year or years, consistent with corresponding regulations or policies adopted by the California Air Resources Board for such systems.

(3) State inspection

The Administrator shall by regulation require States that have implementation plans containing motor vehicle inspection and maintenance programs to amend their plans within 2 years after promulgation of such regulations to provide for inspection of onboard diagnostics systems (as prescribed by regulations under paragraph (1) of this subsection) and for the maintenance or repair of malfunctions or system deterioration identified by or affecting such diagnostics systems. Such regulations shall not be inconsistent with the provisions for warranties promulgated under section 7541(a) and (b) of this title.

(4) Specific requirements

In promulgating regulations under this subsection, the Administrator shall require—

(A) that any connectors through which the emission control diagnostics system is accessed for inspection, diagnosis, service, or repair shall be standard and uniform on all motor vehicles and motor vehicle engines;

(B) that access to the emission control diagnostics system through such connectors shall be unrestricted and shall not require

any access code or any device which is only available from a vehicle manufacturer; and

(C) that the output of the data from the emission control diagnostics system through such connectors shall be usable without the need for any unique decoding information or device.

(5) Information availability

The Administrator, by regulation, shall require (subject to the provisions of section 7542(c) of this title regarding the protection of methods or processes entitled to protection as trade secrets) manufacturers to provide promptly to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, and the Administrator for use by any such persons, with any and all information needed to make use of the emission control diagnostics system prescribed under this subsection and such other information including instructions for making emission related diagnosis and repairs. No such information may be withheld under section 7542(c) of this title if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines. Such information shall also be available to the Administrator, subject to section 7542(c) of this title, in carrying out the Administrator's responsibilities under this section.

(f)[5] Model years after 1990

For model years prior to model year 1994, the regulations under subsection (a) of this section applicable to buses other than those subject to standards under section 7554 of this title shall contain a standard which provides that emissions of particulate matter (PM) from such buses may not exceed the standards set forth in the following table:

PM STANDARD FOR BUSES

Model year	Standard*
1991	0.25
1992	0.25
1993 and thereafter	0.10

*Standards are expressed in grams per brake horsepower hour (g/bhp/hr).

(July 14, 1955, ch. 360, title II, § 202, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91–604, § 6(a), Dec. 31, 1970, 84 Stat. 1690; Pub. L. 93–319, § 5, June 22, 1974, 88 Stat. 258; Pub. L. 95–95, title II, §§ 201, 202(b), 213(b), 214(a), 215–217, 224(a), (b), (g), title IV, § 401(d), Aug. 7, 1977, 91 Stat. 751–753, 758–761, 765, 767, 769, 791; Pub. L. 95–190, § 14(a)(60)–(65), (b)(5), Nov. 16, 1977, 91 Stat. 1403, 1405; Pub. L. 101–549, title II, §§ 201–207, 227(b), 230(1)–(5), Nov. 15, 1990, 104 Stat. 2472–2481, 2507, 2529.)

REFERENCES IN TEXT

The enactment of the Clean Air Act Amendments of 1990, referred to in subsec. (a)(3)(B), probably means the enactment of Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399, which was approved Nov. 15, 1990. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Section 7525(f)(1) of this title, referred to in subsec. (a)(3)(E), was redesignated section 7525(f) of this title by Pub. L. 101–549, title II, § 230(8), Nov. 15, 1990, 104 Stat. 2529.

Paragraph (5) of subsec. (b), referred to in subsec. (b)(1)(A), related to waivers for model years 1981 and 1982, and was repealed by Pub. L. 101–549, title II, § 230(3), Nov. 15, 1990, 104 Stat. 2529. See 1990 Amendment note below.

The Energy Policy and Conservation Act, referred to in subsec. (b)(3)(C), is Pub. L. 94–163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1857f–1 of this title.

AMENDMENTS

1990—Subsec. (a)(3)(A). Pub. L. 101–549, § 201(1), added subpar. (A) and struck out former subpar. (A) which related to promulgation of regulations applicable to reduction of emissions from heavy-duty vehicles or engines manufactured during and after model year 1979 in the case of carbon monoxide, hydrocarbons, and oxides of nitrogen, and from vehicles manufactured during and after model year 1981 in the case of particulate matter.

Subsec. (a)(3)(B). Pub. L. 101–549, § 201(1), added subpar. (B) and struck out former subpar. (B) which read as follows: "During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year."

Subsec. (a)(3)(C). Pub. L. 101–549, § 201(1), added subpar. (C) and struck out former subpar. (C) which read as follows: "Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

"(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

"(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) of this section, issued a report substantially contrary to the findings of the Administrator under clause (i)."

Subsec. (a)(3)(D). Pub. L. 101–549, § 201(1), added subpar. (D) and struck out former subpar. (D) which read as follows: "A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

"(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

[5] So in original. Probably should be "(n)".

''(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

''(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

''(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.''

Subsec. (a)(3)(E), (F). Pub. L. 101–549, § 201, redesignated subpar. (F) as (E), inserted heading, and struck out former subpar. (E) which read as follows:

''(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

''(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated.''

Subsec. (a)(4)(A), (B). Pub. L. 101–549, § 227(b), substituted ''requirements prescribed under this subchapter'' for ''standards prescribed under this subsection''.

Subsec. (a)(6). Pub. L. 101–549, § 202, amended par. (6) generally. Prior to amendment, par. (6) read as follows: ''The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.''

Subsec. (b)(1)(C). Pub. L. 101–549, § 203(c), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977.''

Subsec. (b)(2). Pub. L. 101–549, § 203(d), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.''

Subsec. (b)(3). Pub. L. 101–549, § 230(4), redesignated par. (6) relating to waiver of standards for oxides of nitrogen as par. (3), struck out subpar. (A) designation before ''Upon the petition'', redesignated former cls. (i) to (iii) as subpars. (A) to (C), respectively, and struck out former subpar. (B) which authorized the Administrator to waive the standard under subsec. (b)(1)(B) of this section for emissions of oxides of nitrogen from light-duty vehicles and engines beginning in model year 1981 after providing notice and opportunity for a public hearing, and set forth conditions under which a waiver could be granted.

Subsec. (b)(3)(B). Pub. L. 101–549, § 230(1), in the par. (3) defining terms for purposes of this part struck out subpar. (B) which defined ''light duty vehicles and engines''.

Subsec. (b)(4). Pub. L. 101–549, § 230(2), struck out par. (4) which read as follows: ''On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpenas) shall apply.''

Subsec. (b)(5). Pub. L. 101–549, § 230(3), struck out par. (5) which related to waivers for model years 1981 and 1982 of the effective date of the emissions standard required under par. (1)(A) for carbon monoxide applicable to light-duty vehicles and engines manufactured in those model years.

Subsec. (b)(6). Pub. L. 101–549, § 230(4), redesignated par. (6) as (3).

Subsec. (b)(7). Pub. L. 101–549, § 230(5), struck out par. (7) which read as follows: ''The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utili-

zation of optimum engine, fuel, and emission control systems.''

Subsec. (d). Pub. L. 101–549, § 203(b)(1), substituted ''provide that except where a different useful life period is specified in this subchapter'' for ''provide that''.

Subsec. (d)(1). Pub. L. 101–549, § 203(b)(2), (3), inserted ''and light-duty trucks up to 3,750 lbs. LVW and up to 6,000 lbs. GVWR'' after ''engines'' and substituted for semicolon at end '', except that in the case of any requirement of this section which first becomes applicable after November 15, 1990, where the useful life period is not otherwise specified for such vehicles and engines, the period shall be 10 years or 100,000 miles (or the equivalent), whichever first occurs, with testing for purposes of in-use compliance under section 7541 of this title up to (but not beyond) 7 years or 75,000 miles (or the equivalent), whichever first occurs;''.

Subsec. (f). Pub. L. 101–549, § 207(b), added (after subsec. (m) at end) subsec. (f) relating to regulations applicable to buses for model years after 1990.

Subsecs. (g) to (i). Pub. L. 101–549, § 203(a), added subsecs. (g) to (i).

Subsecs. (j) to (m). Pub. L. 101–549, §§ 204–207(a), added subsecs. (j) to (m).

1977—Subsec. (a)(1). Pub. L. 95–190, § 14(a)(60), restructured subsec. (a) by providing for designation of par. (1) to precede ''The Administrator'' in place of ''Except as''.

Pub. L. 95–95, § 401(d)(1), substituted ''Except as otherwise provided in subsection (b) of this section the Administrator'' for ''The Administrator'', ''cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare'' for ''causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare'', and ''useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices'' for ''useful life (as determined under subsection (d) of this section) whether such vehicles and engines are designed as complete systems or incorporated devices''.

Subsec. (a)(2). Pub. L. 95–95, § 214(a), substituted ''prescribed under paragraph (1) of this subsection'' for ''prescribed under this subsection''.

Subsec. (a)(3). Pub. L. 95–95, § 224(a), added par. (3).

Subsec. (a)(3)(B). Pub. L. 95–190, § 14(a)(61), (62), substituted provisions setting forth applicable periods of from June 1 through Dec. 31, 1978, June 1 through Dec. 31, 1980, and during each period of June 1 through Dec. 31 of each third year thereafter, for provisions setting forth applicable periods of from June 1 through Dec. 31, 1979, and during each period of June 1 through Dec. 31 of each third year after 1979, and substituted ''from any'' for ''of from any''.

Subsec. (a)(3)(E). Pub. L. 95–190, § 14(a)(63), substituted ''1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen'' for ''1979,''.

Subsec. (a)(4). Pub. L. 95–95, § 214(a), added par. (4).

Subsec. (a)(5). Pub. L. 95–95, § 215, added par. (5).

Subsec. (a)(6). Pub. L. 95–95, § 216, added par. (6).

Subsec. (b)(1)(A). Pub. L. 95–95, § 201(a), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 and 1976, substituted ''model year 1980'' for ''model year 1977'' in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970, and inserted provisions that, unless waived as provided in par. (5), the standards for vehicles and engines manufactured during or after the model year 1981 represent a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970.

Subsec. (b)(1)(B). Pub. L. 95–190, § 14(a)(64), (65), substituted ''calendar year 1976'' for ''model year 1976'' and in cl. (i) substituted ''other'' for ''United States''.

Pub. L. 95–95, § 201(b), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 through 1977, substituted provisions that the standards for model years 1981 and after allow emissions of no more than 1.0 gram per vehicle mile for provisions that the standards for model year 1978 and after require a reduction of at least 90 per centum from the average of emissions actually measured from light-duty vehicles manufactured during model year 1971 which were not subject to any Federal or State emission standards for oxides of nitrogen, and inserted provisions directing the Administrator to prescribe separate standards for model years 1981 and 1982 for manufacturers whose production, by corporate identity, for model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the manufacturer's capability to meet emission standards depends upon United States technology and if the manufacturer cannot develop one.

Subsec. (b)(1)(C). Pub. L. 95–95, § 217, added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 95–95, § 224(b), added subpar. (C).

Subsec. (b)(5). Pub. L. 95–95, § 201(c), substituted provisions setting up a procedure under which a manufacturer may apply for a waiver for model years 1981 and 1982 of the effective date of the emission standards for carbon monoxide required by par. (1)(A) for provisions which had set up a procedure under which a manufacturer, after Jan. 1, 1975, could apply for a one-year suspension of the effective date of any emission standard required by par. (1)(A) for model year 1977.

Subsec. (b)(6). Pub. L. 95–95, § 201(c), added par. (6).

Subsec. (b)(7). Pub. L. 95–95, § 202(b), added par. (7).

Subsec. (d)(2). Pub. L. 95–95, § 224(g), as amended by Pub. L. 95–190, § 14(b)(5), to correct typographical error in directory language, inserted ''(other than motorcycles or motorcycle engines)'' after ''motor vehicle or motor vehicle engine''.

Subsec. (d)(3). Pub. L. 95–95, § 224(g), added par. (3).

Subsec. (e). Pub. L. 95–95, § 401(d)(2), substituted ''which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger'' for ''which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers''.

Subsec. (f). Pub. L. 95–95, § 213(b), added subsec. (f).

1974—Subsec. (b)(1)(A). Pub. L. 93–319, § 5(a), substituted ''model year 1977'' for ''model year 1975'' in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970 and inserted provisions covering regulations for model years 1975 and 1976.

Subsec. (b)(1)(B). Pub. L. 93–319, § 5(b), substituted ''model year 1978'' for ''model year 1976'' in provisions requiring a reduction of at least 90 per centum from the average of emissions actually measured from vehicles manufactured during model year 1971 and inserted provisions covering regulations for model years 1975, 1976, and 1977.

Subsec. (b)(5). Pub. L. 93–319, § 5(c), (d), substituted in subpar. (A), ''At any time after January 1, 1975'' for ''At any time after January 1, 1972'', ''with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977'' for ''with respect to such manufacturer'', ''sixty days'' for ''60 days'', ''paragraph (1)(A) of this subsection'' for ''paragraph (1)(A)'', and ''vehicles and engines manufactured during model year 1977'' for ''vehicles and engines manufactured during model year 1975'', redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which had allowed manufacturers, at any time after Jan. 1, 1973, to file with the Administrator an application requesting a 1-year suspension of the effective date of any emission standard required by subsec. (b)(1)(B) with respect to such manufacturer.

1970—Subsec. (a). Pub. L. 91–604 redesignated existing provisions as par. (1), substituted Administrator for

Secretary as the issuing authority for standards, inserted references to the useful life of engines, and substituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91–604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c) to (e). Pub. L. 91–604 added subsecs. (c) to (e).

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON OXIDES OF NITROGEN FROM LIGHT-DUTY VEHICLES

Section 202(a) of Pub. L. 95–95 provided that the Administrator of the Environmental Protection Agency conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light-duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare and that the Administrator submit a report of such study to the Congress, together with recommendations not later than July 1, 1980.

STUDY OF CARBON MONOXIDE INTRUSION INTO SUSTAINED-USE VEHICLES

Section 226 of Pub. L. 95–95 provided that the Administrator, in conjunction with the Secretary of Transportation, study the problem of carbon monoxide intrusion into the passenger area of sustained-use motor vehicles and that within one year the Administrator report to the Congress respecting the results of such study.

CONTINUING COMPREHENSIVE STUDIES AND INVESTIGATIONS BY NATIONAL ACADEMY OF SCIENCES

Section 403(f) of Pub. L. 95–95 provided that: ''The Administrator of the Environmental Protection Agency shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 202(a) of the Clean Air Act [subsec. (a) of this section] (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 202(b) of such Act [subsec. (b) of this section]. The Administrator shall report to the Congress within six months of the date of enactment of this section [Aug. 7, 1977] and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph.''

[For termination, effective May 15, 2000, of provisions relating to annual report to Congress in section 403(f) of Pub. L. 95–95, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 2nd item on page 165 of House Document No. 103–7.]

STUDY ON EMISSION OF SULFUR-BEARING COMPOUNDS FROM MOTOR VEHICLES AND MOTOR VEHICLE AND AIRCRAFT ENGINES

Section 403(g) of Pub. L. 95–95 provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress by the date one year after Aug. 7, 1977, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines.

EX. ORD. NO. 13432. COOPERATION AMONG AGENCIES IN PROTECTING THE ENVIRONMENT WITH RESPECT TO GREENHOUSE GAS EMISSIONS FROM MOTOR VEHICLES, NONROAD VEHICLES, AND NONROAD ENGINES

Ex. Ord. No. 13432, May 14, 2007, 72 F.R. 27717, provided:

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the United States to ensure the coordinated and effective exercise of the authorities of the President and the heads of the Department of Transportation, the Department of Energy, and the Environmental Protection Agency to protect the environment with respect to greenhouse gas emissions from motor vehicles, nonroad vehicles, and nonroad engines, in a manner consistent with sound science, analysis of benefits and costs, public safety, and economic growth.

SEC. 2. *Definitions*. As used in this order:

(a) ''agencies'' refers to the Department of Transportation, the Department of Energy, and the Environmental Protection Agency, and all units thereof, and ''agency'' refers to any of them;

(b) ''alternative fuels'' has the meaning specified for that term in section 301(2) of the Energy Policy Act of 1992 (42 U.S.C. 13211(2));

(c) ''authorities'' include the Clean Air Act (42 U.S.C. 7401–7671q), the Energy Policy Act of 1992 (Public Law 102–486), the Energy Policy Act of 2005 (Public Law 109–58), the Energy Policy and Conservation Act (Public Law 94–163), and any other current or future laws or regulations that may authorize or require any of the agencies to take regulatory action that directly or indirectly affects emissions of greenhouse gases from motor vehicles;

(d) ''greenhouse gases'' has the meaning specified for that term in Executive Order 13423 of January 24, 2007;

(e) ''motor vehicle'' has the meaning specified for that term in section 216(2) of the Clean Air Act (42 U.S.C. 7550(2));

(f) ''nonroad engine'' has the meaning specified for that term in section 216(10) of the Clean Air Act (42 U.S.C. 7550(10));

(g) ''nonroad vehicle'' has the meaning specified for that term in section 216(11) of the Clean Air Act (42 U.S.C. 7550(11));

(h) ''regulation'' has the meaning specified for that term in section 3(d) of Executive Order 12866 of September 30, 1993, as amended (Executive Order 12866); and

(i) ''regulatory action'' has the meaning specified for that term in section 3(e) of Executive Order 12866.

SEC. 3. *Coordination Among the Agencies*. In carrying out the policy set forth in section 1 of this order, the head of an agency undertaking a regulatory action that can reasonably be expected to directly regulate emissions, or to substantially and predictably affect emissions, of greenhouse gases from motor vehicles, nonroad vehicles, nonroad engines, or the use of motor vehicle fuels, including alternative fuels, shall:

(a) undertake such a regulatory action, to the maximum extent permitted by law and determined by the head of the agency to be practicable, jointly with the other agencies;

(b) in undertaking such a regulatory action, consider, in accordance with applicable law, information and recommendations provided by the other agencies;

(c) in undertaking such a regulatory action, exercise authority vested by law in the head of such agency effectively, in a manner consistent with the effective exercise by the heads of the other agencies of the authority vested in them by law; and

(d) obtain, to the extent permitted by law, concurrence or other views from the heads of the other agencies during the development and preparation of the regulatory action and prior to any key decision points during that development and preparation process, and in no event later than 30 days prior to publication of such action.

SEC. 4. *Duties of the Heads of Agencies*. (a) To implement this order, the head of each agency shall:

(1) designate appropriate personnel within the agency to (i) direct the agency's implementation of this order, (ii) ensure that the agency keeps the other agencies and the Office of Management and Budget informed of the agency regulatory actions to which section 3 refers, and (iii) coordinate such actions with the agencies;

(2) in coordination as appropriate with the Committee on Climate Change Science and Technology, continue to conduct and share research designed to advance technologies to further the policy set forth in section 1 of this order;

(3) facilitate the sharing of personnel and the sharing of information among the agencies to further the policy set forth in section 1 of this order;

(4) coordinate with the other agencies to avoid duplication of requests to the public for information from the public in the course of undertaking such regulatory action, consistent with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*.); and

(5) consult with the Secretary of Agriculture whenever a regulatory action will have a significant effect on agriculture related to the production or use of ethanol, biodiesel, or other renewable fuels, including actions undertaken in whole or in part based on authority or requirements in title XV of the Energy Policy Act of 2005, or the amendments made by such title, or when otherwise appropriate or required by law.

(b) To implement this order, the heads of the agencies acting jointly may allocate as appropriate among the agencies administrative responsibilities relating to regulatory actions to which section 3 refers, such as publication of notices in the Federal Register and receipt of comments in response to notices.

SEC. 5. *Duties of the Director of the Office of Management and Budget and the Chairman of the Council on Environmental Quality*. (a) The Director of the Office of Management and Budget, with such assistance from the Chairman of the Council on Environmental Quality as the Director may require, shall monitor the implementation of this order by the heads of the agencies and shall report thereon to the President from time to time, and not less often than semiannually, with any recommendations of the Director for strengthening the implementation of this order.

(b) To implement this order and further the policy set forth in section 1, the Director of the Office of Management and Budget may require the heads of the agencies to submit reports to, and coordinate with, such Office on matters related to this order.

SEC. 6. *General Provisions*. (a) This order shall be implemented in accordance with applicable law and subject to the availability of appropriations.

(b) This order shall not be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, and legislative proposals.

(c) This order is not intended to, and does not, create any right, benefit or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

GEORGE W. BUSH.

§ 7522. Prohibited acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale, or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States, of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part or part C in the case of clean-fuel vehicles (except as provided in subsection (b) of this section);

(2)(A) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information required under section 7542 of this title;

(B) for any person to fail or refuse to permit entry, testing or inspection authorized under section 7525(c) of this title or section 7542 of this title;

(C) for any person to fail or refuse to perform tests, or have tests performed as required under section 7542 of this title;

(D) for any manufacturer to fail to make information available as provided by regulation under section 7521(m)(5) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any person knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person to manufacture or sell, or offer to sell, or install, any part or component intended for use with, or as part of, any motor vehicle or motor vehicle engine, where a principal effect of the part or component is to bypass, defeat, or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter, and where the person knows or should know that such part or component is being offered for sale or installed for such use or put to such use; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title or part C of this subchapter—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with (i) the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title, or (ii) the corresponding requirements of part C

of this subchapter in the case of clean fuel vehicles unless the manufacturer has complied with the corresponding requirements of part C of this subchapter[1]

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title, or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles[1]

(C) except as provided in subsection (c)(3) of section 7541 of this title and the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles with respect to any vehicle; or

(5) for any person to violate section 7553 of this title, 7554 of this title, or part C of this subchapter or any regulations under section 7553 of this title, 7554 of this title, or part C of this subchapter.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term ''manufacturer parts'' means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine. No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if (i) the action is for the purpose of repair or replacement of the device or element, or is a necessary and temporary procedure to repair or replace any other item and the device or element is replaced upon completion of the procedure, and (ii) such action thereafter results in the proper functioning of the device or element referred to in paragraph (3). No action with respect to any device or element of design referred to in paragraph (3) shall be treated as a prohibited act under that paragraph if the action is for the purpose of a conversion of a motor vehicle for use of a clean alternative fuel (as defined in this subchapter) and if such vehicle complies with the applicable standard under section 7521 of this title when operating on such fuel, and if in the case of a clean alternative fuel vehicle (as defined by rule by the Administrator), the device or element is replaced upon completion of the conversion procedure and such action results in proper functioning of the device or element when the motor vehicle operates on conventional fuel.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a) of this section, upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a) of this section, except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

(July 14, 1955, ch. 360, title II, § 203, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 993; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 499; Pub. L. 91–604, §§ 7(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1693, 1705, 1713; Pub. L. 95–95, title II, §§ 206, 211(a), 218(a), (d), 219(a), (b), Aug. 7, 1977, 91 Stat. 755, 757, 761, 762; Pub. L. 95–190, § 14(a)(66)–(68), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§ 228(a), (b), (e), 230(6), Nov. 15, 1990, 104 Stat. 2507, 2511, 2529.)

CODIFICATION

Section was formerly classified to section 1857f–2 of this title.

[1] So in original. Probably should be followed by a comma.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 228(b)(2), inserted two sentences at end which set forth conditions under which actions with respect to devices or elements of design, referred to in par. (3), would not be deemed prohibited acts.

Subsec. (a)(1). Pub. L. 101–549, § 228(e)(1), inserted ''or part C of this subchapter in the case of clean-fuel vehicles'' before ''(except''.

Subsec. (a)(2). Pub. L. 101–549, § 228(a), amended par. (2) generally. Prior to amendment, par. (2) read as follows: ''for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 7542 of this title or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title;''.

Subsec. (a)(3). Pub. L. 101–549, § 228(b)(1), amended par. (3) generally. Prior to amendment, par. (3) read as follows:

''(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

''(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter following its sale and delivery to the ultimate purchaser; or''.

Subsec. (a)(4). Pub. L. 101–549, § 228(e)(2), inserted ''part C of this subchapter'' after ''section 7521 of this title''.

Subsec. (a)(4)(A). Pub. L. 101–549, § 228(e)(3), inserted cl. (i) designation and added cl. (ii).

Subsec. (a)(4)(B). Pub. L. 101–549, § 228(e)(4), inserted at end ''or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles''.

Subsec. (a)(4)(C). Pub. L. 101–549, § 228(e)(5), inserted ''and the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles'' after ''section 7541 of this title''.

Subsec. (a)(4)(D). Pub. L. 101–549, § 228(e)(6), inserted ''or the corresponding requirements of part C of this subchapter in the case of clean fuel vehicles'' before ''with respect to any vehicle''.

Subsec. (a)(5). Pub. L. 101–549, § 228(e)(7), added par. (5).

Subsec. (c). Pub. L. 101–549, § 230(6), struck out subsec. (c) which related to exemptions to permit modifications of emission control devices or systems.

1977—Subsec. (a). Pub. L. 95–190, § 14(a)(68), in closing text inserted a period after ''section 7549 of this title''.

Pub. L. 95–95, §§ 206, 211(a), 218(a), 219(a), (b), inserted ''or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title'' in par. (2), designated existing provisions of par. (3) as subpar. (A) and added subpar. (B), added subpars. (C) and (D) in par. (4), and, following par. (4), inserted provisions that no action with respect to any element of design referred to in par. (3) (including adjustment or alteration of such element) be treated as a prohibited act under par. (3) if the action is in accordance with section 7549 of this title and that nothing in par. (3) be construed to require the use of manufacturer parts in maintaining or repairing motor vehicles or motor vehicle engines.

Subsec. (a)(3)(B). Pub. L. 95–190, § 14(a)(66), substituted ''purchaser;'' for ''purchaser,''.

Subsec. (a)(4)(C). Pub. L. 95–190, § 14(a)(67), inserted ''or'' after ''such person,''.

Subsec. (b)(3). Pub. L. 95–95, § 218(d), substituted ''section 7521 of this title'' for ''subsection (a) of this section'' and ''country which is to receive such vehicle or engine'' for ''country of export''.

1970—Subsec. (a)(1). Pub. L. 91–604, § 7(a)(1), struck out reference to the manufacture of new motor vehicles or new motor vehicle engines for sale, inserted provision for issuance by the Administrator of regulations regarding exceptions in the case of importation of new motor vehicles or new motor vehicle engines, and substituted ''importation'' into the United States of such units for ''importation for sale or resale'' into the United States of such units.

Subsec. (a)(2). Pub. L. 91–604, § 7(a)(2), substituted ''section 208'' for ''section 207'', both of which, for purposes of codification, are translated as ''section 7542 of this title''.

Subsec. (a)(3). Pub. L. 91–604, §§ 7(a)(3), 11(a)(2)(A), substituted ''part'' for ''subchapter'' and inserted provisions prohibiting the knowing removal or inoperation by manufacturers or dealers of devices or elements of design after sale and delivery to the ultimate purchaser.

Subsec. (a)(4). Pub. L. 91–604, § 7(a)(4), added par. (4).

Subsec. (b)(1). Pub. L. 91–604, §§ 7(a)(5), 15(c)(2), struck out reference to the exemption of a class of new motor vehicles or new motor vehicle engines, struck out the protection of the public health and welfare from the enumeration of purposes for which exemptions may be made, and substituted ''Administrator'' for ''Secretary''.

Subsec. (b)(2). Pub. L. 91–604, §§ 7(a)(6), 11(a)(2)(A), 15(c)(2), substituted ''Administrator'' for ''Secretary of Health, Education, and Welfare'', ''importation or imported by any person'' for ''importation by a manufacturer'', and ''part'' for ''subchapter''.

Subsec. (b)(3). Pub. L. 91–604, § 7(a)(7)(A), inserted provision that, if the country of export has emission standards which differ from the standards prescribed under subsec. (a), such vehicle or engine must comply with the standards of such country of export.

Subsec. (c). Pub. L. 91–604, § 7(a)(7)(B), added subsec. (c).

1967—Subsec. (a). Pub. L. 90–148 substituted ''conformity with regulations prescribed under this subchapter'' for ''conformity with regulations prescribed under section 7521 of this title'' in par. (1).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7523. Actions to restrain violations

(a) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain violations of section 7522(a) of this title.

(b) Actions brought by or in name of United States; subpenas

Actions to restrain such violations shall be brought by and in the name of the United

States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

(July 14, 1955, ch. 360, title II, § 204, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91–604, § 7(b), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95–95, title II, § 218(b), Aug. 7, 1977, 91 Stat. 761.)

CODIFICATION

Section was formerly classified to section 1857f–3 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95–95 struck out ''paragraph (1), (2), (3), or (4)'' after ''restrain violations of''.

1970—Subsec. (a). Pub. L. 91–604 inserted reference to par. (4) of section 7522(a) of this title.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 amendment note under section 7401 of this title.

§ 7524. Civil penalties

(a) Violations

Any person who violates sections[1] 7522(a)(1), 7522(a)(4), or 7522(a)(5) of this title or any manufacturer or dealer who violates section 7522(a)(3)(A) of this title shall be subject to a civil penalty of not more than $25,000. Any person other than a manufacturer or dealer who violates section 7522(a)(3)(A) of this title or any person who violates section 7522(a)(3)(B) of this title shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3)(A), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine. Any such violation with respect to section 7522(a)(3)(B) of this title shall constitute a separate offense with respect to each part or component. Any person who violates section 7522(a)(2) of this title shall be subject to a civil penalty of not more than $25,000 per day of violation.

(b) Civil actions

The Administrator may commence a civil action to assess and recover any civil penalty under subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title. Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred or in which the defendant resides or has the Administrator's principal place of business, and the court shall have jurisdiction to assess a civil penalty. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(c) Administrative assessment of certain penalties

(1) Administrative penalty authority

In lieu of commencing a civil action under subsection (b) of this section, the Administrator may assess any civil penalty prescribed in subsection (a) of this section, section 7545(d) of this title, or section 7547(d) of this title, except that the maximum amount of penalty sought against each violator in a penalty assessment proceeding shall not exceed $200,000, unless the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount is appropriate for administrative penalty assessment. Any such determination by the Administrator and the Attorney General shall not be subject to judicial review. Assessment of a civil penalty under this subsection shall be by an order made on the record after opportunity for a hearing in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person. The Administrator may compromise, or remit, with or without conditions, any administrative penalty which may be imposed under this section.

(2) Determining amount

In determining the amount of any civil penalty assessed under this subsection, the Administrator shall take into account the gravity of the violation, the economic benefit or savings (if any) resulting from the violation, the size of the violator's business, the violator's history of compliance with this subchapter, action taken to remedy the violation, the effect of the penalty on the violator's ability to continue in business, and such other matters as justice may require.

(3) Effect of Administrator's action

(A) Action by the Administrator under this subsection shall not affect or limit the Administrator's authority to enforce any provision of this chapter; except that any violation,

[1] So in original. Probably should be ''section''.

(i) with respect to which the Administrator has commenced and is diligently prosecuting an action under this subsection, or

(ii) for which the Administrator has issued a final order not subject to further judicial review and the violator has paid a penalty assessment under this subsection,

shall not be the subject of civil penalty action under subsection (b) of this section.

(B) No action by the Administrator under this subsection shall affect any person's obligation to comply with any section of this chapter.

(4) Finality of order

An order issued under this subsection shall become final 30 days after its issuance unless a petition for judicial review is filed under paragraph (5).

(5) Judicial review

Any person against whom a civil penalty is assessed in accordance with this subsection may seek review of the assessment in the United States District Court for the District of Columbia, or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, within the 30-day period beginning on the date a civil penalty order is issued. Such person shall simultaneously send a copy of the filing by certified mail to the Administrator and the Attorney General. The Administrator shall file in the court a certified copy, or certified index, as appropriate, of the record on which the order was issued within 30 days. The court shall not set aside or remand any order issued in accordance with the requirements of this subsection unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the Administrator's assessment of the penalty constitutes an abuse of discretion, and the court shall not impose additional civil penalties unless the Administrator's assessment of the penalty constitutes an abuse of discretion. In any proceedings, the United States may seek to recover civil penalties assessed under this section.

(6) Collection

If any person fails to pay an assessment of a civil penalty imposed by the Administrator as provided in this subsection—

(A) after the order making the assessment has become final, or

(B) after a court in an action brought under paragraph (5) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to recover the amount assessed (plus interest at rates established pursuant to section 6621(a)(2) of title 26 from the date of the final order or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of the penalty shall not be subject to review. Any person who fails to pay on a timely basis the amount of an assessment of a civil penalty as described in the first sentence of this paragraph shall be required to pay, in addition to that amount and interest, the United States' enforcement expenses, including attorneys fees and costs for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. The nonpayment penalty shall be in an amount equal to 10 percent of the aggregate amount of that person's penalties and nonpayment penalties which are unpaid as of the beginning of such quarter.

(July 14, 1955, ch. 360, title I, § 205, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 500; Pub. L. 91–604, § 7(c), Dec. 31, 1970, 84 Stat. 1694; Pub. L. 95–95, title II, § 219(c), Aug. 7, 1977, 91 Stat. 762; Pub. L. 101–549, title II, § 228(c), Nov. 15, 1990, 104 Stat. 2508.)

CODIFICATION

Section was formerly classified to section 1857f–4 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally. Prior to amendment, section read as follows: ''Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3)(B) of such section 7522(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.''

1977—Pub. L. 95–95 substituted ''Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title, or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title'' for ''Any person who violates paragraph (1), (2), (3), or (4) of section 7522(a) of this title'' in provisions covering the civil penalty of $10,000, and inserted provisions for a civil penalty of not more than $2,500 for violations of par. (3)(B) of section 7522(a) of this title.

1970—Pub. L. 91–604 increased the upper limit of the allowable fine from ''$1,000'' to ''$10,000''.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§ 7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any original equipment manufacturer (as defined by

the Administrator in regulations promulgated before November 15, 1990) of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed 300, the Administrator shall not require, for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine, operation of any vehicle or engine manufactured during such model year for more than 5,000 miles or 160 hours, respectively, unless the Administrator, by regulation, prescribes otherwise. The Administrator shall apply any adjustment factors that the Administrator deems appropriate to assure that each vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(4)(A) Not later than 12 months after November 15, 1990, the Administrator shall revise the regulations promulgated under this subsection to add test procedures capable of determining whether model year 1994 and later model year light-duty vehicles and light-duty trucks, when properly maintained and used, will pass the inspection methods and procedures established under section 7541(b) of this title for that model year, under conditions reasonably likely to be encountered in the conduct of inspection and maintenance programs, but which those programs cannot reasonably influence or control. The conditions shall include fuel characteristics, ambient temperature, and short (30 minutes or less) waiting periods before tests are conducted. The Administrator shall not grant a certificate of conformity under this subsection for any 1994 or later model year vehicle or engine that the Administrator concludes cannot pass the test procedures established under this paragraph.

(B) From time to time, the Administrator may revise the regulations promulgated under subparagraph (A), as the Administrator deems appropriate.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but

suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

(c) Inspection

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect, at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) Rules and regulations

The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) Publication of test results

The Administrator shall make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

(f) High altitude regulations

All light duty[1] vehicles and engines manufactured during or after model year 1984 and all light-duty trucks manufactured during or after model year 1995 shall comply with the requirements of section 7521 of this title regardless of the altitude at which they are sold.

(g) Nonconformance penalty

(1) In the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 7521(a) of this title applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) of this section and shall not be suspended or revoked under subsection (b) of this section for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing. In the case of motorcycles to which such a standard applies, such a certificate may be issued notwithstanding such failure if the manufacturer pays such a penalty.

(2) No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 7521(a) of this title with respect to such class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than one year after August 7, 1977.

(3) The regulations promulgated under paragraph (1) shall, not later than one year after August 7, 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

(A) may vary from pollutant-to-pollutant;

(B) may vary by class or category or vehicle or engine;

(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 7521 of this title;

(D) shall be increased periodically in order to create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

(E) shall remove any competitive disadvantage to manufacturers whose engines or vehi-

[1] So in original. Probably should be ''light-duty''.

cles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

(4) In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 7541(b)(2) of this title and any action under section 7541(c) of this title shall be required to be effective only for the emission levels which the Administrator determines that such certificate was issued and not for the emission levels required under the applicable standard.

(5) The authorities of section 7542(a) of this title shall apply, subject to the conditions of section 7542(b)[2] of this title, for purposes of this subsection.

(h) Review and revision of regulations

Within 18 months after November 15, 1990, the Administrator shall review and revise as necessary the regulations under subsection[3] (a) and (b) of this section regarding the testing of motor vehicles and motor vehicle engines to insure that vehicles are tested under circumstances which reflect the actual current driving conditions under which motor vehicles are used, including conditions relating to fuel, temperature, acceleration, and altitude.

(July 14, 1955, ch. 360, title II, § 206, as added Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1694; amended Pub. L. 95–95, title II, §§ 213(a), 214(b), (c), 220, 224(e), Aug. 7, 1977, 91 Stat. 758–760, 762, 768; Pub. L. 95–190, § 14(a)(69), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§ 208, 230(7), (8), Nov. 15, 1990, 104 Stat. 2483, 2529.)

REFERENCES IN TEXT

Section 7542 of this title, referred to in subsec. (g)(5), was amended generally by Pub. L. 101–549, title II, § 211, Nov. 15, 1990, 104 Stat. 2487, and provisions formerly contained in section 7542(b) of this title are contained in section 7542(c).

CODIFICATION

Section was formerly classified to section 1857f–5 of this title.

PRIOR PROVISIONS

A prior section 206 of act July 14, 1955, related to testing of motor vehicles and motor vehicle engines and was classified to section 1857f–5 of this title, prior to repeal by Pub. L. 91–604.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 208(b), inserted new third sentence and struck out former third sentence which read as follows: ''In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.''

Subsec. (a)(4). Pub. L. 101–549, § 208(a), added par. (4).

Subsec. (e). Pub. L. 101–549, § 230(7), struck out ''announce in the Federal Register and'' after ''The Administrator shall''.

Subsec. (f). Pub. L. 101–549, § 230(8), struck out par. (1) designation before ''All light duty vehicles'', inserted reference to all light-duty trucks manufactured during or after model year 1995, and struck out par. (2) which required the Administrator to report to Congress by Oct. 1, 1978, on the economic impact and technological feasibility of the requirements of former par. (1).

Subsec. (h). Pub. L. 101–549, § 208(c), added subsec. (h).

1977—Subsec. (a)(1). Pub. L. 95–95, § 220, inserted provisions covering testing by small manufacturers.

Subsec. (a)(3). Pub. L. 95–95, § 214(b), added par. (3).

Subsec. (b)(2)(A)(i). Pub. L. 95–95, § 214(c)(1), (2), substituted ''certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend'' for ''certificate of conformity was issued, he may suspend'' and ''such regulations and requirements'' for ''such regulations''.

Subsec. (b)(2)(A)(ii). Pub. L. 95–95, § 214(c)(2), substituted ''such regulations and requirements'' for ''such regulations''.

Subsec. (f). Pub. L. 95–95, § 213(a), added subsec. (f).

Subsec. (g). Pub. L. 95–95, § 224(e), added subsec. (g).

Subsec. (g)(3)(D). Pub. L. 95–190 inserted ''shall'' before ''be''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section 8(b) of Pub. L. 91–604 provided that: ''The amendments made by this section [enacting this section and section 7541 of this title] shall not apply to vehicles or engines imported into the United States before the sixtieth day after the date of enactment of this Act [Dec. 31, 1970].''

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations

[2] See References in Text note below.

[3] So in original. Probably should be ''subsections''.

under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title). In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i) of this section.

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b) of this section. The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term ''designed for emission control'' as used in the preceding sentence means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

(b) Testing methods and procedures

If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its[1] the warranty period (as determined under subsection (i) of this section), each vehicle and engine to which regulations under section 7521 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 7525(a)(1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 7521 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3) of this section,

(B) it fails to conform at any time during its[1] the warranty period (as determined under subsection (i) of this section) to the regulations prescribed under section 7521 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer. No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2) of this section.

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of ve-

[1] So in original. The word ''its'' probably should not appear.

hicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulations require.

(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2) of this section.

(B) The instruction under subparagraph (A) of this paragraph shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such manufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service so identified is used in connection with such vehicle or engine, and

(ii) the Administrator finds that such a waiver is in the public interest.

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(4) INTERMEDIATE IN-USE STANDARDS.—

(A) MODEL YEARS 1994 AND 1995.—For light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are subject to standards under table G of section 7521(g)(1) of this title in model years 1994 and 1995 (40 percent of the manufacturer's sales volume in model year 1994 and 80 percent in model year 1995), the standards applicable to NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in table A below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE A—INTERMEDIATE IN-USE STANDARDS LDTS UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Vehicle type	NMHC	CO	NO_x
Light-duty vehicles	0.32	3.4	0.4*
LDT's (0–3,750 LVW)	0.32	5.2	0.4*
LDT's (3,751–5,750 LVW)	0.41	6.7	0.7*

*Not applicable to diesel-fueled vehicles.

(B) MODEL YEARS 1996 AND THEREAFTER.—(i) In the model years 1996 and 1997, light-duty trucks (LDTs) up to 6,000 lbs. gross vehicle weight rating (GVWR) and light-duty vehicles which are not subject to final in-use standards under paragraph (5) (60 percent of the manufacturer's sales volume in model year 1996 and 20 percent in model year 1997) shall be subject to the standards set forth in table A of subparagraph (A) for NMHC, CO, and NO_x for purposes of this subsection in lieu of those set forth in paragraph (5).

(ii) For LDTs of more than 6,000 lbs. GVWR—

(I) in model year 1996 which are subject to the standards set forth in Table H of section 7521(h) of this title (50%);

(II) in model year 1997 (100%); and

(III) in model year 1998 which are not subject to final in-use standards under paragraph (5) (50%);

the standards for NMHC, CO, and NO_x for purposes of this subsection shall be those set forth in Table B below in lieu of the standards for such air pollutants otherwise applicable under this subchapter.

TABLE B—INTERMEDIATE IN-USE STANDARDS LDTS MORE THAN 6,000 LBS. GVWR

Vehicle type	NMHC	CO	NO_x
LDTs (3,751–5,750 lbs. TW)	0.40	5.5	0.88*
LDTs (over 5,750 lbs. TW)	0.49	6.2	1.38*

*Not applicable to diesel-fueled vehicles.

(C) USEFUL LIFE.—In the case of the in-use standards applicable under this paragraph, for purposes of applying this subsection, the applicable useful life shall be 5 years or 50,000 miles or the equivalent (whichever first occurs).

(5) FINAL IN-USE STANDARDS.—(A) After the model year 1995, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (GVWR) and light duty[2] vehicles, the standards for NMHC, CO, and NO_x shall be as provided in Table G in section 7521(g) of this title, except that in applying the standards set forth in Table G for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 10 years or 100,000 miles (or the equivalent), whichever first occurs in the case

[2] So in original. Probably should be "light-duty".

of standards applicable for purposes of certification at 100,000 miles, except that no testing shall be done beyond 7 years or 75,000 miles, or the equivalent whichever first occurs.

LDTs UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLE SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1996	40
1997	80
1998	100

(B) After the model year 1997, for purposes of applying this subsection, in the case of the percentage specified in the implementation schedule below of each manufacturer's sales volume of light-duty trucks of more than 6,000 lbs. gross vehicle weight rating (GVWR), the standards for NMHC, CO, and NO_x shall be as provided in Table H in section 7521(h) of this title, except that in applying the standards set forth in Table H for purposes of determining compliance with this subsection, the applicable useful life shall be (i) 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and (ii) 11 years or 120,000 miles (or the equivalent), whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that no testing shall be done beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

LDTs OF MORE THAN 6,000 LBS. GVWR IMPLEMENTATION SCHEDULE FOR IMPLEMENTATION OF FINAL IN-USE STANDARDS

Model year	Percent
1998	50
1999	100

(6) DIESEL VEHICLES; IN-USE USEFUL LIFE AND TESTING.—(A) In the case of diesel-fueled light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles, the useful life for purposes of determining in-use compliance with the standards under section 7521(g) of this title for NO_x shall be a period of 10 years or 100,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(B) In the case of diesel-fueled light-duty trucks of 6,000 lbs. GVWR or more, the useful life for purposes of determining in-use compliance with the standards under section 7521(h) of this title for NO_x shall be a period of 11 years or 120,000 miles (or the equivalent), whichever first occurs, in the case of standards applicable for purposes of certification at 120,000 miles, except that testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(d) Dealer costs borne by manufacturer

Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) of this section shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) Cost statement

If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 7611 of this title.

(f) Inspection after sale to ultimate purchaser

Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1) of this section, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

(g) Replacement and maintenance costs borne by owner

For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last sentence of subsection (a)(3) of this section)),[3] unless such part, item, or device is covered by any warranty not mandated by this chapter.

(h) Dealer certification

(1) Upon the sale of each new light-duty motor vehicle by a dealer, the dealer shall furnish to the purchaser a certificate that such motor vehicle conforms to the applicable regulations under section 7521 of this title, including notice of the purchaser's rights under paragraph (2).

(2) If at any time during the period for which the warranty applies under subsection (b) of this section, a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2) of this section (without regard to subparagraph (C) thereof).

(3) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

[3] So in original. The second closing parenthesis probably should not appear.

(i) Warranty period

(1) In general

For purposes of subsection (a)(1) of this section and subsection (b) of this section, the warranty period, effective with respect to new light-duty trucks and new light-duty vehicles and engines, manufactured in the model year 1995 and thereafter, shall be the first 2 years or 24,000 miles of use (whichever first occurs), except as provided in paragraph (2). For purposes of subsection (a)(1) of this section and subsection (b) of this section, for other vehicles and engines the warranty period shall be the period established by the Administrator by regulation (promulgated prior to November 15, 1990) for such purposes unless the Administrator subsequently modifies such regulation.

(2) Specified major emission control components

In the case of a specified major emission control component, the warranty period for new light-duty trucks and new light-duty vehicles and engines manufactured in the model year 1995 and thereafter for purposes of subsection (a)(1) of this section and subsection (b) of this section shall be 8 years or 80,000 miles of use (whichever first occurs). As used in this paragraph, the term ''specified major emission control component'' means only a catalytic converter, an electronic emissions control unit, and an onboard emissions diagnostic device, except that the Administrator may designate any other pollution control device or component as a specified major emission control component if—

(A) the device or component was not in general use on vehicles and engines manufactured prior to the model year 1990; and

(B) the Administrator determines that the retail cost (exclusive of installation costs) of such device or component exceeds $200 (in 1989 dollars), adjusted for inflation or deflation as calculated by the Administrator at the time of such determination.

For purposes of this paragraph, the term ''onboard emissions diagnostic device'' means any device installed for the purpose of storing or processing emissions related diagnostic information, but not including any parts or other systems which it monitors except specified major emissions control components. Nothing in this chapter shall be construed to provide that any part (other than a part referred to in the preceding sentence) shall be required to be warranted under this chapter for the period of 8 years or 80,000 miles referred to in this paragraph.

(3) Instructions

Subparagraph (A) of subsection (b)(2) of this section shall apply only where the Administrator has made a determination that the instructions concerned conform to the requirements of subsection (c)(3) of this section.

(July 14, 1955, ch. 360, title II, § 207, as added Pub. L. 91–604, § 8(a), Dec. 31, 1970, 84 Stat. 1696; amended Pub. L. 95–95, title II, §§ 205, 208–210, 212, Aug. 7, 1977, 91 Stat. 754–756, 758; Pub. L. 95–190, § 14(a)(70)–(72), Nov. 16, 1977, 91 Stat. 1403; Pub. L. 101–549, title II, §§ 209, 210, 230(9), Nov. 15, 1990, 104 Stat. 2484, 2485, 2529.)

CODIFICATION

Section was formerly classified to section 1857f–5a of this title.

PRIOR PROVISIONS

A prior section 207 of act July 14, 1955, was renumbered section 208 by Pub. L. 91–604 and is classified to section 7542 of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 209(4), inserted at end ''In the case of vehicles and engines manufactured in the model year 1995 and thereafter such warranty shall require that the vehicle or engine is free from any such defects for the warranty period provided under subsection (i) of this section.''

Subsec. (b). Pub. L. 101–549, § 209(1), (2), substituted ''the warranty period (as determined under subsection (i) of this section)'' for ''useful life (as determined under section 7521(d) of this title)'' in introductory provisions and par. (2)(B), and struck out closing provisions which read as follows: ''For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term 'emission control device or system' means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968.''

Subsec. (c)(4) to (6). Pub. L. 101–549, § 210, added pars. (4) to (6).

Subsec. (g). Pub. L. 101–549, § 230(9), substituted ''the last sentence of subsection (a)(3) of this section)'' for ''the last three sentences of subsection (a)(1) of this section''.

Subsec. (i). Pub. L. 101–549, § 209(3), added subsec. (i).

1977—Subsec. (a). Pub. L. 95–190, § 14(a)(70), designated provisions contained in cl. (3) of subsec. (a), formerly set out as containing cls. (1), (2), and (3), to be par. (3) of subsec. (a) after the amendment by Pub. L. 95–95, § 209(b), which designated provisions of former subsec. (a) as par. (1) and former cls. (1) and (2) as (A) and (B) of par. (1) and added a new par. (2).

Pub. L. 95–95, § 205, added cl. (3).

Subsec. (b). Pub. L. 95–95, § 209(a), (c), inserted provisions to par. (2) that no warranty be held invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if the part was certified as provided in subsec. (a)(2) of this section, and, following par. (2), inserted provisions defining ''emission control device or system''.

Subsec. (c)(3). Pub. L. 95–95, § 208, designated existing provisions as subpars. (A) and (C), added requirement for the bold face printing of a required notice on the first page of the written maintenance instructions in subpar. (A), and added subpar. (B).

Subsec. (f). Pub. L. 95–190, § 14(a)(71), redesignated subsec. (f) as added by Pub. L. 95–95, § 212, as (h).

Subsec. (g). Pub. L. 95–95, § 210, added subsec. (g).

Subsec. (h). Pub. L. 95–190, § 14(a)(71), redesignated subsec. (f) as added by Pub. L. 95–95, § 212, as (h).

Subsec. (h)(2). Pub. L. 95–190, § 14(a)(72), substituted ''determined under'' for ''determined and''.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 209 of Pub. L. 101–549 provided that the amendments made by that section are effective with respect to new motor vehicles and engines manufactured in model year 1995 and thereafter.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

EFFECTIVE DATE

Section not applicable to vehicles or engines imported into United States before sixtieth day after Dec. 31, 1970, see section 8(b) of Pub. L. 91–604, set out as a note under section 7525 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7542. Information collection

(a) Manufacturer's responsibility

Every manufacturer of new motor vehicles or new motor vehicle engines, and every manufacturer of new motor vehicle or engine parts or components, and other persons subject to the requirements of this part or part C of this subchapter, shall establish and maintain records, perform tests where such testing is not otherwise reasonably available under this part and part C of this subchapter (including fees for testing), make reports and provide information the Administrator may reasonably require to determine whether the manufacturer or other person has acted or is acting in compliance with this part and part C of this subchapter and regulations thereunder, or to otherwise carry out the provision of this part and part C of this subchapter, and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times to have access to and copy such records.

(b) Enforcement authority

For the purposes of enforcement of this section, officers or employees duly designated by the Administrator upon presenting appropriate credentials are authorized—

(1) to enter, at reasonable times, any establishment of the manufacturer, or of any person whom the manufacturer engages to perform any activity required by subsection (a) of this section, for the purposes of inspecting or observing any activity conducted pursuant to subsection (a) of this section, and

(2) to inspect records, files, papers, processes, controls, and facilities used in performing any activity required by subsection (a) of this section, by such manufacturer or by any person whom the manufacturer engages to perform any such activity.

(c) Availability to public; trade secrets

Any records, reports, or information obtained under this part or part C of this subchapter shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or a particular portion thereof (other than emission data), to which the Administrator has access under this section, if made public, would divulge methods or processes entitled to protection as trade secrets of that person, the Administrator shall consider the record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18. Any authorized representative of the Administrator shall be considered an employee of the United States for purposes of section 1905 of title 18. Nothing in this section shall prohibit the Administrator or authorized representative of the Administrator from disclosing records, reports or information to other officers, employees or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under the Administrator's control from the duly authorized committees of the Congress.

(July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91–604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1700, 1705, 1713; Pub. L. 101–549, title II, § 211, Nov. 15, 1990, 104 Stat. 2487.)

CODIFICATION

Section was formerly classified to section 1857f–6 of this title.

PRIOR PROVISIONS

A prior section 208 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 501, was renumbered section 209 by Pub. L. 91–604 and is classified to section 7543 of this title.

Another prior section 208 of act July 14, 1955, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 994, was renumbered section 212 by Pub. L. 90–148, renumbered section 213 by Pub. L. 91–604, renumbered 214 by Pub. L. 93–319, and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), manufacturer's responsibility; and in subsec. (b), availability to public except for trade secrets.

1970—Subsec. (a). Pub. L. 91–604, §§ 11(a)(2)(A), 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing and ''part'' for ''subchapter''.

Subsec. (b). Pub. L. 91–604, §§ 10(a), 15(c)(2), substituted provisions authorizing the Administrator to make available to the public any records, reports, of information obtained under subsec. (a) of this section, except those shown to the Administrator to be entitled to protection as trade secrets, for provisions that all information reported or otherwise obtained by the Secretary or his representative pursuant to subsec. (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, be considered confidential for the purpose of such section 1905, and substituted ''Administrator'' for ''Secretary''.

1967—Pub. L. 90–148 reenacted section without change.

§ 7543. State standards

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard

relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b) of this section.

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(e) Nonroad engines or vehicles

(1) Prohibition on certain State standards

No State or any political subdivision thereof shall adopt or attempt to enforce any standard or other requirement relating to the control of emissions from either of the following new nonroad engines or nonroad vehicles subject to regulation under this chapter—

(A) New engines which are used in construction equipment or vehicles or used in farm equipment or vehicles and which are smaller than 175 horsepower.

(B) New locomotives or new engines used in locomotives.

Subsection (b) of this section shall not apply for purposes of this paragraph.

(2) Other nonroad engines or vehicles

(A) In the case of any nonroad vehicles or engines other than those referred to in subparagraph (A) or (B) of paragraph (1), the Administrator shall, after notice and opportunity for public hearing, authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such authorization shall be granted if the Administrator finds that—

(i) the determination of California is arbitrary and capricious,

(ii) California does not need such California standards to meet compelling and extraordinary conditions, or

(iii) California standards and accompanying enforcement procedures are not consistent with this section.

(B) Any State other than California which has plan provisions approved under part D of subchapter I of this chapter may adopt and enforce, after notice to the Administrator, for any period, standards relating to control of emissions from nonroad vehicles or engines (other than those referred to in subparagraph (A) or (B) of paragraph (1)) and take such other actions as are referred to in subparagraph (A) of this paragraph respecting such vehicles or engines if—

(i) such standards and implementation and enforcement are identical, for the period concerned, to the California standards authorized by the Administrator under subparagraph (A), and

(ii) California and such State adopt such standards at least 2 years before commencement of the period for which the standards take effect.

The Administrator shall issue regulations to implement this subsection.

(July 14, 1955, ch. 360, title II, § 209, formerly § 208, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 501; renumbered and amended Pub. L. 91–604, §§ 8(a), 11(a)(2)(A), 15(c)(2), Dec. 31, 1970, 84 Stat. 1694, 1705, 1713; Pub. L. 95–95, title II, §§ 207, 221, Aug. 7, 1977, 91 Stat. 755, 762; Pub. L. 101–549, title II, § 222(b), Nov. 15, 1990, 104 Stat. 2502.)

CODIFICATION

Section was formerly classified to section 1857f–6a of this title.

PRIOR PROVISIONS

A prior section 209 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 502, was renumbered

section 210 by Pub. L. 91–604 and is classified to section 7544 of this title.

Another prior section 209 of act July 14, 1955, ch. 360, title II, as added Oct. 20, 1965, Pub. L. 89–272, title I, § 101(8), 79 Stat. 995, related to appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, and was classified to section 1857f–8 of this title, prior to repeal by Pub. L. 89–675, § 2(b), Oct. 15, 1966, 80 Stat. 954.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–549 added subsec. (e).

1977—Subsec. (b). Pub. L. 95–95, § 207, designated existing provisions as par. (1), substituted ''March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards'' for ''March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling the extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title'', added subpars. (A), (B), and (C), and added pars. (2) and (3).

Subsecs. (c), (d). Pub. L. 95–95, § 221, added subsec. (c) and redesignated former subsec. (c) as (d).

1970—Subsec. (a). Pub. L. 91–604, § 11(a)(2)(A), substituted ''part'' for ''subchapter''.

Subsec. (b). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

Subsec. (c). Pub. L. 91–604, § 11(a)(2)(A), substituted ''part'' for ''subchapter''.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7544. State grants

The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.

(July 14, 1955, ch. 360, title II, § 210, formerly § 209, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91–604, §§ 8(a), 10(b), Dec. 31, 1970, 84 Stat. 1694, 1700; Pub. L. 95–95, title II, § 204, Aug. 7, 1977, 91 Stat. 754.)

CODIFICATION

Section was formerly classified to section 1857f–6b of this title.

PRIOR PROVISIONS

A prior section 210 of act July 14, 1955, was renumbered section 211 by Pub. L. 91–604 and is classified to section 7545 of this title.

AMENDMENTS

1977—Pub. L. 95–95 inserted provision allowing grants to be made by way of reimbursement in any case in which amounts have been expended by States before the date on which the grants were made.

1970—Pub. L. 91–604, § 10(b), substituted provisions authorizing the Administrator to make grants to appropriate State agencies for the development and maintenance of effective vehicle emission devices and systems inspection and emission testing and control programs, for provisions authorizing the Secretary to make grants to appropriate State air pollution control agencies for the development of meaningful uniform motor vehicle emission device inspection and emission testing programs.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§ 7545. Regulation of fuels

(a) Authority of Administrator to regulate

The Administrator may by regulation designate any fuel or fuel additive (including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles) and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

(b) Registration requirement

(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator shall, on a regular basis, require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health and environmental effects of the fuel or additive (including carcinogenic, teratogenic, or mutagenic effects); and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle, vehicle engine, nonroad engine or nonroad vehicle, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(4) STUDY ON CERTAIN FUEL ADDITIVES AND BLENDSTOCKS.—

(A) IN GENERAL.—Not later than 2 years after August 8, 2005, the Administrator shall—

(i) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of increased use of, and the feasibility of using as substitutes for methyl tertiary butyl ether in gasoline—

(I) ethyl tertiary butyl ether;

(II) tertiary amyl methyl ether;

(III) di-isopropyl ether;

(IV) tertiary butyl alcohol;

(V) other ethers and heavy alcohols, as determined by then[1] Administrator;

(VI) ethanol;

(VII) iso-octane; and

(VIII) alkylates; and

(ii) conduct a study on the effects on public health (including the effects on children, pregnant women, minority or low-income communities, and other sensitive populations), air quality, and water resources of the adjustment for ethanol-blended reformulated gasoline to the volatile organic compounds performance requirements that are applicable under paragraphs (1) and (3) of subsection (k) of this section; and

(iii) submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing the results of the studies under clauses (i) and (ii).

(B) CONTRACTS FOR STUDY.—In carrying out this paragraph, the Administrator may enter into one or more contracts with nongovernmental entities such as—

(i) the national energy laboratories; and

(ii) institutions of higher education (as defined in section 1001 of title 20).

[1] So in original. Probably should be ''the''.

(c) Offending fuels and fuel additives; control; prohibition

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle, motor vehicle engine, or nonroad engine or nonroad vehicle if, in the judgment of the Administrator, any fuel or fuel additive or any emission product of such fuel or fuel additive causes, or contributes, to air pollution or water pollution (including any degradation in the quality of groundwater) that may reasonably be anticipated to endanger the public health or welfare, or (B)[2] if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 7521 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

[2] So in original. Par. (1) does not contain a cl. (A).

(B) In obtaining information under subparagraph (A), section 7607(a) of this title (relating to subpenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting any characteristic or component of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition of the characteristic or component of a fuel or fuel additive under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such characteristic or component of a fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 7543(a) of this title has at any time been waived under section 7543(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C)(i) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a State control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

(ii) The Administrator may temporarily waive a control or prohibition respecting the use of a fuel or fuel additive required or regulated by the Administrator pursuant to subsection (c), (h), (i), (k), or (m) of this section or prescribed in an applicable implementation plan under section 7410 of this title approved by the Administrator under clause (i) of this subparagraph if, after consultation with, and concurrence by, the Secretary of Energy, the Administrator determines that—

(I) extreme and unusual fuel or fuel additive supply circumstances exist in a State or region of the Nation which prevent the distribution of an adequate supply of the fuel or fuel additive to consumers;

(II) such extreme and unusual fuel and fuel additive supply circumstances are the result of a natural disaster, an Act of God, a pipeline or refinery equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuel or fuel additive to such State or region; and

(III) it is in the public interest to grant the waiver (for example, when a waiver is necessary to meet projected temporary shortfalls in the supply of the fuel or fuel additive in a State or region of the Nation which cannot otherwise be compensated for).

(iii) If the Administrator makes the determinations required under clause (ii), such a temporary extreme and unusual fuel and fuel additive supply circumstances waiver shall be permitted only if—

(I) the waiver applies to the smallest geographic area necessary to address the extreme and unusual fuel and fuel additive supply circumstances;

(II) the waiver is effective for a period of 20 calendar days or, if the Administrator determines that a shorter waiver period is adequate, for the shortest practicable time period necessary to permit the correction of the extreme and unusual fuel and fuel additive supply circumstances and to mitigate impact on air quality;

(III) the waiver permits a transitional period, the exact duration of which shall be determined by the Administrator (but which shall be for the shortest practicable period), after the termination of the temporary waiver to permit wholesalers and retailers to blend down their wholesale and retail inventory;

(IV) the waiver applies to all persons in the motor fuel distribution system; and

(V) the Administrator has given public notice to all parties in the motor fuel distribution system, and local and State regulators, in the State or region to be covered by the waiver.

The term ''motor fuel distribution system'' as used in this clause shall be defined by the Administrator through rulemaking.

(iv) Within 180 days of August 8, 2005, the Administrator shall promulgate regulations to implement clauses (ii) and (iii).

(v)[3] Nothing in this subparagraph shall—

(I) limit or otherwise affect the application of any other waiver authority of the Administrator pursuant to this section or pursuant to a regulation promulgated pursuant to this section; and

(II) subject any State or person to an enforcement action, penalties, or liability solely arising from actions taken pursuant to the issuance of a waiver under this subparagraph.

(v)(I)[3] The Administrator shall have no authority, when considering a State implementation plan or a State implementation plan revision, to approve under this paragraph any fuel included in such plan or revision if the effect of such approval increases the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans.

[3] So in original. Two cls. (v) have been enacted.

(II) The Administrator, in consultation with the Secretary of Energy, shall determine the total number of fuels approved under this paragraph as of September 1, 2004, in all State implementation plans and shall publish a list of such fuels, including the States and Petroleum Administration for Defense District in which they are used, in the Federal Register for public review and comment no later than 90 days after August 8, 2005.

(III) The Administrator shall remove a fuel from the list published under subclause (II) if a fuel ceases to be included in a State implementation plan or if a fuel in a State implementation plan is identical to a Federal fuel formulation implemented by the Administrator, but the Administrator shall not reduce the total number of fuels authorized under the list published under subclause (II).

(IV) Subclause (I) shall not limit the Administrator's authority to approve a control or prohibition respecting any new fuel under this paragraph in a State implementation plan or revision to a State implementation plan if such new fuel—

(aa) completely replaces a fuel on the list published under subclause (II); or

(bb) does not increase the total number of fuels on the list published under subclause (II) as of September 1, 2004.

In the event that the total number of fuels on the list published under subclause (II) at the time of the Administrator's consideration of a control or prohibition respecting a new fuel is lower than the total number of fuels on such list as of September 1, 2004, the Administrator may approve a control or prohibition respecting a new fuel under this subclause if the Administrator, after consultation with the Secretary of Energy, publishes in the Federal Register after notice and comment a finding that, in the Administrator's judgment, such control or prohibition respecting a new fuel will not cause fuel supply or distribution interruptions or have a significant adverse impact on fuel producibility in the affected area or contiguous areas.

(V) The Administrator shall have no authority under this paragraph, when considering any particular State's implementation plan or a revision to that State's implementation plan, to approve any fuel unless that fuel was, as of the date of such consideration, approved in at least one State implementation plan in the applicable Petroleum Administration for Defense District. However, the Administrator may approve as part of a State implementation plan or State implementation plan revision a fuel with a summertime Reid Vapor Pressure of 7.0 psi. In no event shall such approval by the Administrator cause an increase in the total number of fuels on the list published under subclause (II).

(VI) Nothing in this clause shall be construed to have any effect regarding any available authority of States to require the use of any fuel additive registered in accordance with subsection (b) of this section, including any fuel additive registered in accordance with subsection (b) of this section after August 8, 2005.

(d) Penalties and injunctions

(1) Civil penalties

Any person who violates subsection (a), (f), (g), (k), (*l*), (m), (n), or (*o*) of this section or the regulations prescribed under subsection (c), (h), (i), (k), (*l*), (m), (n), or (*o*) of this section or who fails to furnish any information or conduct any tests required by the Administrator under subsection (b) of this section shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation prescribed under subsection (c), (k), (*l*), (m), or (*o*) of this section which establishes a regulatory standard based upon a multiday averaging period shall constitute a separate day of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with subsections (b) and (c) of section 7524 of this title.

(2) Injunctive authority

The district courts of the United States shall have jurisdiction to restrain violations of subsections (a), (f), (g), (k), (*l*), (m), (n), and (*o*) of this section and of the regulations prescribed under subsections (c), (h), (i), (k), (*l*), (m), (n), and (*o*) of this section, to award other appropriate relief, and to compel the furnishing of information and the conduct of tests required by the Administrator under subsection (b) of this section. Actions to restrain such violations and compel such actions shall be brought by and in the name of the United States. In any such action, subpoenas for witnesses who are required to attend a district court in any district may run into any other district.

(e) Testing of fuels and fuel additives

(1) Not later than one year after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations which implement the authority under subsection (b)(2)(A) and (B) of this section with respect to each fuel or fuel additive which is registered on the date of promulgation of such regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

(2) Regulations under subsection (b) of this section to carry out this subsection shall require that the requisite information be provided to the Administrator by each such manufacturer—

(A) prior to registration, in the case of any fuel or fuel additive which is not registered on the date of promulgation of such regulations; or

(B) not later than three years after the date of promulgation of such regulations, in the case of any fuel or fuel additive which is registered on such date.

(3) In promulgating such regulations, the Administrator may—

(A) exempt any small business (as defined in such regulations) from or defer or modify the requirements of, such regulations with respect to any such small business;

(B) provide for cost-sharing with respect to the testing of any fuel or fuel additive which

is manufactured or processed by two or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

(C) exempt any person from such regulations with respect to a particular fuel or fuel additive upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing.

(f) New fuels and fuel additives

(1)(A) Effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(B) Effective upon November 15, 1990, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for use by any person in motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(2) Effective November 30, 1977, it shall be unlawful for any manufacturer of any fuel to introduce into commerce any gasoline which contains a concentration of manganese in excess of .0625 grams per gallon of fuel, except as otherwise provided pursuant to a waiver under paragraph (4).

(3) Any manufacturer of any fuel or fuel additive which prior to March 31, 1977, and after January 1, 1974, first introduced into commerce or increased the concentration in use of a fuel or fuel additive that would otherwise have been prohibited under paragraph (1)(A) if introduced on or after March 31, 1977 shall, not later than September 15, 1978, cease to distribute such fuel or fuel additive in commerce. During the period beginning 180 days after August 7, 1977, and before September 15, 1978, the Administrator shall prohibit, or restrict the concentration of any fuel additive which he determines will cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified under section 7525 of this title.

(4) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or fuel additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of the motor vehicle, motor vehicle engine, nonroad engine or nonroad vehicle in which such device or system is used) to achieve compliance by the vehicle or engine with the emission standards with respect to which it has been certified pursuant to sections 7525 and 7547(a) of this title. The Administrator shall take final action to grant or deny an application submitted under this paragraph, after public notice and comment, within 270 days of the receipt of such an application.

(5) No action of the Administrator under this section may be stayed by any court pending judicial review of such action.

(g) Misfueling

(1) No person shall introduce, or cause or allow the introduction of, leaded gasoline into any motor vehicle which is labeled ''unleaded gasoline only,'' which is equipped with a gasoline tank filler inlet designed for the introduction of unleaded gasoline, which is a 1990 or later model year motor vehicle, or which such person knows or should know is a vehicle designed solely for the use of unleaded gasoline.

(2) Beginning October 1, 1993, no person shall introduce or cause or allow the introduction into any motor vehicle of diesel fuel which such person knows or should know contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40 or such equivalent alternative aromatic level as prescribed by the Administrator under subsection (i)(2) of this section.

(h) Reid Vapor Pressure requirements

(1) Prohibition

Not later than 6 months after November 15, 1990, the Administrator shall promulgate regulations making it unlawful for any person during the high ozone season (as defined by the Administrator) to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure in excess of 9.0 pounds per square inch (psi). Such regulations shall also establish more stringent Reid Vapor Pressure standards in a nonattainment area as the Administrator finds necessary to generally achieve comparable evaporative emissions (on a per-vehicle basis) in nonattainment areas, taking into consideration the enforceability of such standards, the need of an area for emission control, and economic factors.

(2) Attainment areas

The regulations under this subsection shall not make it unlawful for any person to sell, offer for supply, transport, or introduce into commerce gasoline with a Reid Vapor Pressure of 9.0 pounds per square inch (psi) or lower in any area designated under section 7407 of this title as an attainment area. Notwithstanding the preceding sentence, the Administrator may impose a Reid vapor pressure requirement lower than 9.0 pounds per square inch (psi) in any area, formerly an ozone nonattainment area, which has been redesignated as an attainment area.

(3) Effective date; enforcement

The regulations under this subsection shall provide that the requirements of this sub-

section shall take effect not later than the high ozone season for 1992, and shall include such provisions as the Administrator determines are necessary to implement and enforce the requirements of this subsection.

(4) Ethanol waiver

For fuel blends containing gasoline and 10 percent denatured anhydrous ethanol, the Reid vapor pressure limitation under this subsection shall be one pound per square inch (psi) greater than the applicable Reid vapor pressure limitations established under paragraph (1); *Provided, however*, That a distributor, blender, marketer, reseller, carrier, retailer, or wholesale purchaser-consumer shall be deemed to be in full compliance with the provisions of this subsection and the regulations promulgated thereunder if it can demonstrate (by showing receipt of a certification or other evidence acceptable to the Administrator) that—

(A) the gasoline portion of the blend complies with the Reid vapor pressure limitations promulgated pursuant to this subsection;

(B) the ethanol portion of the blend does not exceed its waiver condition under subsection (f)(4) of this section; and

(C) no additional alcohol or other additive has been added to increase the Reid Vapor Pressure of the ethanol portion of the blend.

(5) Exclusion from ethanol waiver

(A) Promulgation of regulations

Upon notification, accompanied by supporting documentation, from the Governor of a State that the Reid vapor pressure limitation established by paragraph (4) will increase emissions that contribute to air pollution in any area in the State, the Administrator shall, by regulation, apply, in lieu of the Reid vapor pressure limitation established by paragraph (4), the Reid vapor pressure limitation established by paragraph (1) to all fuel blends containing gasoline and 10 percent denatured anhydrous ethanol that are sold, offered for sale, dispensed, supplied, offered for supply, transported, or introduced into commerce in the area during the high ozone season.

(B) Deadline for promulgation

The Administrator shall promulgate regulations under subparagraph (A) not later than 90 days after the date of receipt of a notification from a Governor under that subparagraph.

(C) Effective date

(i) In general

With respect to an area in a State for which the Governor submits a notification under subparagraph (A), the regulations under that subparagraph shall take effect on the later of—

(I) the first day of the first high ozone season for the area that begins after the date of receipt of the notification; or

(II) 1 year after the date of receipt of the notification.

(ii) Extension of effective date based on determination of insufficient supply

(I) In general

If, after receipt of a notification with respect to an area from a Governor of a State under subparagraph (A), the Administrator determines, on the Administrator's own motion or on petition of any person and after consultation with the Secretary of Energy, that the promulgation of regulations described in subparagraph (A) would result in an insufficient supply of gasoline in the State, the Administrator, by regulation—

(aa) shall extend the effective date of the regulations under clause (i) with respect to the area for not more than 1 year; and

(bb) may renew the extension under item (aa) for two additional periods, each of which shall not exceed 1 year.

(II) Deadline for action on petitions

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(6) Areas covered

The provisions of this subsection shall apply only to the 48 contiguous States and the District of Columbia.

(i) Sulfur content requirements for diesel fuel

(1) Effective October 1, 1993, no person shall manufacture, sell, supply, offer for sale or supply, dispense, transport, or introduce into commerce motor vehicle diesel fuel which contains a concentration of sulfur in excess of 0.05 percent (by weight) or which fails to meet a cetane index minimum of 40.

(2) Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations to implement and enforce the requirements of paragraph (1). The Administrator may require manufacturers and importers of diesel fuel not intended for use in motor vehicles to dye such fuel in a particular manner in order to segregate it from motor vehicle diesel fuel. The Administrator may establish an equivalent alternative aromatic level to the cetane index specification in paragraph (1).

(3) The sulfur content of fuel required to be used in the certification of 1991 through 1993 model year heavy-duty diesel vehicles and engines shall be 0.10 percent (by weight). The sulfur content and cetane index minimum of fuel required to be used in the certification of 1994 and later model year heavy-duty diesel vehicles and engines shall comply with the regulations promulgated under paragraph (2).

(4) The States of Alaska and Hawaii may be exempted from the requirements of this subsection in the same manner as provided in section 7625[4] of this title. The Administrator shall take final action on any petition filed under section 7625[4] of this title or this paragraph for an exemption from the requirements of this sub-

[4] So in original. Probably should be section ''7625–1''.

section, within 12 months from the date of the petition.

(j) Lead substitute gasoline additives

(1) After November 15, 1990, any person proposing to register any gasoline additive under subsection (a) of this section or to use any previously registered additive as a lead substitute may also elect to register the additive as a lead substitute gasoline additive for reducing valve seat wear by providing the Administrator with such relevant information regarding product identity and composition as the Administrator deems necessary for carrying out the responsibilities of paragraph (2) of this subsection (in addition to other information which may be required under subsection (b) of this section).

(2) In addition to the other testing which may be required under subsection (b) of this section, in the case of the lead substitute gasoline additives referred to in paragraph (1), the Administrator shall develop and publish a test procedure to determine the additives' effectiveness in reducing valve seat wear and the additives' tendencies to produce engine deposits and other adverse side effects. The test procedures shall be developed in cooperation with the Secretary of Agriculture and with the input of additive manufacturers, engine and engine components manufacturers, and other interested persons. The Administrator shall enter into arrangements with an independent laboratory to conduct tests of each additive using the test procedures developed and published pursuant to this paragraph. The Administrator shall publish the results of the tests by company and additive name in the Federal Register along with, for comparison purposes, the results of applying the same test procedures to gasoline containing 0.1 gram of lead per gallon in lieu of the lead substitute gasoline additive. The Administrator shall not rank or otherwise rate the lead substitute additives. Test procedures shall be established within 1 year after November 15, 1990. Additives shall be tested within 18 months of November 15, 1990, or 6 months after the lead substitute additives are identified to the Administrator, whichever is later.

(3) The Administrator may impose a user fee to recover the costs of testing of any fuel additive referred to in this subsection. The fee shall be paid by the person proposing to register the fuel additive concerned. Such fee shall not exceed $20,000 for a single fuel additive.

(4) There are authorized to be appropriated to the Administrator not more than $1,000,000 for the second full fiscal year after November 15, 1990, to establish test procedures and conduct engine tests as provided in this subsection. Not more than $500,000 per year is authorized to be appropriated for each of the 5 subsequent fiscal years.

(5) Any fees collected under this subsection shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(k) Reformulated gasoline for conventional vehicles

(1) EPA regulations

(A) In general

Not later than November 15, 1991, the Administrator shall promulgate regulations under this section establishing requirements for reformulated gasoline to be used in gasoline-fueled vehicles in specified nonattainment areas. Such regulations shall require the greatest reduction in emissions of ozone forming volatile organic compounds (during the high ozone season) and emissions of toxic air pollutants (during the entire year) achievable through the reformulation of conventional gasoline, taking into consideration the cost of achieving such emission reductions, any nonair-quality and other air-quality related health and environmental impacts and energy requirements.

(B) Maintenance of toxic air pollutant emissions reductions from reformulated gasoline

(i) Definition of PADD

In this subparagraph the term ''PADD'' means a Petroleum Administration for Defense District.

(ii) Regulations concerning emissions of toxic air pollutants

Not later than 270 days after August 8, 2005, the Administrator shall establish by regulation, for each refinery or importer (other than a refiner or importer in a State that has received a waiver under section 7543(b) of this title with respect to gasoline produced for use in that State), standards for toxic air pollutants from use of the reformulated gasoline produced or distributed by the refiner or importer that maintain the reduction of the average annual aggregate emissions of toxic air pollutants for reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002 (as determined on the basis of data collected by the Administrator with respect to the refiner or importer).

(iii) Standards applicable to specific refineries or importers

(I) Applicability of standards

For any calendar year, the standards applicable to a refiner or importer under clause (ii) shall apply to the quantity of gasoline produced or distributed by the refiner or importer in the calendar year only to the extent that the quantity is less than or equal to the average annual quantity of reformulated gasoline produced or distributed by the refiner or importer during calendar years 2001 and 2002.

(II) Applicability of other standards

For any calendar year, the quantity of gasoline produced or distributed by a refiner or importer that is in excess of the quantity subject to subclause (I) shall be subject to standards for emissions of

toxic air pollutants promulgated under subparagraph (A) and paragraph (3)(B).

(iv) Credit program

The Administrator shall provide for the granting and use of credits for emissions of toxic air pollutants in the same manner as provided in paragraph (7).

(v) Regional protection of toxics reduction baselines

(I) In general

Not later than 60 days after August 8, 2005, and not later than April 1 of each calendar year that begins after August 8, 2005, the Administrator shall publish in the Federal Register a report that specifies, with respect to the previous calendar year—

(aa) the quantity of reformulated gasoline produced that is in excess of the average annual quantity of reformulated gasoline produced in 2001 and 2002; and

(bb) the reduction of the average annual aggregate emissions of toxic air pollutants in each PADD, based on retail survey data or data from other appropriate sources.

(II) Effect of failure to maintain aggregate toxics reductions

If, in any calendar year, the reduction of the average annual aggregate emissions of toxic air pollutants in a PADD fails to meet or exceed the reduction of the average annual aggregate emissions of toxic air pollutants in the PADD in calendar years 2001 and 2002, the Administrator, not later than 90 days after the date of publication of the report for the calendar year under subclause (I), shall—

(aa) identify, to the maximum extent practicable, the reasons for the failure, including the sources, volumes, and characteristics of reformulated gasoline that contributed to the failure; and

(bb) promulgate revisions to the regulations promulgated under clause (ii), to take effect not earlier than 180 days but not later than 270 days after the date of promulgation, to provide that, notwithstanding clause (iii)(II), all reformulated gasoline produced or distributed at each refiner or importer shall meet the standards applicable under clause (iii)(I) beginning not later than April 1 of the calendar year following publication of the report under subclause (I) and in each calendar year thereafter.

(vi) Not later than July 1, 2007, the Administrator shall promulgate final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels, as provided for in section 80.1045 of title 40, Code of Federal Regulations (as in effect on August 8, 2005), and as authorized under section 7521(*l*)[5] of this title. If the Administrator promulgates by such date, final regulations to control hazardous air pollutants from motor vehicles and motor vehicle fuels that achieve and maintain greater overall reductions in emissions of air toxics from reformulated gasoline than the reductions that would be achieved under subsection (k)(1)(B) of this section as amended by this clause, then subsections (k)(1)(B)(i) through (k)(1)(B)(v) of this section shall be null and void and regulations promulgated thereunder shall be rescinded and have no further effect.

(2) General requirements

The regulations referred to in paragraph (1) shall require that reformulated gasoline comply with paragraph (3) and with each of the following requirements (subject to paragraph (7)):

(A) NO_x emissions

The emissions of oxides of nitrogen (NO_x) from baseline vehicles when using the reformulated gasoline shall be no greater than the level of such emissions from such vehicles when using baseline gasoline. If the Administrator determines that compliance with the limitation on emissions of oxides of nitrogen under the preceding sentence is technically infeasible, considering the other requirements applicable under this subsection to such gasoline, the Administrator may, as appropriate to ensure compliance with this subparagraph, adjust (or waive entirely), any other requirements of this paragraph or any requirements applicable under paragraph (3)(A).

(B) Benzene content

The benzene content of the gasoline shall not exceed 1.0 percent by volume.

(C) Heavy metals

The gasoline shall have no heavy metals, including lead or manganese. The Administrator may waive the prohibition contained in this subparagraph for a heavy metal (other than lead) if the Administrator determines that addition of the heavy metal to the gasoline will not increase, on an aggregate mass or cancer-risk basis, toxic air pollutant emissions from motor vehicles.

(3) More stringent of formula or performance standards

The regulations referred to in paragraph (1) shall require compliance with the more stringent of either the requirements set forth in subparagraph (A) or the requirements of subparagraph (B) of this paragraph. For purposes of determining the more stringent provision, clause (i) and clause (ii) of subparagraph (B) shall be considered independently.

(A) Formula

(i) Benzene

The benzene content of the reformulated gasoline shall not exceed 1.0 percent by volume.

(ii) Aromatics

The aromatic hydrocarbon content of the reformulated gasoline shall not exceed 25 percent by volume.

[5] So in original. See References in Text note below.

(iii) Lead

The reformulated gasoline shall have no lead content.

(iv) Detergents

The reformulated gasoline shall contain additives to prevent the accumulation of deposits in engines or vehicle fuel supply systems.

(B) Performance standard

(i) VOC emissions

During the high ozone season (as defined by the Administrator), the aggregate emissions of ozone forming volatile organic compounds from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of ozone forming volatile organic compounds from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in VOC emissions. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

(ii) Toxics

During the entire year, the aggregate emissions of toxic air pollutants from baseline vehicles when using the reformulated gasoline shall be 15 percent below the aggregate emissions of toxic air pollutants from such vehicles when using baseline gasoline. Effective in calendar year 2000 and thereafter, 25 percent shall be substituted for 15 percent in applying this clause, except that the Administrator may adjust such 25 percent requirement to provide for a lesser or greater reduction based on technological feasibility, considering the cost of achieving such reductions in toxic air pollutants. No such adjustment shall provide for less than a 20 percent reduction below the aggregate emissions of such air pollutants from such vehicles when using baseline gasoline. The reductions required under this clause shall be on a mass basis.

Any reduction greater than a specific percentage reduction required under this subparagraph shall be treated as satisfying such percentage reduction requirement.

(4) Certification procedures

(A) Regulations

The regulations under this subsection shall include procedures under which the Administrator shall certify reformulated gasoline as complying with the requirements established pursuant to this subsection. Under such regulations, the Administrator shall establish procedures for any person to petition the Administrator to certify a fuel formulation, or slate of fuel formulations. Such procedures shall further require that the Administrator shall approve or deny such petition within 180 days of receipt. If the Administrator fails to act within such 180-day period, the fuel shall be deemed certified until the Administrator completes action on the petition.

(B) Certification; equivalency

The Administrator shall certify a fuel formulation or slate of fuel formulations as complying with this subsection if such fuel or fuels—

(i) comply with the requirements of paragraph (2), and

(ii) achieve equivalent or greater reductions in emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants than are achieved by a reformulated gasoline meeting the applicable requirements of paragraph (3).

(C) EPA determination of emissions level

Within 1 year after November 15, 1990, the Administrator shall determine the level of emissions of ozone forming volatile organic compounds and emissions of toxic air pollutants emitted by baseline vehicles when operating on baseline gasoline. For purposes of this subsection, within 1 year after November 15, 1990, the Administrator shall, by rule, determine appropriate measures of, and methodology for, ascertaining the emissions of air pollutants (including calculations, equipment, and testing tolerances).

(5) Prohibition

Effective beginning January 1, 1995, each of the following shall be a violation of this subsection:

(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

(B) The sale or dispensing by any refiner, blender, importer, or marketer of conventional gasoline for resale in any covered area, without (i) segregating such gasoline from reformulated gasoline, and (ii) clearly marking such conventional gasoline as ''conventional gasoline, not for sale to ultimate consumer in a covered area''.

Any refiner, blender, importer or marketer who purchases property[6] segregated and marked conventional gasoline, and thereafter labels, represents, or wholesales such gasoline as reformulated gasoline shall also be in violation of this subsection. The Administrator may impose sampling, testing, and recordkeeping requirements upon any refiner, blender, importer, or marketer to prevent violations of this section.

(6) Opt-in areas

(A) Classified areas

(i) In general

Upon the application of the Governor of a State, the Administrator shall apply the

[6] So in original. Probably should be ''properly''.

prohibition set forth in paragraph (5) in any area in the State classified under subpart 2 of part D of subchapter I of this chapter as a Marginal, Moderate, Serious, or Severe Area (without regard to whether or not the 1980 population of the area exceeds 250,000). In any such case, the Administrator shall establish an effective date for such prohibition as he deems appropriate, not later than January 1, 1995, or 1 year after such application is received, whichever is later. The Administrator shall publish such application in the Federal Register upon receipt.

(ii) Effect of insufficient domestic capacity to produce reformulated gasoline

If the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient domestic capacity to produce gasoline certified under this subsection, the Administrator shall, by rule, extend the effective date of such prohibition in Marginal, Moderate, Serious, or Severe Areas referred to in clause (i) for one additional year, and may, by rule, renew such extension for 2 additional one-year periods. The Administrator shall act on any petition submitted under this subparagraph within 6 months after receipt of the petition. The Administrator shall issue such extensions for areas with a lower ozone classification before issuing any such extension for areas with a higher classification.

(B) Ozone transport region

(i) Application of prohibition

(I) In general

On application of the Governor of a State in the ozone transport region established by section 7511c(a) of this title, the Administrator, not later than 180 days after the date of receipt of the application, shall apply the prohibition specified in paragraph (5) to any area in the State (other than an area classified as a marginal, moderate, serious, or severe ozone nonattainment area under subpart 2 of part D of subchapter I of this chapter) unless the Administrator determines under clause (iii) that there is insufficient capacity to supply reformulated gasoline.

(II) Publication of application

As soon as practicable after the date of receipt of an application under subclause (I), the Administrator shall publish the application in the Federal Register.

(ii) Period of applicability

Under clause (i), the prohibition specified in paragraph (5) shall apply in a State—

(I) commencing as soon as practicable but not later than 2 years after the date of approval by the Administrator of the application of the Governor of the State; and

(II) ending not earlier than 4 years after the commencement date determined under subclause (I).

(iii) Extension of commencement date based on insufficient capacity

(I) In general

If, after receipt of an application from a Governor of a State under clause (i), the Administrator determines, on the Administrator's own motion or on petition of any person, after consultation with the Secretary of Energy, that there is insufficient capacity to supply reformulated gasoline, the Administrator, by regulation—

(aa) shall extend the commencement date with respect to the State under clause (ii)(I) for not more than 1 year; and

(bb) may renew the extension under item (aa) for 2 additional periods, each of which shall not exceed 1 year.

(II) Deadline for action on petitions

The Administrator shall act on any petition submitted under subclause (I) not later than 180 days after the date of receipt of the petition.

(7) Credits

(A) The regulations promulgated under this subsection shall provide for the granting of an appropriate amount of credits to a person who refines, blends, or imports and certifies a gasoline or slate of gasoline that—

(i) has an aromatic hydrocarbon content (by volume) that is less than the maximum aromatic hydrocarbon content required to comply with paragraph (3); or

(ii) has a benzene content (by volume) that is less than the maximum benzene content specified in paragraph (2).

(B) The regulations described in subparagraph (A) shall also provide that a person who is granted credits may use such credits, or transfer all or a portion of such credits to another person for use within the same nonattainment area, for the purpose of complying with this subsection.

(C) The regulations promulgated under subparagraphs (A) and (B) shall ensure the enforcement of the requirements for the issuance, application, and transfer of the credits. Such regulations shall prohibit the granting or transfer of such credits for use with respect to any gasoline in a nonattainment area, to the extent the use of such credits would result in any of the following:

(i) An average gasoline aromatic hydrocarbon content (by volume) for the nonattainment (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average fuel aromatic hydrocarbon content (by volume) that would occur in the absence of using any such credits.

(ii) An average benzene content (by volume) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) higher than the average benzene content (by volume) that would occur in the absence of using any such credits.

(8) Anti-dumping rules

(A) In general

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations applicable to each refiner, blender, or importer of gasoline ensuring that gasoline sold or introduced into commerce by such refiner, blender, or importer (other than reformulated gasoline subject to the requirements of paragraph (1)) does not result in average per gallon emissions (measured on a mass basis) of (i) volatile organic compounds, (ii) oxides of nitrogen, (iii) carbon monoxide, and (iv) toxic air pollutants in excess of such emissions of such pollutants attributable to gasoline sold or introduced into commerce in calendar year 1990 by that refiner, blender, or importer. Such regulations shall take effect beginning January 1, 1995.

(B) Adjustments

In evaluating compliance with the requirements of subparagraph (A), the Administrator shall make appropriate adjustments to insure that no credit is provided for improvement in motor vehicle emissions control in motor vehicles sold after the calendar year 1990.

(C) Compliance determined for each pollutant independently

In determining whether there is an increase in emissions in violation of the prohibition contained in subparagraph (A) the Administrator shall consider an increase in each air pollutant referred to in clauses (i) through (iv) as a separate violation of such prohibition, except that the Administrator shall promulgate regulations to provide that any increase in emissions of oxides of nitrogen resulting from adding oxygenates to gasoline may be offset by an equivalent or greater reduction (on a mass basis) in emissions of volatile organic compounds, carbon monoxide, or toxic air pollutants, or any combination of the foregoing.

(D) Compliance period

The Administrator shall promulgate an appropriate compliance period or appropriate compliance periods to be used for assessing compliance with the prohibition contained in subparagraph (A).

(E) Baseline for determining compliance

If the Administrator determines that no adequate and reliable data exists regarding the composition of gasoline sold or introduced into commerce by a refiner, blender, or importer in calendar year 1990, for such refiner, blender, or importer, baseline gasoline shall be substituted for such 1990 gasoline in determining compliance with subparagraph (A).

(9) Emissions from entire vehicle

In applying the requirements of this subsection, the Administrator shall take into account emissions from the entire motor vehicle, including evaporative, running, refueling, and exhaust emissions.

(10) Definitions

For purposes of this subsection—

(A) Baseline vehicles

The term ''baseline vehicles'' mean representative model year 1990 vehicles.

(B) Baseline gasoline

(i) Summertime

The term ''baseline gasoline'' means in the case of gasoline sold during the high ozone period (as defined by the Administrator) a gasoline which meets the following specifications:

BASELINE GASOLINE FUEL PROPERTIES	
API Gravity	57.4
Sulfur, ppm	339
Benzene, %	1.53
RVP, psi	8.7
Octane, R+M/2	87.3
IBP, F	91
10%, F	128
50%, F	218
90%, F	330
End Point, F	415
Aromatics, %	32.0
Olefins, %	9.2
Saturates, %	58.8

(ii) Wintertime

The Administrator shall establish the specifications of ''baseline gasoline'' for gasoline sold at times other than the high ozone period (as defined by the Administrator). Such specifications shall be the specifications of 1990 industry average gasoline sold during such period.

(C) Toxic air pollutants

The term ''toxic air pollutants'' means the aggregate emissions of the following:

Benzene
1,3 Butadiene
Polycyclic organic matter (POM)
Acetaldehyde
Formaldehyde.

(D) Covered area

The 9 ozone nonattainment areas having a 1980 population in excess of 250,000 and having the highest ozone design value during the period 1987 through 1989 shall be ''covered areas'' for purposes of this subsection. Effective one year after the reclassification of any ozone nonattainment area as a Severe ozone nonattainment area under section 7511(b) of this title, such Severe area shall also be a ''covered area'' for purposes of this subsection.

(E) Reformulated gasoline

The term ''reformulated gasoline'' means any gasoline which is certified by the Administrator under this section as complying with this subsection.

(F) Conventional gasoline

The term ''conventional gasoline'' means any gasoline which does not meet specifications set by a certification under this subsection.

(*l*) Detergents

Effective beginning January 1, 1995, no person may sell or dispense to an ultimate consumer in

the United States, and no refiner or marketer may directly or indirectly sell or dispense to persons who sell or dispense to ultimate consumers in the United States any gasoline which does not contain additives to prevent the accumulation of deposits in engines or fuel supply systems. Not later than 2 years after November 15, 1990, the Administrator shall promulgate a rule establishing specifications for such additives.

(m) Oxygenated fuels

(1) Plan revisions for CO nonattainment areas

(A) Each State in which there is located all or part of an area which is designated under subchapter I of this chapter as a nonattainment area for carbon monoxide and which has a carbon monoxide design value of 9.5 parts per million (ppm) or above based on data for the 2-year period of 1988 and 1989 and calculated according to the most recent interpretation methodology issued by the Administrator prior to November 15, 1990, shall submit to the Administrator a State implementation plan revision under section 7410 of this title and part D of subchapter I of this chapter for such area which shall contain the provisions specified under this subsection regarding oxygenated gasoline.

(B) A plan revision which contains such provisions shall also be submitted by each State in which there is located any area which, for any 2-year period after 1989 has a carbon monoxide design value of 9.5 ppm or above. The revision shall be submitted within 18 months after such 2-year period.

(2) Oxygenated gasoline in CO nonattainment areas

Each plan revision under this subsection shall contain provisions to require that any gasoline sold, or dispensed, to the ultimate consumer in the carbon monoxide nonattainment area or sold or dispensed directly or indirectly by fuel refiners or marketers to persons who sell or dispense to ultimate consumers, in the larger of—

(A) the Consolidated Metropolitan Statistical Area (CMSA) in which the area is located, or

(B) if the area is not located in a CMSA, the Metropolitan Statistical Area in which the area is located,

be blended, during the portion of the year in which the area is prone to high ambient concentrations of carbon monoxide to contain not less than 2.7 percent oxygen by weight (subject to a testing tolerance established by the Administrator). The portion of the year in which the area is prone to high ambient concentrations of carbon monoxide shall be as determined by the Administrator, but shall not be less than 4 months. At the request of a State with respect to any area designated as nonattainment for carbon monoxide, the Administrator may reduce the period specified in the preceding sentence if the State can demonstrate that because of meteorological conditions, a reduced period will assure that there will be no exceedances of the carbon monoxide standard outside of such reduced period. For areas with a carbon monoxide design value of 9.5 ppm or more of[7] November 15, 1990, the revision shall provide that such requirement shall take effect no later than November 1, 1992 (or at such other date during 1992 as the Administrator establishes under the preceding provisions of this paragraph). For other areas, the revision shall provide that such requirement shall take effect no later than November 1 of the third year after the last year of the applicable 2-year period referred to in paragraph (1) (or at such other date during such third year as the Administrator establishes under the preceding provisions of this paragraph) and shall include a program for implementation and enforcement of the requirement consistent with guidance to be issued by the Administrator.

(3) Waivers

(A) The Administrator shall waive, in whole or in part, the requirements of paragraph (2) upon a demonstration by the State to the satisfaction of the Administrator that the use of oxygenated gasoline would prevent or interfere with the attainment by the area of a national primary ambient air quality standard (or a State or local ambient air quality standard) for any air pollutant other than carbon monoxide.

(B) The Administrator shall, upon demonstration by the State satisfactory to the Administrator, waive the requirement of paragraph (2) where the Administrator determines that mobile sources of carbon monoxide do not contribute significantly to carbon monoxide levels in an area.

(C)(i) Any person may petition the Administrator to make a finding that there is, or is likely to be, for any area, an inadequate domestic supply of, or distribution capacity for, oxygenated gasoline meeting the requirements of paragraph (2) or fuel additives (oxygenates) necessary to meet such requirements. The Administrator shall act on such petition within 6 months after receipt of the petition.

(ii) If the Administrator determines, in response to a petition under clause (i), that there is an inadequate supply or capacity described in clause (i), the Administrator shall delay the effective date of paragraph (2) for 1 year. Upon petition, the Administrator may extend such effective date for one additional year. No partial delay or lesser waiver may be granted under this clause.

(iii) In granting waivers under this subparagraph the Administrator shall consider distribution capacity separately from the adequacy of domestic supply and shall grant such waivers in such manner as will assure that, if supplies of oxygenated gasoline are limited, areas having the highest design value for carbon monoxide will have a priority in obtaining oxygenated gasoline which meets the requirements of paragraph (2).

(iv) As used in this subparagraph, the term distribution capacity includes capacity for transportation, storage, and blending.

[7] So in original. Probably should be ''as of''.

(4) Fuel dispensing systems

Any person selling oxygenated gasoline at retail pursuant to this subsection shall be required under regulations promulgated by the Administrator to label the fuel dispensing system with a notice that the gasoline is oxygenated and will reduce the carbon monoxide emissions from the motor vehicle.

(5) Guidelines for credit

The Administrator shall promulgate guidelines, within 9 months after November 15, 1990, allowing the use of marketable oxygen credits from gasolines during that portion of the year specified in paragraph (2) with higher oxygen content than required to offset the sale or use of gasoline with a lower oxygen content than required. No credits may be transferred between nonattainment areas.

(6) Attainment areas

Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

(7) Failure to attain CO standard

If the Administrator determines under section 7512(b)(2) of this title that the national primary ambient air quality standard for carbon monoxide has not been attained in a Serious Area by the applicable attainment date, the State shall submit a plan revision for the area within 9 months after the date of such determination. The plan revision shall provide that the minimum oxygen content of gasoline referred to in paragraph (2) shall be 3.1 percent by weight unless such requirement is waived in accordance with the provisions of this subsection.

(n) Prohibition on leaded gasoline for highway use

After December 31, 1995, it shall be unlawful for any person to sell, offer for sale, supply, offer for supply, dispense, transport, or introduce into commerce, for use as fuel in any motor vehicle (as defined in section 7554(2)[8] of this title) any gasoline which contains lead or lead additives.

(*o*) Renewable fuel program

(1) Definitions

In this section:

(A) Additional renewable fuel

The term ''additional renewable fuel'' means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in home heating oil or jet fuel.

(B) Advanced biofuel

(i) In general

The term ''advanced biofuel'' means renewable fuel, other than ethanol derived from corn starch, that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than baseline lifecycle greenhouse gas emissions.

(ii) Inclusions

The types of fuels eligible for consideration as ''advanced biofuel'' may include any of the following:

(I) Ethanol derived from cellulose, hemicellulose, or lignin.

(II) Ethanol derived from sugar or starch (other than corn starch).

(III) Ethanol derived from waste material, including crop residue, other vegetative waste material, animal waste, and food waste and yard waste.

(IV) Biomass-based diesel.

(V) Biogas (including landfill gas and sewage waste treatment gas) produced through the conversion of organic matter from renewable biomass.

(VI) Butanol or other alcohols produced through the conversion of organic matter from renewable biomass.

(VII) Other fuel derived from cellulosic biomass.

(C) Baseline lifecycle greenhouse gas emissions

The term ''baseline lifecycle greenhouse gas emissions'' means the average lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, for gasoline or diesel (whichever is being replaced by the renewable fuel) sold or distributed as transportation fuel in 2005.

(D) Biomass-based diesel

The term ''biomass-based diesel'' means renewable fuel that is biodiesel as defined in section 13220(f) of this title and that has lifecycle greenhouse gas emissions, as determined by the Administrator, after notice and opportunity for comment, that are at least 50 percent less than the baseline lifecycle greenhouse gas emissions. Notwithstanding the preceding sentence, renewable fuel derived from co-processing biomass with a petroleum feedstock shall be advanced biofuel if it meets the requirements of subparagraph (B), but is not biomass-based diesel.

(E) Cellulosic biofuel

The term ''cellulosic biofuel'' means renewable fuel derived from any cellulose, hemicellulose, or lignin that is derived from renewable biomass and that has lifecycle greenhouse gas emissions, as determined by the Administrator, that are at least 60 percent less than the baseline lifecycle greenhouse gas emissions.

(F) Conventional biofuel

The term ''conventional biofuel'' means renewable fuel that is ethanol derived from corn starch.

(G) Greenhouse gas

The term ''greenhouse gas'' means carbon dioxide, hydrofluorocarbons, methane, ni-

[8] So in original. Probably should be section ''7550(2)''.

trous oxide, perfluorocarbons,[9] sulfur hexafluoride. The Administrator may include any other anthropogenically-emitted gas that is determined by the Administrator, after notice and comment, to contribute to global warming.

(H) Lifecycle greenhouse gas emissions

The term ''lifecycle greenhouse gas emissions'' means the aggregate quantity of greenhouse gas emissions (including direct emissions and significant indirect emissions such as significant emissions from land use changes), as determined by the Administrator, related to the full fuel lifecycle, including all stages of fuel and feedstock production and distribution, from feedstock generation or extraction through the distribution and delivery and use of the finished fuel to the ultimate consumer, where the mass values for all greenhouse gases are adjusted to account for their relative global warming potential.

(I) Renewable biomass

The term ''renewable biomass'' means each of the following:

(i) Planted crops and crop residue harvested from agricultural land cleared or cultivated at any time prior to December 19, 2007, that is either actively managed or fallow, and nonforested.

(ii) Planted trees and tree residue from actively managed tree plantations on nonfederal[10] land cleared at any time prior to December 19, 2007, including land belonging to an Indian tribe or an Indian individual, that is held in trust by the United States or subject to a restriction against alienation imposed by the United States.

(iii) Animal waste material and animal byproducts.

(iv) Slash and pre-commercial thinnings that are from non-federal[10] forestlands, including forestlands belonging to an Indian tribe or an Indian individual, that are held in trust by the United States or subject to a restriction against alienation imposed by the United States, but not forests or forestlands that are ecological communities with a global or State ranking of critically imperiled, imperiled, or rare pursuant to a State Natural Heritage Program, old growth forest, or late successional forest.

(v) Biomass obtained from the immediate vicinity of buildings and other areas regularly occupied by people, or of public infrastructure, at risk from wildfire.

(vi) Algae.

(vii) Separated yard waste or food waste, including recycled cooking and trap grease.

(J) Renewable fuel

The term ''renewable fuel'' means fuel that is produced from renewable biomass and that is used to replace or reduce the quantity of fossil fuel present in a transportation fuel.

(K) Small refinery

The term ''small refinery'' means a refinery for which the average aggregate daily crude oil throughput for a calendar year (as determined by dividing the aggregate throughput for the calendar year by the number of days in the calendar year) does not exceed 75,000 barrels.

(L) Transportation fuel

The term ''transportation fuel'' means fuel for use in motor vehicles, motor vehicle engines, nonroad vehicles, or nonroad engines (except for ocean-going vessels).

(2) Renewable fuel program

(A) Regulations

(i) In general

Not later than 1 year after August 8, 2005, the Administrator shall promulgate regulations to ensure that gasoline sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains the applicable volume of renewable fuel determined in accordance with subparagraph (B). Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) and, in the case of any such renewable fuel produced from new facilities that commence construction after December 19, 2007, achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.

(ii) Noncontiguous State opt-in

(I) In general

On the petition of a noncontiguous State or territory, the Administrator may allow the renewable fuel program established under this subsection to apply in the noncontiguous State or territory at the same time or any time after the Administrator promulgates regulations under this subparagraph.

(II) Other actions

In carrying out this clause, the Administrator may—

(aa) issue or revise regulations under this paragraph;

(bb) establish applicable percentages under paragraph (3);

(cc) provide for the generation of credits under paragraph (5); and

(dd) take such other actions as are necessary to allow for the application of the renewable fuels program in a noncontiguous State or territory.

[9] So in original. The word ''and'' probably should appear.

[10] So in original. Probably should be ''non-Federal''.

(iii) Provisions of regulations

Regardless of the date of promulgation, the regulations promulgated under clause (i)—

(I) shall contain compliance provisions applicable to refineries, blenders, distributors, and importers, as appropriate, to ensure that the requirements of this paragraph are met; but

(II) shall not—

(aa) restrict geographic areas in which renewable fuel may be used; or

(bb) impose any per-gallon obligation for the use of renewable fuel.

(iv) Requirement in case of failure to promulgate regulations

If the Administrator does not promulgate regulations under clause (i), the percentage of renewable fuel in gasoline sold or dispensed to consumers in the United States, on a volume basis, shall be 2.78 percent for calendar year 2006.

(B) Applicable volumes

(i) Calendar years after 2005

(I) Renewable fuel

For the purpose of subparagraph (A), the applicable volume of renewable fuel for the calendar years 2006 through 2022 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of renewable fuel (in billions of gallons):
2006	4.0
2007	4.7
2008	9.0
2009	11.1
2010	12.95
2011	13.95
2012	15.2
2013	16.55
2014	18.15
2015	20.5
2016	22.25
2017	24.0
2018	26.0
2019	28.0
2020	30.0
2021	33.0
2022	36.0

(II) Advanced biofuel

For the purpose of subparagraph (A), of the volume of renewable fuel required under subclause (I), the applicable volume of advanced biofuel for the calendar years 2009 through 2022 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of advanced biofuel (in billions of gallons):
2009	0.6
2010	0.95
2011	1.35
2012	2.0
2013	2.75
2014	3.75
2015	5.5
2016	7.25
2017	9.0
2018	11.0
2019	13.0
2020	15.0
2021	18.0
2022	21.0

(III) Cellulosic biofuel

For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of cellulosic biofuel for the calendar years 2010 through 2022 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of cellulosic biofuel (in billions of gallons):
2010	0.1
2011	0.25
2012	0.5
2013	1.0
2014	1.75
2015	3.0
2016	4.25
2017	5.5
2018	7.0
2019	8.5
2020	10.5
2021	13.5
2022	16.0

(IV) Biomass-based diesel

For the purpose of subparagraph (A), of the volume of advanced biofuel required under subclause (II), the applicable volume of biomass-based diesel for the calendar years 2009 through 2012 shall be determined in accordance with the following table:

Calendar year:	Applicable volume of biomass-based diesel (in billions of gallons):
2009	0.5
2010	0.65
2011	0.80
2012	1.0

(ii) Other calendar years

For the purposes of subparagraph (A), the applicable volumes of each fuel specified in the tables in clause (i) for calendar years after the calendar years specified in the tables shall be determined by the Administrator, in coordination with the Secretary of Energy and the Secretary of Agriculture, based on a review of the imple-

mentation of the program during calendar years specified in the tables, and an analysis of—

(I) the impact of the production and use of renewable fuels on the environment, including on air quality, climate change, conversion of wetlands, ecosystems, wildlife habitat, water quality, and water supply;

(II) the impact of renewable fuels on the energy security of the United States;

(III) the expected annual rate of future commercial production of renewable fuels, including advanced biofuels in each category (cellulosic biofuel and biomass-based diesel);

(IV) the impact of renewable fuels on the infrastructure of the United States, including deliverability of materials, goods, and products other than renewable fuel, and the sufficiency of infrastructure to deliver and use renewable fuel;

(V) the impact of the use of renewable fuels on the cost to consumers of transportation fuel and on the cost to transport goods; and

(VI) the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

The Administrator shall promulgate rules establishing the applicable volumes under this clause no later than 14 months before the first year for which such applicable volume will apply.

(iii) Applicable volume of advanced biofuel

For the purpose of making the determinations in clause (ii), for each calendar year, the applicable volume of advanced biofuel shall be at least the same percentage of the applicable volume of renewable fuel as in calendar year 2022.

(iv) Applicable volume of cellulosic biofuel

For the purpose of making the determinations in clause (ii), for each calendar year, the applicable volume of cellulosic biofuel established by the Administrator shall be based on the assumption that the Administrator will not need to issue a waiver for such years under paragraph (7)(D).

(v) Minimum applicable volume of biomass-based diesel

For the purpose of making the determinations in clause (ii), the applicable volume of biomass-based diesel shall not be less than the applicable volume listed in clause (i)(IV) for calendar year 2012.

(3) Applicable percentages

(A) Provision of estimate of volumes of gasoline sales

Not later than October 31 of each of calendar years 2005 through 2021, the Administrator of the Energy Information Administration shall provide to the Administrator of the Environmental Protection Agency an estimate, with respect to the following calendar year, of the volumes of transportation fuel, biomass-based diesel, and cellulosic biofuel projected to be sold or introduced into commerce in the United States.

(B) Determination of applicable percentages

(i) In general

Not later than November 30 of each of calendar years 2005 through 2021, based on the estimate provided under subparagraph (A), the Administrator of the Environmental Protection Agency shall determine and publish in the Federal Register, with respect to the following calendar year, the renewable fuel obligation that ensures that the requirements of paragraph (2) are met.

(ii) Required elements

The renewable fuel obligation determined for a calendar year under clause (i) shall—

(I) be applicable to refineries, blenders, and importers, as appropriate;

(II) be expressed in terms of a volume percentage of transportation fuel sold or introduced into commerce in the United States; and

(III) subject to subparagraph (C)(i), consist of a single applicable percentage that applies to all categories of persons specified in subclause (I).

(C) Adjustments

In determining the applicable percentage for a calendar year, the Administrator shall make adjustments—

(i) to prevent the imposition of redundant obligations on any person specified in subparagraph (B)(ii)(I); and

(ii) to account for the use of renewable fuel during the previous calendar year by small refineries that are exempt under paragraph (9).

(4) Modification of greenhouse gas reduction percentages

(A) In general

The Administrator may, in the regulations under the last sentence of paragraph (2)(A)(i), adjust the 20 percent, 50 percent, and 60 percent reductions in lifecycle greenhouse gas emissions specified in paragraphs (2)(A)(i) (relating to renewable fuel), (1)(D) (relating to biomass-based diesel), (1)(B)(i) (relating to advanced biofuel), and (1)(E) (relating to cellulosic biofuel) to a lower percentage. For the 50 and 60 percent reductions, the Administrator may make such an adjustment only if he determines that generally such reduction is not commercially feasible for fuels made using a variety of feedstocks, technologies, and processes to meet the applicable reduction.

(B) Amount of adjustment

In promulgating regulations under this paragraph, the specified 50 percent reduction in greenhouse gas emissions from advanced biofuel and in biomass-based diesel may not be reduced below 40 percent. The specified 20

percent reduction in greenhouse gas emissions from renewable fuel may not be reduced below 10 percent, and the specified 60 percent reduction in greenhouse gas emissions from cellulosic biofuel may not be reduced below 50 percent.

(C) Adjusted reduction levels

An adjustment under this paragraph to a percent less than the specified 20 percent greenhouse gas reduction for renewable fuel shall be the minimum possible adjustment, and the adjusted greenhouse gas reduction shall be established by the Administrator at the maximum achievable level, taking cost in consideration, for natural gas fired corn-based ethanol plants, allowing for the use of a variety of technologies and processes. An adjustment in the 50 or 60 percent greenhouse gas levels shall be the minimum possible adjustment for the fuel or fuels concerned, and the adjusted greenhouse gas reduction shall be established at the maximum achievable level, taking cost in consideration, allowing for the use of a variety of feedstocks, technologies, and processes.

(D) 5-year review

Whenever the Administrator makes any adjustment under this paragraph, not later than 5 years thereafter he shall review and revise (based upon the same criteria and standards as required for the initial adjustment) the regulations establishing the adjusted level.

(E) Subsequent adjustments

After the Administrator has promulgated a final rule under the last sentence of paragraph (2)(A)(i) with respect to the method of determining lifecycle greenhouse gas emissions, except as provided in subparagraph (D), the Administrator may not adjust the percent greenhouse gas reduction levels unless he determines that there has been a significant change in the analytical methodology used for determining the lifecycle greenhouse gas emissions. If he makes such determination, he may adjust the 20, 50, or 60 percent reduction levels through rulemaking using the criteria and standards set forth in this paragraph.

(F) Limit on upward adjustments

If, under subparagraph (D) or (E), the Administrator revises a percent level adjusted as provided in subparagraphs (A), (B), and (C) to a higher percent, such higher percent may not exceed the applicable percent specified in paragraph (2)(A)(i), (1)(D), (1)(B)(i), or (1)(E).

(G) Applicability of adjustments

If the Administrator adjusts, or revises, a percent level referred to in this paragraph or makes a change in the analytical methodology used for determining the lifecycle greenhouse gas emissions, such adjustment, revision, or change (or any combination thereof) shall only apply to renewable fuel from new facilities that commence construction after the effective date of such adjustment, revision, or change.

(5) Credit program

(A) In general

The regulations promulgated under paragraph (2)(A) shall provide—

(i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports gasoline that contains a quantity of renewable fuel that is greater than the quantity required under paragraph (2);

(ii) for the generation of an appropriate amount of credits for biodiesel; and

(iii) for the generation of credits by small refineries in accordance with paragraph (9)(C).

(B) Use of credits

A person that generates credits under subparagraph (A) may use the credits, or transfer all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(C) Duration of credits

A credit generated under this paragraph shall be valid to show compliance for the 12 months as of the date of generation.

(D) Inability to generate or purchase sufficient credits

The regulations promulgated under paragraph (2)(A) shall include provisions allowing any person that is unable to generate or purchase sufficient credits to meet the requirements of paragraph (2) to carry forward a renewable fuel deficit on condition that the person, in the calendar year following the year in which the renewable fuel deficit is created—

(i) achieves compliance with the renewable fuel requirement under paragraph (2); and

(ii) generates or purchases additional renewable fuel credits to offset the renewable fuel deficit of the previous year.

(E) Credits for additional renewable fuel

The Administrator may issue regulations providing: (i) for the generation of an appropriate amount of credits by any person that refines, blends, or imports additional renewable fuels specified by the Administrator; and (ii) for the use of such credits by the generator, or the transfer of all or a portion of the credits to another person, for the purpose of complying with paragraph (2).

(6) Seasonal variations in renewable fuel use

(A) Study

For each of calendar years 2006 through 2012, the Administrator of the Energy Information Administration shall conduct a study of renewable fuel blending to determine whether there are excessive seasonal variations in the use of renewable fuel.

(B) Regulation of excessive seasonal variations

If, for any calendar year, the Administrator of the Energy Information Administration, based on the study under subparagraph (A), makes the determinations speci-

fied in subparagraph (C), the Administrator of the Environmental Protection Agency shall promulgate regulations to ensure that 25 percent or more of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) is used during each of the 2 periods specified in subparagraph (D) of each subsequent calendar year.

(C) Determinations

The determinations referred to in subparagraph (B) are that—

(i) less than 25 percent of the quantity of renewable fuel necessary to meet the requirements of paragraph (2) has been used during 1 of the 2 periods specified in subparagraph (D) of the calendar year;

(ii) a pattern of excessive seasonal variation described in clause (i) will continue in subsequent calendar years; and

(iii) promulgating regulations or other requirements to impose a 25 percent or more seasonal use of renewable fuels will not prevent or interfere with the attainment of national ambient air quality standards or significantly increase the price of motor fuels to the consumer.

(D) Periods

The 2 periods referred to in this paragraph are—

(i) April through September; and

(ii) January through March and October through December.

(E) Exclusion

Renewable fuel blended or consumed in calendar year 2006 in a State that has received a waiver under section 7543(b) of this title shall not be included in the study under subparagraph (A).

(F) State exemption from seasonality requirements

Notwithstanding any other provision of law, the seasonality requirement relating to renewable fuel use established by this paragraph shall not apply to any State that has received a waiver under section 7543(b) of this title or any State dependent on refineries in such State for gasoline supplies.

(7) Waivers

(A) In general

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States, by any person subject to the requirements of this subsection, or by the Administrator on his own motion by reducing the national quantity of renewable fuel required under paragraph (2)—

(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or

(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply.

(B) Petitions for waivers

The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.

(C) Termination of waivers

A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.

(D) Cellulosic biofuel

(i) For any calendar year for which the projected volume of cellulosic biofuel production is less than the minimum applicable volume established under paragraph (2)(B), as determined by the Administrator based on the estimate provided under paragraph (3)(A), not later than November 30 of the preceding calendar year, the Administrator shall reduce the applicable volume of cellulosic biofuel required under paragraph (2)(B) to the projected volume available during that calendar year. For any calendar year in which the Administrator makes such a reduction, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(ii) Whenever the Administrator reduces the minimum cellulosic biofuel volume under this subparagraph, the Administrator shall make available for sale cellulosic biofuel credits at the higher of $0.25 per gallon or the amount by which $3.00 per gallon exceeds the average wholesale price of a gallon of gasoline in the United States. Such amounts shall be adjusted for inflation by the Administrator for years after 2008.

(iii) Eighteen months after December 19, 2007, the Administrator shall promulgate regulations to govern the issuance of credits under this subparagraph. The regulations shall set forth the method for determining the exact price of credits in the event of a waiver. The price of such credits shall not be changed more frequently than once each quarter. These regulations shall include such provisions, including limiting the credits' uses and useful life, as the Administrator deems appropriate to assist market liquidity and transparency, to provide appropriate certainty for regulated entities and renewable fuel producers, and to limit any potential misuse of cellulosic biofuel credits to reduce the use of other renewable fuels, and for such other purposes as the Administrator determines will help achieve the goals of this subsection. The regulations shall limit the number of cellulosic biofuel credits for any calendar year to the minimum applicable volume (as reduced under this subparagraph) of cellulosic biofuel for that year.

(E) Biomass-based diesel

(i) Market evaluation

The Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall periodically evaluate the impact of the biomass-based diesel requirements established under this paragraph on the price of diesel fuel.

(ii) Waiver

If the Administrator determines that there is a significant renewable feedstock disruption or other market circumstances that would make the price of biomass-based diesel fuel increase significantly, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, shall issue an order to reduce, for up to a 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed 15 percent of the applicable annual requirement for biomass-based diesel. For any calendar year in which the Administrator makes a reduction under this subparagraph, the Administrator may also reduce the applicable volume of renewable fuel and advanced biofuels requirement established under paragraph (2)(B) by the same or a lesser volume.

(iii) Extensions

If the Administrator determines that the feedstock disruption or circumstances described in clause (ii) is continuing beyond the 60-day period described in clause (ii) or this clause, the Administrator, in consultation with the Secretary of Energy and the Secretary of Agriculture, may issue an order to reduce, for up to an additional 60-day period, the quantity of biomass-based diesel required under subparagraph (A) by an appropriate quantity that does not exceed an additional 15 percent of the applicable annual requirement for biomass-based diesel.

(F) Modification of applicable volumes

For any of the tables in paragraph (2)(B), if the Administrator waives—

(i) at least 20 percent of the applicable volume requirement set forth in any such table for 2 consecutive years; or

(ii) at least 50 percent of such volume requirement for a single year,

the Administrator shall promulgate a rule (within 1 year after issuing such waiver) that modifies the applicable volumes set forth in the table concerned for all years following the final year to which the waiver applies, except that no such modification in applicable volumes shall be made for any year before 2016. In promulgating such a rule, the Administrator shall comply with the processes, criteria, and standards set forth in paragraph (2)(B)(ii).

(8) Study and waiver for initial year of program

(A) In general

Not later than 180 days after August 8, 2005, the Secretary of Energy shall conduct for the Administrator a study assessing whether the renewable fuel requirement under paragraph (2) will likely result in significant adverse impacts on consumers in 2006, on a national, regional, or State basis.

(B) Required evaluations

The study shall evaluate renewable fuel—

(i) supplies and prices;

(ii) blendstock supplies; and

(iii) supply and distribution system capabilities.

(C) Recommendations by the Secretary

Based on the results of the study, the Secretary of Energy shall make specific recommendations to the Administrator concerning waiver of the requirements of paragraph (2), in whole or in part, to prevent any adverse impacts described in subparagraph (A).

(D) Waiver

(i) In general

Not later than 270 days after August 8, 2005, the Administrator shall, if and to the extent recommended by the Secretary of Energy under subparagraph (C), waive, in whole or in part, the renewable fuel requirement under paragraph (2) by reducing the national quantity of renewable fuel required under paragraph (2) in calendar year 2006.

(ii) No effect on waiver authority

Clause (i) does not limit the authority of the Administrator to waive the requirements of paragraph (2) in whole, or in part, under paragraph (7).

(9) Small refineries

(A) Temporary exemption

(i) In general

The requirements of paragraph (2) shall not apply to small refineries until calendar year 2011.

(ii) Extension of exemption

(I) Study by Secretary of Energy

Not later than December 31, 2008, the Secretary of Energy shall conduct for the Administrator a study to determine whether compliance with the requirements of paragraph (2) would impose a disproportionate economic hardship on small refineries.

(II) Extension of exemption

In the case of a small refinery that the Secretary of Energy determines under subclause (I) would be subject to a disproportionate economic hardship if required to comply with paragraph (2), the Administrator shall extend the exemption under clause (i) for the small refinery for a period of not less than 2 additional years.

(B) Petitions based on disproportionate economic hardship

(i) Extension of exemption

A small refinery may at any time petition the Administrator for an extension of

the exemption under subparagraph (A) for the reason of disproportionate economic hardship.

(ii) Evaluation of petitions

In evaluating a petition under clause (i), the Administrator, in consultation with the Secretary of Energy, shall consider the findings of the study under subparagraph (A)(ii) and other economic factors.

(iii) Deadline for action on petitions

The Administrator shall act on any petition submitted by a small refinery for a hardship exemption not later than 90 days after the date of receipt of the petition.

(C) Credit program

If a small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A), the regulations promulgated under paragraph (2)(A) shall provide for the generation of credits by the small refinery under paragraph (5) beginning in the calendar year following the date of notification.

(D) Opt-in for small refineries

A small refinery shall be subject to the requirements of paragraph (2) if the small refinery notifies the Administrator that the small refinery waives the exemption under subparagraph (A).

(10) Ethanol market concentration analysis

(A) Analysis

(i) In general

Not later than 180 days after August 8, 2005, and annually thereafter, the Federal Trade Commission shall perform a market concentration analysis of the ethanol production industry using the Herfindahl-Hirschman Index to determine whether there is sufficient competition among industry participants to avoid price-setting and other anticompetitive behavior.

(ii) Scoring

For the purpose of scoring under clause (i) using the Herfindahl-Hirschman Index, all marketing arrangements among industry participants shall be considered.

(B) Report

Not later than December 1, 2005, and annually thereafter, the Federal Trade Commission shall submit to Congress and the Administrator a report on the results of the market concentration analysis performed under subparagraph (A)(i).

(11) Periodic reviews

To allow for the appropriate adjustment of the requirements described in subparagraph (B) of paragraph (2), the Administrator shall conduct periodic reviews of—

(A) existing technologies;

(B) the feasibility of achieving compliance with the requirements; and

(C) the impacts of the requirements described in subsection (a)(2)[11] on each individual and entity described in paragraph (2).

(12) Effect on other provisions

Nothing in this subsection, or regulations issued pursuant to this subsection, shall affect or be construed to affect the regulatory status of carbon dioxide or any other greenhouse gas, or to expand or limit regulatory authority regarding carbon dioxide or any other greenhouse gas, for purposes of other provisions (including section 7475) of this chapter. The previous sentence shall not affect implementation and enforcement of this subsection.

(q)[12] Analyses of motor vehicle fuel changes and emissions model

(1) Anti-backsliding analysis

(A) Draft analysis

Not later than 4 years after August 8, 2005, the Administrator shall publish for public comment a draft analysis of the changes in emissions of air pollutants and air quality due to the use of motor vehicle fuel and fuel additives resulting from implementation of the amendments made by the Energy Policy Act of 2005.

(B) Final analysis

After providing a reasonable opportunity for comment but not later than 5 years after August 8, 2005, the Administrator shall publish the analysis in final form.

(2) Emissions model

For the purposes of this section, not later than 4 years after August 8, 2005, the Administrator shall develop and finalize an emissions model that reflects, to the maximum extent practicable, the effects of gasoline characteristics or components on emissions from vehicles in the motor vehicle fleet during calendar year 2007.

(3) Permeation effects study

(A) In general

Not later than 1 year after August 8, 2005, the Administrator shall conduct a study, and report to Congress the results of the study, on the effects of ethanol content in gasoline on permeation, the process by which fuel molecules migrate through the elastomeric materials (rubber and plastic parts) that make up the fuel and fuel vapor systems of a motor vehicle.

(B) Evaporative emissions

The study shall include estimates of the increase in total evaporative emissions likely to result from the use of gasoline with ethanol content in a motor vehicle, and the fleet of motor vehicles, due to permeation.

(r) Fuel and fuel additive importers and importation

For the purposes of this section, the term ''manufacturer'' includes an importer and the term ''manufacture'' includes importation.

(s) Conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels

(1) In general

The Secretary of Energy may provide grants to merchant producers of cellulosic biomass

[11] So in original. Subsection (a) does not contain a par. (2).

[12] So in original. No subsec. (p) has been enacted.

ethanol, waste-derived ethanol, and approved renewable fuels in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of ethanol or approved renewable fuels.

(2) Eligible production facilities

A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic or renewable biomass or waste-derived feedstocks derived from agricultural residues, wood residues, municipal solid waste, or agricultural byproducts.

(3) Authorization of appropriations

There are authorized to be appropriated the following amounts to carry out this subsection:

(A) $100,000,000 for fiscal year 2006.

(B) $250,000,000 for fiscal year 2007.

(C) $400,000,000 for fiscal year 2008.

(4) Definitions

For the purposes of this subsection:

(A) The term ''approved renewable fuels'' are fuels and components of fuels that have been approved by the Department of Energy, as defined in section 13211 of this title, which have been made from renewable biomass.

(B) The term ''renewable biomass'' is, as defined in Presidential Executive Order 13134, published in the Federal Register on August 16, 1999, any organic matter that is available on a renewable or recurring basis (excluding old-growth timber), including dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, animal wastes, wood and wood residues, paper and paper residues, and other vegetative waste materials. Old-growth timber means timber of a forest from the late successional stage of forest development.

(t) Blending of compliant reformulated gasolines

(1) In general

Notwithstanding subsections (h) and (k) of this section and subject to the limitations in paragraph (2) of this subsection, it shall not be a violation of this part[13] for a gasoline retailer, during any month of the year, to blend at a retail location batches of ethanol-blended and non-ethanol-blended reformulated gasoline, provided that—

(A) each batch of gasoline to be blended has been individually certified as in compliance with subsections (h) and (k) of this section prior to being blended;

(B) the retailer notifies the Administrator prior to such blending, and identifies the exact location of the retail station and the specific tank in which such blending will take place;

(C) the retailer retains and, as requested by the Administrator or the Administrator's designee, makes available for inspection such certifications accounting for all gasoline at the retail outlet; and

(D) the retailer does not, between June 1 and September 15 of each year, blend a batch of VOC-controlled, or ''summer'', gasoline with a batch of non-VOC-controlled, or ''winter'', gasoline (as these terms are defined under subsections (h) and (k) of this section).

(2) Limitations

(A) Frequency limitation

A retailer shall only be permitted to blend batches of compliant reformulated gasoline under this subsection a maximum of two blending periods between May 1 and September 15 of each calendar year.

(B) Duration of blending period

Each blending period authorized under subparagraph (A) shall extend for a period of no more than 10 consecutive calendar days.

(3) Surveys

A sample of gasoline taken from a retail location that has blended gasoline within the past 30 days and is in compliance with subparagraphs (A), (B), (C), and (D) of paragraph (1) shall not be used in a VOC survey mandated by 40 CFR Part 80.

(4) State implementation plans

A State shall be held harmless and shall not be required to revise its State implementation plan under section 7410 of this title to account for the emissions from blended gasoline authorized under paragraph (1).

(5) Preservation of State law

Nothing in this subsection shall—

(A) preempt existing State laws or regulations regulating the blending of compliant gasolines; or

(B) prohibit a State from adopting such restrictions in the future.

(6) Regulations

The Administrator shall promulgate, after notice and comment, regulations implementing this subsection within 1 year after August 8, 2005.

(7) Effective date

This subsection shall become effective 15 months after August 8, 2005, and shall apply to blended batches of reformulated gasoline on or after that date, regardless of whether the implementing regulations required by paragraph (6) have been promulgated by the Administrator by that date.

(8) Liability

No person other than the person responsible for blending under this subsection shall be subject to an enforcement action or penalties under subsection (d) of this section solely arising from the blending of compliant reformulated gasolines by the retailers.

(9) Formulation of gasoline

This subsection does not grant authority to the Administrator or any State (or any subdivision thereof) to require reformulation of gasoline at the refinery to adjust for potential or actual emissions increases due to the blending authorized by this subsection.

[13] See References in Text note below.

(u) Standard specifications for biodiesel

(1) Unless the American Society for Testing and Materials has adopted a standard for diesel fuel containing 20 percent biodiesel (commonly known as ''B20'') within 1 year after December 19, 2007, the Administrator shall initiate a rulemaking to establish a uniform per gallon fuel standard for such fuel and designate an identification number so that vehicle manufacturers are able to design engines to use fuel meeting such standard.

(2) Unless the American Society for Testing and Materials has adopted a standard for diesel fuel containing 5 percent biodiesel (commonly known as ''B5'') within 1 year after December 19, 2007, the Administrator shall initiate a rulemaking to establish a uniform per gallon fuel standard for such fuel and designate an identification so that vehicle manufacturers are able to design engines to use fuel meeting such standard.

(3) Whenever the Administrator is required to initiate a rulemaking under paragraph (1) or (2), the Administrator shall promulgate a final rule within 18 months after December 19, 2007.

(4) Not later than 180 days after December 19, 2007, the Administrator shall establish an annual inspection and enforcement program to ensure that diesel fuel containing biodiesel sold or distributed in interstate commerce meets the standards established under regulations under this section, including testing and certification for compliance with applicable standards of the American Society for Testing and Materials. There are authorized to be appropriated to carry out the inspection and enforcement program under this paragraph $3,000,000 for each of fiscal years 2008 through 2010.

(5) For purposes of this subsection, the term ''biodiesel'' has the meaning provided by section 13220(f) of this title.

(v) Prevention of air quality deterioration

(1) Study

(A) In general

Not later than 18 months after December 19, 2007, the Administrator shall complete a study to determine whether the renewable fuel volumes required by this section will adversely impact air quality as a result of changes in vehicle and engine emissions of air pollutants regulated under this chapter.

(B) Considerations

The study shall include consideration of—

(i) different blend levels, types of renewable fuels, and available vehicle technologies; and

(ii) appropriate national, regional, and local air quality control measures.

(2) Regulations

Not later than 3 years after December 19, 2007, the Administrator shall—

(A) promulgate fuel regulations to implement appropriate measures to mitigate, to the greatest extent achievable, considering the results of the study under paragraph (1), any adverse impacts on air quality, as the result of the renewable volumes required by this section; or

(B) make a determination that no such measures are necessary.

(July 14, 1955, ch. 360, title II, § 211, formerly § 210, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 502; renumbered and amended Pub. L. 91–604, §§ 8(a), 9(a), Dec. 31, 1970, 84 Stat. 1694, 1698; Pub. L. 92–157, title III, § 302(d), (e), Nov. 18, 1971, 85 Stat. 464; Pub. L. 95–95, title II, §§ 222, 223, title IV, § 401(e), Aug. 7, 1977, 91 Stat. 762, 764, 791; Pub. L. 95–190, § 14(a)(73), (74), Nov. 16, 1977, 91 Stat. 1403, 1404; Pub. L. 101–549, title II, §§ 212–221, 228(d), Nov. 15, 1990, 104 Stat. 2488–2500, 2510; Pub. L. 109–58, title XV, §§ 1501(a)–(c), 1504(a)(1), (b), 1505–1507, 1512, 1513, 1541(a), (b), Aug. 8, 2005, 119 Stat. 1067–1074, 1076, 1077, 1080, 1081, 1088, 1089, 1106, 1107; Pub. L. 110–140, title II, §§ 201, 202, 203(f), 208, 209, 210(b), 247, 251, Dec. 19, 2007, 121 Stat. 1519, 1521, 1529, 1531, 1532, 1547, 1548.)

REFERENCES IN TEXT

August 8, 2005, referred to in subsec. (c)(4)(C)(v)(II), was in the original ''enactment'', which was translated as meaning the date of enactment of Pub. L. 109–58, which enacted subsec. (c)(4)(C)(v), to reflect the probable intent of Congress.

Section 7521(*l*) of this title, referred to in subsec. (k)(1)(B)(vi), was in the original ''section 202(1) of the Clean Air Act'', which was translated as meaning section 202(*l*) of the Clean Air Act, to reflect the probable intent of Congress.

The Energy Policy Act of 2005, referred to in subsec. (q)(1)(A), is Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

Executive Order 13134, referred to in subsec. (s)(4)(B), which was set out as a note under section 8601 of Title 7, Agriculture, was revoked by Ex. Ord. No. 13423, § 11(a)(iii), Jan. 24, 2007, 72 F.R. 3923.

This part, referred to in subsec. (t)(1), was in the original ''this subtitle'' which was translated as ''this part'', meaning part A of title II of act July 14, 1955, as the probable intent of Congress, because title II of act July 14, 1955, does not contain subtitles.

CODIFICATION

Section was formerly classified to section 1857f–6c of this title.

PRIOR PROVISIONS

A prior section 211 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 503, provided for a national emissions standards study and was classified to section 1857f–6d of this title, prior to repeal by section 8(a) of Pub. L. 91–604.

AMENDMENTS

2007—Subsec. (c)(1). Pub. L. 110–140, § 208, substituted ''nonroad vehicle if, in the judgment of the Administrator, any fuel or fuel additive or'' for ''nonroad vehicle (A) if in the judgment of the Administrator'' and ''air pollution or water pollution (including any degradation in the quality of groundwater) that'' for ''air pollution which''.

Subsec. (f)(4). Pub. L. 110–140, § 251, amended par. (4) generally. Prior to amendment, par. (4) read as follows: ''The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life

of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 7525 of this title. If the Administrator has not acted to grant or deny an application under this paragraph within one hundred and eighty days of receipt of such application, the waiver authorized by this paragraph shall be treated as granted.''

Subsec. (*o*)(1). Pub. L. 110–140, § 201, amended par. (1) generally. Prior to amendment, par. (1) defined ''cellulosic biomass ethanol'', ''waste derived ethanol'', ''renewable fuel'', and ''small refinery''.

Subsec. (*o*)(2)(A)(i). Pub. L. 110–140, § 202(a)(1), inserted at end ''Not later than 1 year after December 19, 2007, the Administrator shall revise the regulations under this paragraph to ensure that transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), on an annual average basis, contains at least the applicable volume of renewable fuel, advanced biofuel, cellulosic biofuel, and biomass-based diesel, determined in accordance with subparagraph (B) and, in the case of any such renewable fuel produced from new facilities that commence construction after December 19, 2007, achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions.''

Subsec. (*o*)(2)(B). Pub. L. 110–140, § 202(a)(2), amended subpar. (B) generally. Prior to amendment, subpar. (B) set forth table of applicable volumes for renewable fuel and related to determination of applicable volumes after the years addressed by the table, including the minimum quantity of renewable fuel to be derived from cellulosic biomass and the method of calculating the minimum applicable volume.

Subsec. (*o*)(3)(A). Pub. L. 110–140, § 202(b)(1), (2), substituted ''2021'' for ''2011'' and ''transportation fuel, biomass-based diesel, and cellulosic biofuel'' for ''gasoline''.

Subsec. (*o*)(3)(B)(i). Pub. L. 110–140, § 202(b)(3), substituted ''2021'' for ''2012''.

Subsec. (*o*)(3)(B)(ii)(II). Pub. L. 110–140, § 202(b)(4), substituted ''transportation fuel'' for ''gasoline''.

Subsec. (*o*)(4). Pub. L. 110–140, § 202(c), amended par. (4) generally. Prior to amendment, text read as follows: ''For the purpose of paragraph (2), 1 gallon of cellulosic biomass ethanol or waste derived ethanol shall be considered to be the equivalent of 2.5 gallons of renewable fuel.''

Subsec. (*o*)(5)(E). Pub. L. 110–140, § 202(d), added subpar. (E).

Subsec. (*o*)(7)(A). Pub. L. 110–140, § 202(e)(1), inserted '', by any person subject to the requirements of this subsection, or by the Administrator on his own motion'' after ''one or more States'' in introductory provisions.

Subsec. (*o*)(7)(B). Pub. L. 110–140, § 202(e)(1), struck out ''State'' before ''petition for a waiver''.

Subsec. (*o*)(7)(D) to (F). Pub. L. 110–140, § 202(e)(2), (3), added subpars. (D) to (F).

Subsec. (*o*)(11). Pub. L. 110–140, § 203(f), added par. (11).

Subsec. (*o*)(12). Pub. L. 110–140, § 210(b), added par. (12).

Subsecs. (r), (s). Pub. L. 110–140, § 247, redesignated subsecs. (r), relating to conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels, and (s) as (s) and (t), respectively.

Subsec. (u). Pub. L. 110–140, § 247, which directed amendment of this section by adding subsec. (u) at the end, was executed by adding subsec. (u) after subsec. (t) to reflect the probable intent of Congress.

Subsec. (v). Pub. L. 110–140, § 209, added subsec. (v).

2005—Subsec. (b)(2). Pub. L. 109–58, § 1505(1)(A), substituted ''shall, on a regular basis,'' for ''may also'' in introductory provisions.

Subsec. (b)(2)(A). Pub. L. 109–58, § 1505(1)(B), added subpar. (A) and struck out former subpar. (A) which read as follows: ''to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and''.

Subsec. (b)(4). Pub. L. 109–58, § 1505(2), added par. (4).

Subsec. (c)(4)(C). Pub. L. 109–58, § 1541(a), designated existing provisions as cl. (i) and added cls. (ii) to (iv) and (v) relating to waiver authority.

Subsec. (c)(4)(C)(v). Pub. L. 109–58, § 1541(b), added cl. (v) relating to approval of fuels.

Subsec. (d)(1). Pub. L. 109–58, § 1501(b)(1), substituted ''(n), or (*o*)'' for ''or (n)'' in two places in first sentence and ''(m), or (*o*)'' for ''or (m)'' in second sentence.

Subsec. (d)(2). Pub. L. 109–58, § 1501(b)(2), substituted ''(n), and (*o*)'' for ''and (n)'' in two places in first sentence.

Subsec. (h)(5), (6). Pub. L. 109–58, § 1501(c), added par. (5) and redesignated former par. (5) as (6).

Subsec. (k)(1). Pub. L. 109–58, § 1504(b), designated existing provisions as subpar. (A), inserted heading, substituted ''Not later than November 15, 1991,'' for ''Within 1 year after November 15, 1990,'', and added subpar. (B).

Subsec. (k)(2)(A). Pub. L. 109–58, § 1504(a)(1)(A)(i), struck out ''(including the oxygen content requirement contained in subparagraph (B))'' after ''requirements of this paragraph''.

Subsec. (k)(2)(B) to (D). Pub. L. 109–58, § 1504(a)(1)(A)(ii), (iii), redesignated subpars. (C) and (D) as (B) and (C), respectively, and struck out heading and text of former subpar. (B). Text read as follows: ''The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard.''

Subsec. (k)(3)(A)(v). Pub. L. 109–58, § 1504(a)(1)(B), struck out heading and text of cl. (v). Text read as follows: ''The oxygen content of the reformulated gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this chapter.''

Subsec. (k)(6). Pub. L. 109–58, § 1507, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, of subpar. (A), inserted subpar. and cl. headings, in cl. (ii) substituted ''clause (i)'' for ''subparagraph (A)'' and ''this subparagraph'' for ''this paragraph'', and added subpar. (B).

Subsec. (k)(7)(A). Pub. L. 109–58, § 1504(a)(1)(C)(i), redesignated cls. (ii) and (iii) as (i) and (ii), respectively, and struck out former cl. (i) which read as follows: ''has an oxygen content (by weight) that exceeds the minimum oxygen content specified in paragraph (2);''.

Subsec. (k)(7)(C)(ii), (iii). Pub. L. 109–58, § 1504(a)(1)(C)(ii), redesignated cl. (iii) as (ii) and struck out former cl. (ii) which read as follows: ''An average gasoline oxygen content (by weight) for the nonattainment area (taking into account all gasoline sold for use in conventional gasoline-fueled vehicles in the nonattainment area) lower than the average gasoline oxygen content (by weight) that would occur in the absence of using any such credits.''

Subsec. (*o*). Pub. L. 109–58, § 1501(a)(2), added subsec. (*o*). Former subsec. (*o*) redesignated (r) relating to fuel and fuel additive importers and importation.

Subsec. (q). Pub. L. 109–58, § 1506, which directed amendment of this section by adding subsec. (q) after subsec. (p), was executed by making the addition after subsec. (*o*) to reflect the probable intent of Congress.

Subsec. (r). Pub. L. 109–58, § 1512, added subsec. (r) relating to conversion assistance for cellulosic biomass, waste-derived ethanol, approved renewable fuels.

Pub. L. 109–58, § 1501(a)(1), redesignated subsec. (*o*) as (r) relating to fuel and fuel additive importers and importation.

Subsec. (s). Pub. L. 109–58, § 1513, added subsec. (s).

1990—Subsec. (a). Pub. L. 101–549, § 212, inserted ''(including any fuel or fuel additive used exclusively in nonroad engines or nonroad vehicles)'' after ''fuel or fuel additive''.

Subsecs. (b)(2)(B), (c)(1). Pub. L. 101–549, § 212(b), (c), inserted reference to nonroad engine or nonroad vehicle.

Subsec. (c)(4)(A). Pub. L. 101–549, § 213(a), substituted ''any characteristic or component of a'' for ''use of a'', inserted ''of the characteristic or component of a fuel or fuel additive'' after ''control or prohibition'' in cl. (i), and inserted ''characteristic or component of a'' after ''such'' in cl. (ii).

Subsec. (c)(4)(C). Pub. L. 101–549, § 213(b), inserted last two sentences, authorizing Administrator to make a finding that State control or prohibition is necessary to achieve the standard.

Subsec. (d). Pub. L. 101–549, § 228(d), amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: ''Any person who violates subsection (a) or (f) of this section or the regulations prescribed under subsection (c) of this section or who fails to furnish any information required by the Administrator under subsection (b) of this section shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications.''

Subsec. (f)(1). Pub. L. 101–549, § 214(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (f)(3). Pub. L. 101–549, § 214(b), substituted reference to paragraph (1)(A) for reference to paragraph (1).

Subsec. (g). Pub. L. 101–549, § 215, amended subsec. (g) generally, substituting present provisions for provisions which defined ''gasoline'', ''refinery'', and ''small refinery'' and which limited Administrator's authority to require small refineries to reduce average lead content per gallon of gasoline.

Subsec. (h). Pub. L. 101–549, § 216, added subsec. (h).

Subsec. (i). Pub. L. 101–549, § 217, added subsec. (i).

Subsec. (j). Pub. L. 101–549, § 218(a), added subsec. (j).

Subsecs. (k) to (m). Pub. L. 101–549, § 219, added subsecs. (k) to (m).

Subsec. (n). Pub. L. 101–549, § 220, added subsec. (n).

Subsec. (*o*). Pub. L. 101–549, § 221, added subsec. (*o*).

1977—Subsec. (c)(1)(A). Pub. L. 95–95, § 401(e), substituted ''if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger'' for ''if any emission products of such fuel or fuel additive will endanger''.

Subsec. (d). Pub. L. 95–95, § 222(b), inserted ''or (f)'' after ''Any person who violates subsection (a)''.

Subsecs. (e), (f). Pub. L. 95–95, § 222(a), added subsecs. (e) and (f).

Subsec. (f)(2). Pub. L. 95–190, § 14(a)(73), inserted provision relating to waiver under par. (4) of this subsec., and struck out ''first'' before ''introduce''.

Subsec. (f)(4). Pub. L. 95–190, § 14(a)(74), inserted provision relating to applicability of limitation specified under par. (2) of this subsection.

Subsec. (g). Pub. L. 95–95, § 223, added subsec. (g).

1971—Subsec. (c)(3)(A). Pub. L. 92–157, § 302(d), substituted ''purpose of obtaining'' for ''purpose of''.

Subsec. (d). Pub. L. 92–157, § 302(e), substituted ''subsection (b)'' for ''subsection (c)'' where appearing the second time.

1970—Subsec. (a). Pub. L. 91–604, § 9(a), substituted ''Administrator'' for ''Secretary'' as the registering authority, inserted references to fuel additives, and substituted the selling, offering for sale, and introduction into commerce of fuel or fuel additives, for the delivery for introduction into interstate commerce or delivery to another person who can reasonably be expected to deliver fuel into interstate commerce.

Subsec. (b). Pub. L. 91–604, § 9(a), designated existing provisions as pars. (1) and (3), added par. (2), and substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (c). Pub. L. 91–604, § 9(a), substituted provisions covering the control or prohibition of offending fuels and fuel additives, for provisions covering trade secrets and substituted ''Administrator'' for ''Secretary'' wherever appearing.

Subsec. (d). Pub. L. 91–604, § 9(a), inserted references to failure to obey regulations prescribed under subsec. (c) and failure to furnish information required by the Administrator under subsec. (c), increased the daily civil penalty from $1,000 to $10,000 and substituted ''Administrator'' for ''Secretary''.

Subsec. (e). Pub. L. 91–604, § 9(a), struck out subsec. (e) which directed the various United States Attorneys to prosecute for the recovery of forfeitures.

EFFECTIVE DATE OF 2007 AMENDMENT

Pub. L. 110–140, title II, § 210(c), Dec. 19, 2007, 121 Stat. 1532, provided that: ''The amendments made by this title to section 211(*o*) of the Clean Air Act [42 U.S.C. 7545(*o*)] shall take effect January 1, 2009, except that the Administrator [of the Environmental Protection Agency] shall promulgate regulations to carry out such amendments not later than 1 year after the enactment of this Act [Dec. 19, 2007].''

Amendment by Pub. L. 110–140 effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as an Effective Date note under section 1824 of Title 2, The Congress.

EFFECTIVE DATE OF 2005 AMENDMENT

Pub. L. 109–58, title XV, § 1504(a)(2), Aug. 8, 2005, 119 Stat. 1077, provided that: ''The amendments made by paragraph (1) [amending this section] apply—

''(A) in the case of a State that has received a waiver under section 209(b) of the Clean Air Act (42 U.S.C. 7543(b)), beginning on the date of enactment of this Act [Aug. 8, 2005]; and

''(B) in the case of any other State, beginning 270 days after the date of enactment of this Act [Aug. 8, 2005].''

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

SAVINGS

Pub. L. 109–58, title XV, § 1504(d), Aug. 8, 2005, 119 Stat. 1079, provided that:

''(1) IN GENERAL.—Nothing in this section [amending this section and enacting provisions set out as notes under this section] or any amendment made by this section affects or prejudices any legal claim or action with respect to regulations promulgated by the Administrator [of the Environmental Protection Agency] before the date of enactment of this Act [Aug. 8, 2005] regarding—

''(A) emissions of toxic air pollutants from motor vehicles; or

''(B) the adjustment of standards applicable to a specific refinery or importer made under those regulations.

''(2) ADJUSTMENT OF STANDARDS.—

''(A) APPLICABILITY.—The Administrator may apply any adjustments to the standards applicable to a refinery or importer under subparagraph (B)(iii)(I) of section 211(k)(1) of the Clean Air Act [42 U.S.C. 7545(k)(1)(B)(iii)(I)] (as added by subsection (b)(2)), except that—

''(i) the Administrator shall revise the adjustments to be based only on calendar years 1999 and 2000;

''(ii) any such adjustment shall not be made at a level below the average percentage of reductions of emissions of toxic air pollutants for reformulated gasoline supplied to PADD I during calendar years 1999 and 2000; and

''(iii) in the case of an adjustment based on toxic air pollutant emissions from reformulated gasoline significantly below the national annual average emissions of toxic air pollutants from all reformulated gasoline—

''(I) the Administrator may revise the adjustment to take account of the scope of the prohibition on methyl tertiary butyl ether imposed by a State; and

''(II) any such adjustment shall require the refiner or importer, to the maximum extent practicable, to maintain the reduction achieved during calendar years 1999 and 2000 in the average annual aggregate emissions of toxic air pollutants from reformulated gasoline produced or distributed by the refiner or importer.''

ENVIRONMENTAL AND RESOURCE CONSERVATION IMPACTS

Pub. L. 110–140, title II, § 204, Dec. 19, 2007, 121 Stat. 1529, provided that:

''(a) IN GENERAL.—Not later than 3 years after the enactment of this section [Dec. 19, 2007] and every 3 years thereafter, the Administrator of the Environmental Protection Agency, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall assess and report to Congress on the impacts to date and likely future impacts of the requirements of section 211(*o*) of the Clean Air Act [42 U.S.C. 7545(*o*)] on the following:

''(1) Environmental issues, including air quality, effects on hypoxia, pesticides, sediment, nutrient and pathogen levels in waters, acreage and function of waters, and soil environmental quality.

''(2) Resource conservation issues, including soil conservation, water availability, and ecosystem health and biodiversity, including impacts on forests, grasslands, and wetlands.

''(3) The growth and use of cultivated invasive or noxious plants and their impacts on the environment and agriculture.

In advance of preparing the report required by this subsection, the Administrator may seek the views of the National Academy of Sciences or another appropriate independent research institute. The report shall include the annual volume of imported renewable fuels and feedstocks for renewable fuels, and the environmental impacts outside the United States of producing such fuels and feedstocks. The report required by this subsection shall include recommendations for actions to address any adverse impacts found.

''(b) EFFECT ON AIR QUALITY AND OTHER ENVIRONMENTAL REQUIREMENTS.—Except as provided in section 211(*o*)(12) of the Clean Air Act [42 U.S.C. 7545(*o*)(12)], nothing in the amendments made by this title to section 211(*o*) of the Clean Air Act shall be construed as superseding, or limiting, any more environmentally protective requirement under the Clean Air Act [42 U.S.C. 7401 et seq.], or under any other provision of State or Federal law or regulation, including any environmental law or regulation.''

TRANSITION RULES

Pub. L. 110–140, title II, § 210(a), Dec. 19, 2007, 121 Stat. 1532, provided that:

''(1) For calendar year 2008, transportation fuel sold or introduced into commerce in the United States (except in noncontiguous States or territories), that is produced from facilities that commence construction after the date of enactment of this Act [Dec. 19, 2007] shall be treated as renewable fuel within the meaning of section 211(*o*) of the Clean Air Act [42 U.S.C. 7545(*o*)] only if it achieves at least a 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions. For calendar years 2008 and 2009, any ethanol plant that is fired with natural gas, biomass, or any combination thereof is deemed to be in compliance with such 20 percent reduction requirement and with the 20 percent reduction requirement of section 211(*o*)(1) of the Clean Air Act. The terms used in this subsection shall have the same meaning as provided in the amendment made by this Act to section 211(*o*) of the Clean Air Act.

''(2) Until January 1, 2009, the Administrator of the Environmental Protection Agency shall implement section 211(*o*) of the Clean Air Act and the rules promulgated under that section in accordance with the provisions of that section as in effect before the enactment of this Act and in accordance with the rules promulgated before the enactment of this Act, except that for calendar year 2008, the number '9.0' shall be substituted for the number '5.4' in the table in section 211(*o*)(2)(B) and in the corresponding rules promulgated to carry out those provisions. The Administrator is authorized to take such other actions as may be necessary to carry out this paragraph notwithstanding any other provision of law.''

SURVEY OF RENEWABLE FUEL MARKET

Pub. L. 109–58, title XV, § 1501(d), Aug. 8, 2005, 119 Stat. 1075, provided that:

''(1) SURVEY AND REPORT.—Not later than December 1, 2006, and annually thereafter, the Administrator of the Environmental Protection Agency (in consultation with the Secretary [of Energy] acting through the Administrator of the Energy Information Administration) shall—

''(A) conduct, with respect to each conventional gasoline use area and each reformulated gasoline use area in each State, a survey to determine the market shares of—

''(i) conventional gasoline containing ethanol;

''(ii) reformulated gasoline containing ethanol;

''(iii) conventional gasoline containing renewable fuel; and

''(iv) reformulated gasoline containing renewable fuel; and

''(B) submit to Congress, and make publicly available, a report on the results of the survey under subparagraph (A).

''(2) RECORDKEEPING AND REPORTING REQUIREMENTS.—The Administrator of the Environmental Protection Agency (hereinafter in this subsection referred to as the 'Administrator') may require any refiner, blender, or importer to keep such records and make such reports as are necessary to ensure that the survey conducted under paragraph (1) is accurate. The Administrator, to avoid duplicative requirements, shall rely, to the extent practicable, on existing reporting and recordkeeping requirements and other information available to the Administrator including gasoline distribution patterns that include multistate use areas.

''(3) APPLICABLE LAW.—Activities carried out under this subsection shall be conducted in a manner designed to protect confidentiality of individual responses.''

FINDINGS

Pub. L. 109–58, title XV, § 1502, Aug. 8, 2005, 119 Stat. 1076, provided that: ''Congress finds that—

''(1) since 1979, methyl tertiary butyl ether (hereinafter in this section referred to as 'MTBE') has been used nationwide at low levels in gasoline to replace lead as an octane booster or anti-knocking agent;

''(2) Public Law 101–549 (commonly known as the 'Clean Air Act Amendments of 1990') (42 U.S.C. 7401 et seq.) [see Tables for classification] established a fuel oxygenate standard under which reformulated gasoline must contain at least 2 percent oxygen by weight; and

''(3) the fuel industry responded to the fuel oxygenate standard established by Public Law 101–549 by making substantial investments in—

''(A) MTBE production capacity; and

''(B) systems to deliver MTBE-containing gasoline to the marketplace.''

CLAIMS FILED AFTER AUGUST 8, 2005

Pub. L. 109–58, title XV, § 1503, Aug. 8, 2005, 119 Stat. 1076, provided that: ''Claims and legal actions filed

after the date of enactment of this Act [Aug. 8, 2005] related to allegations involving actual or threatened contamination of methyl tertiary butyl ether (MTBE) may be removed to the appropriate United States district court.''

FINDINGS AND SENSE OF CONGRESS ON ETHANOL USAGE

Pub. L. 100–203, title I, § 1508, Dec. 22, 1987, 101 Stat. 1330–29, provided that:

''(a) FINDINGS.—Congress finds that—

''(1) the United States is dependent for a large and growing share of its energy needs on the Middle East at a time when world petroleum reserves are declining;

''(2) the burning of gasoline causes pollution;

''(3) ethanol can be blended with gasoline to produce a cleaner source of fuel;

''(4) ethanol can be produced from grain, a renewable resource that is in considerable surplus in the United States;

''(5) the conversion of grain into ethanol would reduce farm program costs and grain surpluses; and

''(6) increasing the quantity of motor fuels that contain at least 10 percent ethanol from current levels to 50 percent by 1992 would create thousands of new jobs in ethanol production facilities.

''(b) SENSE OF CONGRESS.—It is the sense of Congress that the Administrator of the Environmental Protection Agency should use authority provided under the Clean Air Act (42 U.S.C. 7401 et seq.) to require greater use of ethanol as motor fuel.''

AGRICULTURAL MACHINERY: STUDY OF UNLEADED FUEL

Pub. L. 99–198, title XVII, § 1765, Dec. 23, 1985, 99 Stat. 1653, directed Administrator of EPA and Secretary of Agriculture jointly to conduct a study of use of fuel containing lead additives, and alternative lubricating additives, in gasoline engines that are used in agricultural machinery, and designed to combust fuel containing such additives, study to analyze potential for mechanical problems (including but not limited to valve recession) that may be associated with use of other fuels in such engines, and not later than Jan. 1, 1987, Administrator and Secretary to publish results of the study, with Administrator to publish in Federal Register notice of publication of such study and a summary thereof; directed Administrator, after notice and opportunity for hearing, but not later than 6 months after publication of the study, to make findings and recommendations on need for lead additives in gasoline to be used on a farm for farming purposes, including a determination of whether a modification of regulations limiting lead content of gasoline would be appropriate in the case of gasoline used on a farm for farming purposes, and submit to President and Congress a report containing the study, a summary of comments received during public hearing (including comments of Secretary), and findings and recommendations of Administrator made in accordance with clause (1), such report to be transmitted named congressional committees; directed Administrator between Jan. 1, 1986, and Dec. 31, 1987, to monitor actual lead content of leaded gasoline sold in the United States, with Administrator to determine average lead content of such gasoline for each 3-month period between Jan. 1, 1986, and Dec. 31, 1987, and if actual lead content falls below an average of 0.2 of a gram of lead per gallon in any such 3-month period, to report to Congress, and publish a notice thereof in Federal Register; provided that until Jan. 1, 1988, no regulation of Administrator issued under this section 211 could require an average lead content per gallon that is less than 0.1 of a gram per gallon; and authorized an appropriation.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7546. Renewable fuel

(a) Definitions

In this section:

(1) Municipal solid waste

The term ''municipal solid waste'' has the meaning given the term ''solid waste'' in section 6903 of this title.

(2) RFG State

The term ''RFG State'' means a State in which is located one or more covered areas (as defined in section 7545(k)(10)(D) of this title).

(3) Secretary

The term ''Secretary'' means the Secretary of Energy.

(b) Cellulosic biomass ethanol and municipal solid waste loan guarantee program

(1) In general

Funds may be provided for the cost (as defined in the Federal Credit Reform Act of 1990 (2 U.S.C. 661 et seq.)) of loan guarantees issued under title XIV of the Energy Policy Act[1] to carry out commercial demonstration projects for celluosic[2] biomass and sucrose-derived ethanol.

(2) Demonstration projects

(A) In general

The Secretary shall issue loan guarantees under this section to carry out not more than 4 projects to commercially demonstrate the feasibility and viability of producing cellulosic biomass ethanol or sucrose-derived ethanol, including at least 1 project that uses cereal straw as a feedstock and 1 project that uses municipal solid waste as a feedstock.

(B) Design capacity

Each project shall have a design capacity to produce at least 30,000,000 gallons of cellulosic biomass ethanol each year.

(3) Applicant assurances

An applicant for a loan guarantee under this section shall provide assurances, satisfactory to the Secretary, that—

(A) the project design has been validated through the operation of a continuous process facility with a cumulative output of at least 50,000 gallons of ethanol;

(B) the project has been subject to a full technical review;

(C) the project is covered by adequate project performance guarantees;

(D) the project, with the loan guarantee, is economically viable; and

[1] See References in Text note below.

[2] So in original.

(E) there is a reasonable assurance of repayment of the guaranteed loan.

(4) Limitations

(A) Maximum guarantee

Except as provided in subparagraph (B), a loan guarantee under this section may be issued for up to 80 percent of the estimated cost of a project, but may not exceed $250,000,000 for a project.

(B) Additional guarantees

(i) In general

The Secretary may issue additional loan guarantees for a project to cover up to 80 percent of the excess of actual project cost over estimated project cost but not to exceed 15 percent of the amount of the original guarantee.

(ii) Principal and interest

Subject to subparagraph (A), the Secretary shall guarantee 100 percent of the principal and interest of a loan made under subparagraph (A).

(5) Equity contributions

To be eligible for a loan guarantee under this section, an applicant for the loan guarantee shall have binding commitments from equity investors to provide an initial equity contribution of at least 20 percent of the total project cost.

(6) Insufficient amounts

If the amount made available to carry out this section is insufficient to allow the Secretary to make loan guarantees for 3 projects described in subsection (b) of this section, the Secretary shall issue loan guarantees for one or more qualifying projects under this section in the order in which the applications for the projects are received by the Secretary.

(7) Approval

An application for a loan guarantee under this section shall be approved or disapproved by the Secretary not later than 90 days after the application is received by the Secretary.

(c) Authorization of appropriations for resource center

There is authorized to be appropriated, for a resource center to further develop bioconversion technology using low-cost biomass for the production of ethanol at the Center for Biomass-Based Energy at the Mississippi State University and the Oklahoma State University, $4,000,000 for each of fiscal years 2005 through 2007.

(d) Renewable fuel production research and development grants

(1) In general

The Administrator shall provide grants for the research into, and development and implementation of, renewable fuel production technologies in RFG States with low rates of ethanol production, including low rates of production of cellulosic biomass ethanol.

(2) Eligibility

(A) In general

The entities eligible to receive a grant under this subsection are academic institutions in RFG States, and consortia made up of combinations of academic institutions, industry, State government agencies, or local government agencies in RFG States, that have proven experience and capabilities with relevant technologies.

(B) Application

To be eligible to receive a grant under this subsection, an eligible entity shall submit to the Administrator an application in such manner and form, and accompanied by such information, as the Administrator may specify.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection $25,000,000 for each of fiscal years 2006 through 2010.

(e) Cellulosic biomass ethanol conversion assistance

(1) In general

The Secretary may provide grants to merchant producers of cellulosic biomass ethanol in the United States to assist the producers in building eligible production facilities described in paragraph (2) for the production of cellulosic biomass ethanol.

(2) Eligible production facilities

A production facility shall be eligible to receive a grant under this subsection if the production facility—

(A) is located in the United States; and

(B) uses cellulosic biomass feedstocks derived from agricultural residues or municipal solid waste.

(3) Authorization of appropriations

There is authorized to be appropriated to carry out this subsection—

(A) $250,000,000 for fiscal year 2006; and

(B) $400,000,000 for fiscal year 2007.

(July 14, 1955, ch. 360, title II, § 212, as added Pub. L. 109–58, title XV, § 1511, Aug. 8, 2005, 119 Stat. 1086.)

REFERENCES IN TEXT

The Federal Credit Reform Act of 1990, referred to in subsec. (b)(1), is title V of Pub. L. 93–344, as added by Pub. L. 101–508, title XIII, § 13201(a), Nov. 5, 1990, 104 Stat. 1388–609, as amended, which is classified generally to subchapter III (§ 661 et seq.) of chapter 17A of Title 2, The Congress. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 2 and Tables.

The Energy Policy Act, referred to in subsec. (b)(1), probably means the Energy Policy Act of 2005, Pub. L. 109–58, Aug. 8, 2005, 119 Stat. 594. Title XIV of the Act probably should be a reference to title XV of the Act which relates to ethanol and motor fuels and enacted subchapter XIV (§ 16501 et seq.) of chapter 149 of this title and sections 6991i to 6991m and 7546 of this title, amended sections 6991 to 6991f, 6991h, 1991i, 7135, 7545, and 13220 of this title, and enacted provisions set out as notes under section 7545 of this title. Title XIV of the Act, which contains miscellaneous provisions, is classified principally to subchapter XIII (§ 16491 et seq.) of chapter 149 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 15801 of this title and Tables.

PRIOR PROVISIONS

A prior section 7546, act July 14, 1955, ch. 360, title II, § 212, as added Dec. 31, 1970, Pub. L. 91–604, § 10(c), 84

Stat. 1700; amended Dec. 31, 1970, Pub. L. 91–605, § 202(a), 84 Stat. 1739; Apr. 9, 1973, Pub. L. 93–15, § 1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(b), 88 Stat. 265, related to low-emission vehicles, prior to repeal by Pub. L. 101–549, title II, § 230(10), Nov. 15, 1990, 104 Stat. 2529.

A prior section 212 of act July 14, 1955, was renumbered section 213 by Pub. L. 91–604, renumbered section 214 by Pub. L. 93–319, and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

§ 7547. Nonroad engines and vehicles

(a) Emissions standards

(1) The Administrator shall conduct a study of emissions from nonroad engines and nonroad vehicles (other than locomotives or engines used in locomotives) to determine if such emissions cause, or significantly contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such study shall be completed within 12 months of November 15, 1990.

(2) After notice and opportunity for public hearing, the Administrator shall determine within 12 months after completion of the study under paragraph (1), based upon the results of such study, whether emissions of carbon monoxide, oxides of nitrogen, and volatile organic compounds from new and existing nonroad engines or nonroad vehicles (other than locomotives or engines used in locomotives) are significant contributors to ozone or carbon monoxide concentrations in more than 1 area which has failed to attain the national ambient air quality standards for ozone or carbon monoxide. Such determination shall be included in the regulations under paragraph (3).

(3) If the Administrator makes an affirmative determination under paragraph (2) the Administrator shall, within 12 months after completion of the study under paragraph (1), promulgate (and from time to time revise) regulations containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the engines or vehicles to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. In determining what degree of reduction will be available, the Administrator shall first consider standards equivalent in stringency to standards for comparable motor vehicles or engines (if any) regulated under section 7521 of this title, taking into account the technological feasibility, costs, safety, noise, and energy factors associated with achieving, as appropriate, standards of such stringency and lead time. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(4) If the Administrator determines that any emissions not referred to in paragraph (2) from new nonroad engines or vehicles significantly contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, the Administrator may promulgate (and from time to time revise) such regulations as the Administrator deems appropriate containing standards applicable to emissions from those classes or categories of new nonroad engines and new nonroad vehicles (other than locomotives or engines used in locomotives) which in the Administrator's judgment cause, or contribute to, such air pollution, taking into account costs, noise, safety, and energy factors associated with the application of technology which the Administrator determines will be available for the engines and vehicles to which such standards apply. The regulations shall apply to the useful life of the engines or vehicles (as determined by the Administrator).

(5) Within 5 years after November 15, 1990, the Administrator shall promulgate regulations containing standards applicable to emissions from new locomotives and new engines used in locomotives. Such standards shall achieve the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the locomotives or engines to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(b) Effective date

Standards under this section shall take effect at the earliest possible date considering the lead time necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period and energy and safety.

(c) Safe controls

Effective with respect to new engines or vehicles to which standards under this section apply, no emission control device, system, or element of design shall be used in such a new nonroad engine or new nonroad vehicle for purposes of complying with such standards if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function. In determining whether an unreasonable risk exists, the Administrator shall consider factors including those described in section 7521(a)(4)(B) of this title.

(d) Enforcement

The standards under this section shall be subject to sections 7525, 7541, 7542, and 7543 of this title, with such modifications of the applicable regulations implementing such sections as the Administrator deems appropriate, and shall be enforced in the same manner as standards prescribed under section 7521 of this title. The Administrator shall revise or promulgate regulations as may be necessary to determine compliance with, and enforce, standards in effect under this section.

(July 14, 1955, ch. 360, title II, § 213, as added Pub. L. 93–319, § 10, June 22, 1974, 88 Stat. 261; amended Pub. L. 101–549, title II, § 222(a), Nov. 15, 1990, 104 Stat. 2500.)

CODIFICATION

Section was formerly classified to section 1857f–6f of this title.

PRIOR PROVISIONS

A prior section 213 of act July 14, 1955, was renumbered section 214 by Pub. L. 93–319 and renumbered section 216 by Pub. L. 95–95, and is classified to section 7550 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions requiring Administrator and Secretary of Transportation to conduct study on fuel economy improvement for new motor vehicles manufactured during and after model year 1980.

REGULATIONS RELATING TO STANDARDS TO REDUCE EMISSIONS

Pub. L. 108–199, div. G, title IV, § 428(b), Jan. 23, 2004, 118 Stat. 418, provided that: ''Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations under the Clean Air Act [42 U.S.C. 7401 et seq.] that shall contain standards to reduce emissions from new nonroad spark-ignition engines smaller than 50 horsepower. Not later than December 31, 2005, the Administrator shall publish in the Federal Register final regulations containing such standards.''

§ 7548. Study of particulate emissions from motor vehicles

(a) Study and analysis

(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 7521 of this title applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives.

(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

(b) Report to Congress

The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) of this section not later than two years after August 7, 1977. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph (2) of subsection (a) of this section.

(July 14, 1955, ch. 360, title II, § 214, as added Pub. L. 95–95, title II, § 224(d), Aug. 7, 1977, 91 Stat. 767.)

PRIOR PROVISIONS

A prior section 214 of act July 14, 1955, was renumbered section 216 by Pub. L. 95–95 and is classified to section 7550 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON SUSPENDED PARTICULATE MATTER

Section 403(a) of Pub. L. 95–95 directed Administrator of EPA, not later than 18 months after Aug. 7, 1977, in cooperation with National Academy of Sciences, to study and report to Congress on relationship between size, weight, and chemical composition of suspended particulate matter and nature and degree of endangerment to public health or welfare presented by such particulate matter and availability of technology for controlling such particulate matter.

§ 7549. High altitude performance adjustments

(a) Instruction of the manufacturer

(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter (including any alteration or adjustment of such element), shall be treated as not in violation of section 7522(a) of this title if such action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) of this section and approved by the Administrator.

(2) If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance with respect to each standard under section 7521 of this title at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice.

(b) Regulations

(1) Instructions respecting each class or category of vehicles or engines to which this subchapter applies providing for such vehicle and engine adjustments and modifications as may be necessary to insure emission control performance at different altitudes shall be submitted by the manufacturer to the Administrator pursuant to regulations promulgated by the Administrator.

(2) Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by such manufacturer of section 7522(a)(3) of this title for purposes of the penalties contained in section 7524 of this title.

(3) Such instructions shall provide, in addition to other adjustments, for adjustments for vehicles moving from high altitude areas to low altitude areas after the initial registration of such vehicles.

(c) Manufacturer parts

No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 7522(a) of this title) unless the manufacturer demonstrates to the satisfaction of the Administrator that the use of such manufacturer parts is necessary to insure emission control performance.

(d) State inspection and maintenance programs

Before January 1, 1981 the authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator under regulations promulgated before August 7, 1977) but after December 31, 1980, such authority shall be available only in

any such State in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any national ambient air quality standard for auto-related pollutants has not been attained.

(e) High altitude testing

(1) The Administrator shall promptly establish at least one testing center (in addition to the testing centers existing on November 15, 1990) located at a site that represents high altitude conditions, to ascertain in a reasonable manner whether, when in actual use throughout their useful life (as determined under section 7521(d) of this title), each class or category of vehicle and engines to which regulations under section 7521 of this title apply conforms to the emissions standards established by such regulations. For purposes of this subsection, the term ''high altitude conditions'' refers to high altitude as defined in regulations of the Administrator in effect as of November 15, 1990.

(2) The Administrator, in cooperation with the Secretary of Energy and the Administrator of the Federal Transit Administration, and such other agencies as the Administrator deems appropriate, shall establish a research and technology assessment center to provide for the development and evaluation of less-polluting heavy-duty engines and fuels for use in buses, heavy-duty trucks, and non-road engines and vehicles, which shall be located at a high-altitude site that represents high-altitude conditions. In establishing and funding such a center, the Administrator shall give preference to proposals which provide for local cost-sharing of facilities and recovery of costs of operation through utilization of such facility for the purposes of this section.

(3) The Administrator shall designate at least one center at high-altitude conditions to provide research on after-market emission components, dual-fueled vehicles and conversion kits, the effects of tampering on emissions equipment, testing of alternate fuels and conversion kits, and the development of curricula, training courses, and materials to maximize the effectiveness of inspection and maintenance programs as they relate to promoting effective control of vehicle emissions at high-altitude elevations. Preference shall be given to existing vehicle emissions testing and research centers that have established reputations for vehicle emissions research and development and training, and that possess in-house Federal Test Procedure capacity.

(July 14, 1955, ch. 360, title II, § 215, as added Pub. L. 95–95, title II, § 211(b), Aug. 7, 1977, 91 Stat. 757; amended Pub. L. 95–190, § 14(a)(75), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title II, § 224, Nov. 15, 1990, 104 Stat. 2503; Pub. L. 102–240, title III, § 3004(b), Dec. 18, 1991, 105 Stat. 2088.)

CODIFICATION

In subsec. (d), ''August 7, 1977'' substituted for ''the date of enactment of this Act'' to reflect the probable intent of Congress that such date of enactment meant the date of enactment of Pub. L. 95–95.

AMENDMENTS

1990—Subsec. (e). Pub. L. 101–549 added subsec. (e).

1977—Subsec. (d). Pub. L. 95–190 substituted ''December 31, 1980'' for ''December 31, 1981''.

CHANGE OF NAME

''Federal Transit Administration'' substituted for ''Urban Mass Transportation Administration'' in subsec. (e)(2) pursuant to section 3004(b) of Pub. L. 102–240, set out as a note under section 107 of Title 49, Transportation.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7550. Definitions

As used in this part—

(1) The term ''manufacturer'' as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines, but shall not include any dealer with respect to new motor vehicles, new motor vehicle engines, new nonroad vehicles or new nonroad engines received by him in commerce.

(2) The term ''motor vehicle'' means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term ''new motor vehicle'' means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term ''new motor vehicle engine'' means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term ''dealer'' means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term ''ultimate purchaser'' means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term ''commerce'' means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(7) VEHICLE CURB WEIGHT, GROSS VEHICLE WEIGHT RATING, LIGHT-DUTY TRUCK, LIGHT-DUTY VEHICLE, AND LOADED VEHICLE WEIGHT.—The terms ''vehicle curb weight'', ''gross vehicle

weight rating'' (GVWR), ''light-duty truck'' (LDT), light-duty vehicle,[1] and ''loaded vehicle weight'' (LVW) have the meaning provided in regulations promulgated by the Administrator and in effect as of November 15, 1990. The abbreviations in parentheses corresponding to any term referred to in this paragraph shall have the same meaning as the corresponding term.

(8) TEST WEIGHT.—The term ''test weight'' and the abbreviation ''tw'' mean the vehicle curb weight added to the gross vehicle weight rating (gvwr) and divided by 2.

(9) MOTOR VEHICLE OR ENGINE PART MANUFACTURER.—The term ''motor vehicle or engine part manufacturer'' as used in sections 7541 and 7542 of this title means any person engaged in the manufacturing, assembling or rebuilding of any device, system, part, component or element of design which is installed in or on motor vehicles or motor vehicle engines.

(10) NONROAD ENGINE.—The term ''nonroad engine'' means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 of this title or section 7521 of this title.

(11) NONROAD VEHICLE.—The term ''nonroad vehicle'' means a vehicle that is powered by a nonroad engine and that is not a motor vehicle or a vehicle used solely for competition.

(July 14, 1955, ch. 360, title II, § 216, formerly § 208, as added Pub. L. 89–272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 994; renumbered § 212, and amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 503; renumbered § 213, and amended Pub. L. 91–604, §§ 8(a), 10(d), 11(a)(2)(A), Dec. 31, 1970, 84 Stat. 1694, 1703, 1705; renumbered § 214, Pub. L. 93–319, § 10, June 22, 1974, 88 Stat. 261; renumbered § 216, Pub. L. 95–95, title II, § 224(d), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101–549, title II, § 223, Nov. 15, 1990, 104 Stat. 2503.)

CODIFICATION

Section was formerly classified to section 1857f–7 of this title.

AMENDMENTS

1990—Par. (1). Pub. L. 101–549, § 223(b), inserted references to new nonroad vehicles or new nonroad engines.

Pars. (7) to (11). Pub. L. 101–549, § 223(a), added pars. (7) to (11).

1970—Pub. L. 91–604, § 11(a)(2)(A), substituted ''part'' for ''subchapter''.

Par. (1). Pub. L. 91–604, § 10(d)(1), inserted reference to section 7521 of this title.

Par. (3). Pub. L. 91–604, § 10(d)(2), inserted provisions which defined such terms with respect to imported vehicles or engines.

1967—Pub. L. 90–148 inserted ''as used in sections 7522, 7525, 7541, and 7542 of this title'' after ''manufacturer'' in par. (1).

§ 7551. Omitted

Section, Pub. L. 95–95, title II, § 203, Aug. 7, 1977, 91 Stat. 754; Pub. L. 97–375, title I, § 106(a), Dec. 21, 1982, 96 Stat. 1820, which required the Administrator of the Environmental Protection Agency to report to Congress respecting the motor vehicle fuel consumption associated with the standards applicable for the immediately preceding model year, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 5th item on page 165 of House Document No. 103–7. Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the Clean Air Act which comprises this chapter.

§ 7552. Motor vehicle compliance program fees

(a) Fee collection

Consistent with section 9701 of title 31, the Administrator may promulgate (and from time to time revise) regulations establishing fees to recover all reasonable costs to the Administrator associated with—

(1) new vehicle or engine certification under section 7525(a) of this title or part C of this subchapter,

(2) new vehicle or engine compliance monitoring and testing under section 7525(b) of this title or part C of this subchapter, and

(3) in-use vehicle or engine compliance monitoring and testing under section 7541(c) of this title or part C of this subchapter.

The Administrator may establish for all foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity. In the case of heavy-duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs.

(b) Special Treasury fund

Any fees collected under this section shall be deposited in a special fund in the United States Treasury for licensing and other services which thereafter shall be available for appropriation, to remain available until expended, to carry out the Agency's activities for which the fees were collected.

(c) Limitation on fund use

Moneys in the special fund referred to in subsection (b) of this section shall not be used until after the first fiscal year commencing after the first July 1 when fees are paid into the fund.

(d) Administrator's testing authority

Nothing in this subsection shall be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in this part.

(July 14, 1955, ch. 360, title II, § 217, as added Pub. L. 101–549, title II, § 225, Nov. 15, 1990, 104 Stat. 2504.)

§ 7553. Prohibition on production of engines requiring leaded gasoline

The Administrator shall promulgate regulations applicable to motor vehicle engines and nonroad engines manufactured after model year 1992 that prohibit the manufacture, sale, or introduction into commerce of any engine that requires leaded gasoline.

(July 14, 1955, ch. 360, title II, § 218, as added Pub. L. 101–549, title II, § 226, Nov. 15, 1990, 104 Stat. 2505.)

[1] So in original. Probably should be set off by quotation marks.

§ 7554. Urban bus standards

(a) Standards for model years after 1993

Not later than January 1, 1992, the Administrator shall promulgate regulations under section 7521(a) of this title applicable to urban buses for the model year 1994 and thereafter. Such standards shall be based on the best technology that can reasonably be anticipated to be available at the time such measures are to be implemented, taking costs, safety, energy, lead time, and other relevant factors into account. Such regulations shall require that such urban buses comply with the provisions of subsection (b) of this section (and subsection (c) of this subsection,[1] if applicable) in addition to compliance with the standards applicable under section 7521(a) of this title for heavy-duty vehicles of the same type and model year.

(b) PM standard

(1) 50 percent reduction

The standards under section 7521(a) of this title applicable to urban buses shall require that, effective for the model year 1994 and thereafter, emissions of particulate matter (PM) from urban buses shall not exceed 50 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(2) Revised reduction

The Administrator shall increase the level of emissions of particulate matter allowed under the standard referred to in paragraph (1) if the Administrator determines that the 50 percent reduction referred to in paragraph (1) is not technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors. The Administrator may not increase such level of emissions above 70 percent of the emissions of particulate matter (PM) allowed under the emission standard applicable under section 7521(a) of this title as of November 15, 1990, for particulate matter (PM) in the case of heavy-duty diesel vehicles and engines manufactured in the model year 1994.

(3) Determination as part of rule

As part of the rulemaking under subsection (a) of this section, the Administrator shall make a determination as to whether the 50 percent reduction referred to in paragraph (1) is technologically achievable, taking into account durability, costs, lead time, safety, and other relevant factors.

(c) Low-polluting fuel requirement

(1) Annual testing

Beginning with model year 1994 buses, the Administrator shall conduct annual tests of a representative sample of operating urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) of this section to determine whether such buses comply with such standard in use over their full useful life.

(2) Promulgation of additional low-polluting fuel requirement

(A) If the Administrator determines, based on the testing under paragraph (1), that urban buses subject to the particulate matter (PM) standard applicable pursuant to subsection (b) of this section do not comply with such standard in use over their full useful life, he shall revise the standards applicable to such buses to require (in addition to compliance with the PM standard applicable pursuant to subsection (b) of this section) that all new urban buses purchased or placed into service by owners or operators of urban buses in all metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of 750,000 or more shall be capable of operating, and shall be exclusively operated, on low-polluting fuels. The Administrator shall establish the pass-fail rate for purposes of testing under this subparagraph.

(B) The Administrator shall promulgate a schedule phasing in any low-polluting fuel requirement established pursuant to this paragraph to an increasing percentage of new urban buses purchased or placed into service in each of the first 5 model years commencing 3 years after the determination under subparagraph (A). Under such schedule 100 percent of new urban buses placed into service in the fifth model year commencing 3 years after the determination under subparagraph (A) shall comply with the low-polluting fuel requirement established pursuant to this paragraph.

(C) The Administrator may extend the requirements of this paragraph to metropolitan statistical areas or consolidated metropolitan statistical areas with a 1980 population of less than 750,000, if the Administrator determines that a significant benefit to public health could be expected to result from such extension.

(d) Retrofit requirements

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations under section 7521(a) of this title requiring that urban buses which—

(1) are operating in areas referred to in subparagraph (A) of subsection (c)(2) of this section (or subparagraph (C) of subsection (c)(2) of this section if the Administrator has taken action under that subparagraph);

(2) were not subject to standards in effect under the regulations under subsection (a) of this section; and

(3) have their engines replaced or rebuilt after January 1, 1995,

shall comply with an emissions standard or emissions control technology requirement established by the Administrator in such regulations. Such emissions standard or emissions control technology requirement shall reflect the best retrofit technology and maintenance practices reasonably achievable.

(e) Procedures for administration and enforcement

The Administrator shall establish, within 18 months after November 15, 1990, and in accordance with section 7525(h) of this title, procedures

[1] So in original. Probably should be ''section,''.

for the administration and enforcement of standards for buses subject to standards under this section, testing procedures, sampling protocols, in-use compliance requirements, and criteria governing evaluation of buses. Procedures for testing (including, but not limited to, certification testing) shall reflect actual operating conditions.

(f) Definitions

For purposes of this section—

(1) Urban bus

The term ''urban bus'' has the meaning provided under regulations of the Administrator promulgated under section 7521(a) of this title.

(2) Low-polluting fuel

The term ''low-polluting fuel'' means methanol, ethanol, propane, or natural gas, or any comparably low-polluting fuel. In determining whether a fuel is comparably low-polluting, the Administrator shall consider both the level of emissions of air pollutants from vehicles using the fuel and the contribution of such emissions to ambient levels of air pollutants. For purposes of this paragraph, the term ''methanol'' includes any fuel which contains at least 85 percent methanol unless the Administrator increases such percentage as he deems appropriate to protect public health and welfare.

(July 14, 1955, ch. 360, title II, § 219, as added Pub. L. 101–549, title II, § 227[(a)], Nov. 15, 1990, 104 Stat. 2505.)

PART B—AIRCRAFT EMISSION STANDARDS

§ 7571. Establishment of standards

(a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2)(A) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B)(i) The Administrator shall consult with the Administrator of the Federal Aviation Administration on aircraft engine emission standards.

(ii) The Administrator shall not change the aircraft engine emission standards if such change would significantly increase noise and adversely affect safety.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

(July 14, 1955, ch. 360, title II, § 231, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1703; amended Pub. L. 95–95, title II, § 225, title IV, § 401(f), Aug. 7, 1977, 91 Stat. 769, 791; Pub. L. 104–264, title IV, § 406(b), Oct. 9, 1996, 110 Stat. 3257.)

CODIFICATION

Section was formerly classified to section 1857f–9 of this title.

AMENDMENTS

1996—Subsec. (a)(2). Pub. L. 104–264 designated existing provisions as subpar. (A) and added subpar. (B).

1977—Subsec. (a)(2). Pub. L. 95–95, § 401(f), substituted ''The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare'' for ''Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare''.

Subsec. (c). Pub. L. 95–95, § 225, substituted ''Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety'' for ''Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety'' and inserted provision that findings include a reasonably specific statement of the basis upon which the finding was made.

EFFECTIVE DATE OF 1996 AMENDMENT

Except as otherwise specifically provided, amendment by Pub. L. 104–264 applicable only to fiscal years

beginning after Sept. 30, 1996, and not to be construed as affecting funds made available for a fiscal year ending before Oct. 1, 1996, see section 3 of Pub. L. 104–264, set out as a note under section 106 of Title 49, Transportation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY AND INVESTIGATION OF UNINSTALLED AIRCRAFT ENGINES

Pub. L. 101–549, title II, § 233, Nov. 15, 1990, 104 Stat. 2529, provided that:

''(a) STUDY.—The Administrator of the Environmental Protection Agency and the Secretary of Transportation, in consultation with the Secretary of Defense, shall commence a study and investigation of the testing of uninstalled aircraft engines in enclosed test cells that shall address at a minimum the following issues and such other issues as they shall deem appropriate—

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

''(2) the effectiveness of such technologies;

''(3) the cost of implementing such technologies;

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

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

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

''(b) REPORT, AUTHORITY TO REGULATE.—Not later than 24 months after enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the Administrator of the Environmental Protection Agency and the Secretary of Transportation shall submit to Congress a report of the study conducted under this section. Following the completion of such study, any of the States may adopt or enforce any standard for emissions of oxides of nitrogen from test cells only after issuing a public notice stating whether such standards are in accordance with the findings of the study.''

§ 7572. Enforcement of standards

(a) Regulations to insure compliance with standards

The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 7571 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by part A of subtitle VII of title 49 or the Department of Transportation Act. Such Secretary shall insure that all necessary inspections are accomplished, and,[1] may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) Notice and appeal rights

In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 7571 of this title or of a regulation prescribed under subsection (a) of this section is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in part A of subtitle VII of title 49 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

(July 14, 1955, ch. 360, title II, § 232, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

REFERENCES IN TEXT

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89–670, Oct. 15, 1966, 80 Stat. 931, as amended, which was classified principally to sections 1651 to 1660 of former Title 49, Transportation. The Act was repealed and the provisions thereof reenacted in Title 49, Transportation, by Pub. L. 97–449, Jan. 12, 1983, 96 Stat. 2413, and Pub. L. 103–272, July 5, 1994, 108 Stat. 745. The Act was also repealed by Pub. L. 104–287, § 7(5), Oct. 11, 1996, 110 Stat. 3400. For disposition of sections of former Title 49, see Table at the beginning of Title 49.

CODIFICATION

In subsecs. (a) and (b), ''part A of subtitle VII of title 49'' substituted for ''the Federal Aviation Act [49 App. U.S.C. 1301 et seq.]'' and ''the Federal Aviation Act of 1958 [49 App. U.S.C. 1301 et seq.]'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f–10 of this title.

§ 7573. State standards and controls

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

(July 14, 1955, ch. 360, title II, § 233, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1704.)

CODIFICATION

Section was formerly classified to section 1857f–11 of this title.

§ 7574. Definitions

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 40102(a) of title 49.

[1] So in original. The comma probably should not appear.

(July 14, 1955, ch. 360, title II, § 234, as added Pub. L. 91–604, § 11(a)(1), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

In text, ''section 40102(a) of title 49'' substituted for ''section 101 of the Federal Aviation Act of 1958'' on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

Section was formerly classified to section 1857f–12 of this title.

PART C—CLEAN FUEL VEHICLES

§ 7581. Definitions

For purposes of this part—

(1) Terms defined in part A

The definitions applicable to part A under section 7550 of this title shall also apply for purposes of this part.

(2) Clean alternative fuel

The term ''clean alternative fuel'' means any fuel (including methanol, ethanol, or other alcohols (including any mixture thereof containing 85 percent or more by volume of such alcohol with gasoline or other fuels), reformulated gasoline, diesel, natural gas, liquefied petroleum gas, and hydrogen) or power source (including electricity) used in a clean-fuel vehicle that complies with the standards and requirements applicable to such vehicle under this subchapter when using such fuel or power source. In the case of any flexible fuel vehicle or dual fuel vehicle, the term ''clean alternative fuel'' means only a fuel with respect to which such vehicle was certified as a clean-fuel vehicle meeting the standards applicable to clean-fuel vehicles under section 7583(d)(2) of this title when operating on clean alternative fuel (or any CARB standards which replaces such standards pursuant to section 7583(e) of this title).

(3) NMOG

The term nonmethane organic gas (''NMOG'') means the sum of nonoxygenated and oxygenated hydrocarbons contained in a gas sample, including, at a minimum, all oxygenated organic gases containing 5 or fewer carbon atoms (i.e., aldehydes, ketones, alcohols, ethers, etc.), and all known alkanes, alkenes, alkynes, and aromatics containing 12 or fewer carbon atoms. To demonstrate compliance with a NMOG standard, NMOG emissions shall be measured in accordance with the ''California Non-Methane Organic Gas Test Procedures''. In the case of vehicles using fuels other than base gasoline, the level of NMOG emissions shall be adjusted based on the reactivity of the emissions relative to vehicles using base gasoline.

(4) Base gasoline

The term ''base gasoline'' means gasoline which meets the following specifications:

Specifications of Base Gasoline Used as Basis for Reactivity Readjustment:	
API gravity	57.8
Sulfur, ppm	317
Color	Purple
Benzene, vol. %	1.35
Reid vapor pressure	8.7
Drivability	1195
Antiknock index	87.3
Distillation, D–86 °F	
IBP	92
10%	126
50%	219
90%	327
EP	414
Hydrocarbon Type, Vol. % FIA:	
Aromatics	30.9
Olefins	8.2
Saturates	60.9

The Administrator shall modify the definitions of NMOG, base gasoline, and the methods for making reactivity adjustments, to conform to the definitions and method used in California under the Low-Emission Vehicle and Clean Fuel Regulations of the California Air Resources Board, so long as the California definitions are, in the aggregate, at least as protective of public health and welfare as the definitions in this section.

(5) Covered fleet

The term ''covered fleet'' means 10 or more motor vehicles which are owned or operated by a single person. In determining the number of vehicles owned or operated by a single person for purposes of this paragraph, all motor vehicles owned or operated, leased or otherwise controlled by such person, by any person who controls such person, by any person controlled by such person, and by any person under common control with such person shall be treated as owned by such person. The term ''covered fleet'' shall not include motor vehicles held for lease or rental to the general public, motor vehicles held for sale by motor vehicle dealers (including demonstration vehicles), motor vehicles used for motor vehicle manufacturer product evaluations or tests, law enforcement and other emergency vehicles, or nonroad vehicles (including farm and construction vehicles).

(6) Covered fleet vehicle

The term ''covered fleet vehicle'' means only a motor vehicle which is—

(i) in a vehicle class for which standards are applicable under this part; and

(ii) in a covered fleet which is centrally fueled (or capable of being centrally fueled).

No vehicle which under normal operations is garaged at a personal residence at night shall be considered to be a vehicle which is capable of being centrally fueled within the meaning of this paragraph.

(7) Clean-fuel vehicle

The term ''clean-fuel vehicle'' means a vehicle in a class or category of vehicles which has been certified to meet for any model year the clean-fuel vehicle standards applicable under this part for that model year to clean-fuel vehicles in that class or category.

(July 14, 1955, ch. 360, title II, § 241, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2511.)

§ 7582. Requirements applicable to clean-fuel vehicles

(a) Promulgation of standards

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regulations under this part containing clean-fuel vehicle standards for the clean-fuel vehicles specified in this part.

(b) Other requirements

Clean-fuel vehicles of up to 8,500 gvwr subject to standards set forth in this part shall comply with all motor vehicle requirements of this subchapter (such as requirements relating to on-board diagnostics, evaporative emissions, etc.) which are applicable to conventional gasoline-fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part. Clean-fuel vehicles of 8,500 gvwr or greater subject to standards set forth in this part shall comply with all requirements of this subchapter which are applicable in the case of conventional gasoline-fueled or diesel fueled vehicles of the same category and model year, except as provided in section 7584 of this title with respect to administration and enforcement, and except to the extent that any such requirement is in conflict with the provisions of this part.

(c) In-use useful life and testing

(1) In the case of light-duty vehicles and light-duty trucks up to 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 10 years or 100,000 miles (or the equivalent) whichever first occurs, in the case of standards applicable for purposes of certification at 100,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 75,000 miles (or the equivalent) whichever first occurs.

(2) In the case of light-duty trucks of more than 6,000 lbs gvwr, the useful life for purposes of determining in-use compliance with the standards under section 7583 of this title shall be—

(A) a period of 5 years or 50,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 50,000 miles; and

(B) a period of 11 years or 120,000 miles (or the equivalent) whichever first occurs in the case of standards applicable for purposes of certification at 120,000 miles, except that in-use testing shall not be done for a period beyond 7 years or 90,000 miles (or the equivalent) whichever first occurs.

(July 14, 1955, ch. 360, title II, § 242, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2513.)

§ 7583. Standards for light-duty clean-fuel vehicles

(a) Exhaust standards for light-duty vehicles and certain light-duty trucks

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of up to 6,000 lbs. gross vehicle weight rating (gvwr) (but not including light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw)) or light-duty vehicles:

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table:

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM	HCHO (formaldehyde)
50,000 mile standard.	0.125	3.4	0.4	.....	0.015
100,000 mile standard.	0.156	4.2	0.6	0.08*	0.018

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF UP TO 3,750 LBS. LVW AND UP TO 6,000 LBS. GVWR AND LIGHT-DUTY VEHICLES

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.075	3.4	0.2	.....	0.015
100,000 mile standard.	0.090	4.2	0.3	0.08	0.018

Standards are expressed in grams per mile (gpm).

*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.

In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(b) Exhaust standards for light-duty trucks of more than 3,750 lbs. LVW and up to 5,750 lbs. LVW and up to 6,000 lbs. GVWR

The standards set forth in this paragraph[1] shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 3,750 lbs. loaded vehicle weight (lvw) but not more than 5,750 lbs. lvw and not more than 6,000 lbs. gross weight rating (GVWR):

(1) Phase I

Beginning with model year 1996, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE I CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.160	4.4	0.7	.....	0.018
100,000 mile standard.	0.200	5.5	0.9	0.08	0.023

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(2) Phase II

Beginning with model year 2001, for the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions shall not exceed the levels specified in the following table.

PHASE II CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT-DUTY TRUCKS OF MORE THAN 3,750 LBS. LVW AND UP TO 5,750 LBS. LVW AND UP TO 6,000 LBS. GVWR

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.100	4.4	0.4	.....	0.018
100,000 mile standard.	0.130	5.5	0.5	0.08	0.023

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
In the case of the 50,000 mile standards and the 100,000 mile standards, for purposes of certification, the applicable useful life shall be 50,000 miles or 100,000 miles, respectively.

(c) Exhaust standards for light-duty trucks greater than 6,000 lbs. GVWR

The standards set forth in this subsection shall apply in the case of clean-fuel vehicles which are light-duty trucks of more than 6,000 lbs. gross weight rating (GVWR) and less than or equal to 8,500 lbs. GVWR, beginning with model year 1998. For the air pollutants specified in the following table, the clean-fuel vehicle standards under this section shall provide that vehicle exhaust emissions of vehicles within the test weight categories specified in the following table shall not exceed the levels specified in such table.

CLEAN FUEL VEHICLE EMISSION STANDARDS FOR LIGHT DUTY TRUCKS GREATER THAN 6,000 LBS. GVWR

Test Weight Category: Up to 3,750 lbs. tw

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.125	3.4	0.4**	.....	0.015
120,000 mile standard.	0.180	5.0	0.6	0.08	0.022

Test Weight Category: Above 3,750 but not above 5,750 lbs. tw

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.160	4.4	0.7**	.....	0.018
120,000 mile standard.	0.230	6.4	1.0	0.10	0.027

Test Weight Category: Above 5,750 tw but not above 8,500 lbs. gvwr

Pollutant	NMOG	CO	NO_x	PM*	HCHO (formaldehyde)
50,000 mile standard.	0.195	5.0	1.1**	.....	0.022
120,000 mile standard.	0.280	7.3	1.5	0.12	0.032

Standards are expressed in grams per mile (gpm).
*Standards for particulates (PM) shall apply only to diesel-fueled vehicles.
**Standard not applicable to diesel-fueled vehicles.
For the 50,000 mile standards and the 120,000 mile standards set forth in the table, the applicable useful life for purposes of certification shall be 50,000 miles or 120,000 miles, respectively.

(d) Flexible and dual-fuel vehicles

(1) In general

The Administrator shall establish standards and requirements under this section for the model year 1996 and thereafter for vehicles weighing not more than 8,500 lbs. gvwr which are capable of operating on more than one fuel. Such standards shall require that such vehicles meet the exhaust standards applicable under subsection[2] (a), (b), and (c) of this section for CO, NO_x, and HCHO, and if appropriate, PM for single-fuel vehicles of the same vehicle category and model year.

(2) Exhaust NMOG standard for operation on clean alternative fuel

In addition to standards for the pollutants referred to in paragraph (1), the standards es-

[1] So in original. Probably should be ''subsection''.

[2] So in original. Probably should be ''subsections''.

tablished under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below when the vehicle is operated on the clean alternative fuel for which such vehicle is certified:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CLEAN ALTERNATIVE FUEL

Light-duty Trucks up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.125	0.156
LDT's (3,751–5,750 lbs. LVW).	0.160	0.20
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.075	0.090
LDT's (3,751–5,750 lbs. LVW).	0.100	0.130

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks More than 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.125	0.180
LDT's (3,751–5,750 lbs. TW)	0.160	0.230
LDT's (above 5,750 lbs. TW)	0.195	0.280

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(3) NMOG standard for operation on conventional fuel

In addition to the standards referred to in paragraph (1), the standards established under paragraph (1) shall require that vehicle exhaust emissions of NMOG not exceed the levels (expressed in grams per mile) specified in the tables below:

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 1996:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.25	0.31
LDT's (3,751–5,750 lbs. LVW).	0.32	0.40

NMOG STANDARDS FOR FLEXIBLE- AND DUAL-FUELED VEHICLES WHEN OPERATING ON CONVENTIONAL FUEL

Light-duty Trucks of up to 6,000 lbs. GVWR and Light-duty vehicles

Vehicle Type	Column A (50,000 mi.) Standard (gpm)	Column B (100,000 mi.) Standard (gpm)
Beginning MY 2001:		
LDT's (0–3,750 lbs. LVW) and light-duty vehicles.	0.125	0.156
LDT's (3,751–5,750 lbs. LVW).	0.160	0.200

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 100,000 miles.

Light-duty Trucks of up to 6,000 lbs. GVWR

Vehicle Type	Column A (50,000 mi.) Standard	Column B (120,000 mi.) Standard
Beginning MY 1998:		
LDT's (0–3,750 lbs. TW)	0.25	0.36
LDT's (3,751–5,750 lbs. TW)	0.32	0.46
LDT's (above 5,750 lbs. TW)	0.39	0.56

For standards under column A, for purposes of certification under section 7525 of this title, the applicable useful life shall be 50,000 miles.

For standards under column B, for purposes of certification under section 7525 of this title, the applicable useful life shall be 120,000 miles.

(e) Replacement by CARB standards

(1) Single set of CARB standards

If the State of California promulgates regulations establishing and implementing a single set of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and such set of standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such set of California standards shall apply to clean-fuel vehicles in such category in lieu of the standards otherwise applicable under section 7582 of this title and subsection (a), (b), (c), or (d) of this section, as the case may be.

(2) Multiple sets of CARB standards

If the State of California promulgates regulations establishing and implementing several different sets of standards applicable in California pursuant to a waiver approved under section 7543 of this title to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section and each of such sets of California standards is, in the aggregate, at least as protective of public health and welfare as the otherwise applicable standards set forth in section 7582 of this title and subsection (a), (b), (c), or (d) of this section, such standards shall be treated as ''qualifying California standards'' for purposes of this paragraph. Where more than one set of qualifying stand-

ards are established and administered by the State of California, the least stringent set of qualifying California standards shall apply to the clean-fuel vehicles concerned in lieu of the standards otherwise applicable to such vehicles under section 7582 of this title and this section.

(f) Less stringent CARB standards

If the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board applicable to any category of vehicles referred to in subsection (a), (b), (c), or (d) of this section are modified after November 15, 1990, to provide an emissions standard which is less stringent than the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) of this section, or if any effective date contained in such regulations is delayed, such modified standards or such delay (or both, as the case may be) shall apply, for an interim period, in lieu of the standard or effective date otherwise applicable under subsection (a), (b), (c), or (d) of this section to any vehicles covered by such modified standard or delayed effective date. The interim period shall be a period of not more than 2 model years from the effective date otherwise applicable under subsection (a), (b), (c), or (d) of this section. After such interim period, the otherwise applicable standard set forth in subsection (a), (b), (c), or (d) of this section shall take effect with respect to such vehicles (unless subsequently replaced under subsection (e) of this section).

(g) Not applicable to heavy-duty vehicles

Notwithstanding any provision of the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board nothing in this section shall apply to heavy-duty engines in vehicles of more than 8,500 lbs. GVWR.

(July 14, 1955, ch. 360, title II, § 243, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2514.)

§ 7584. Administration and enforcement as per California standards

Where the numerical clean-fuel vehicle standards applicable under this part to vehicles of not more than 8,500 lbs. GVWR are the same as numerical emission standards applicable in California under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (''CARB''), such standards shall be administered and enforced by the Administrator—

(1) in the same manner and with the same flexibility as the State of California administers and enforces corresponding standards applicable under the Low-Emission Vehicle and Clean Fuels Regulations of the California Air Resources Board (''CARB''); and

(2) subject to the same requirements, and utilizing the same interpretations and policy judgments, as are applicable in the case of such CARB standards, including, but not limited to, requirements regarding certification, production-line testing, and in-use compliance,

unless the Administrator determines (in promulgating the rules establishing the clean fuel vehicle program under this section) that any such administration and enforcement would not meet the criteria for a waiver under section 7543 of this title. Nothing in this section shall apply in the case of standards under section 7585 of this title for heavy-duty vehicles.

(July 14, 1955, ch. 360, title II, § 244, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2519.)

§ 7585. Standards for heavy-duty clean-fuel vehicles (GVWR above 8,500 up to 26,000 lbs.)

(a) Model years after 1997; combined NO_x and NMHC standard

For classes or categories of heavy-duty vehicles or engines manufactured for the model year 1998 or thereafter and having a GVWR greater than 8,500 lbs. and up to 26,000 lbs. GVWR, the standards under this part for clean-fuel vehicles shall require that combined emissions of oxides of nitrogen (NO_x) and nonmethane hydrocarbons (NMHC) shall not exceed 3.15 grams per brake horsepower hour (equivalent to 50 percent of the combined emission standards applicable under section 7521 of this title for such air pollutants in the case of a conventional model year 1994 heavy-duty diesel-fueled vehicle or engine). No standard shall be promulgated as provided in this section for any heavy-duty vehicle of more than 26,000 lbs. GVWR.

(b) Revised standards that are less stringent

(1) The Administrator may promulgate a revised less stringent standard for the vehicles or engines referred to in subsection (a) of this section if the Administrator determines that the 50 percent reduction required under subsection (a) of this section is not technologically feasible for clean diesel-fueled vehicles and engines, taking into account durability, costs, lead time, safety, and other relevant factors. To provide adequate lead time the Administrator shall make a determination with regard to the technological feasibility of such 50 percent reduction before December 31, 1993.

(2) Any person may at any time petition the Administrator to make a determination under paragraph (1). The Administrator shall act on such a petition within 6 months after the petition is filed.

(3) Any revised less stringent standards promulgated as provided in this subsection shall require at least a 30 percent reduction in lieu of the 50 percent reduction referred to in paragraph (1).

(July 14, 1955, ch. 360, title II, § 245, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2519.)

§ 7586. Centrally fueled fleets

(a) Fleet program required for certain nonattainment areas

(1) SIP revision

Each State in which there is located all or part of a covered area (as defined in paragraph (2)) shall submit, within 42 months after November 15, 1990, a State implementation plan revision under section 7410 of this title and part D of subchapter I of this chapter to estab-

lish a clean-fuel vehicle program for fleets under this section.

(2) Covered areas

For purposes of this subsection, each of the following shall be a ''covered area'':

(A) Ozone nonattainment areas

Any ozone nonattainment area with a 1980 population of 250,000 or more classified under subpart 2 of part D of subchapter I of this chapter as Serious, Severe, or Extreme based on data for the calendar years 1987, 1988, and 1989. In determining the ozone nonattainment areas to be treated as covered areas pursuant to this subparagraph, the Administrator shall use the most recent interpretation methodology issued by the Administrator prior to November 15, 1990.

(B) Carbon monoxide nonattainment areas

Any carbon monoxide nonattainment area with a 1980 population of 250,000 or more and a carbon monoxide design value at or above 16.0 parts per million based on data for calendar years 1988 and 1989 (as calculated according to the most recent interpretation methodology issued prior to November 15, 1990, by the United States Environmental Protection Agency), excluding those carbon monoxide nonattainment areas in which mobile sources do not contribute significantly to carbon monoxide exceedances.

(3) Plan revisions for reclassified areas

In the case of ozone nonattainment areas reclassified as Serious, Severe, or Extreme under part D of subchapter I of this chapter with a 1980 population of 250,000 or more, the State shall submit a plan revision meeting the requirements of this subsection within 1 year after reclassification. Such plan revision shall implement the requirements applicable under this subsection at the time of reclassification and thereafter, except that the Administrator may adjust for a limited period the deadlines for compliance where compliance with such deadlines would be infeasible.

(4) Consultation; consideration of factors

Each State required to submit an implementation plan revision under this subsection shall develop such revision in consultation with fleet operators, vehicle manufacturers, fuel producers and distributors, motor vehicle fuel, and other interested parties, taking into consideration operational range, specialty uses, vehicle and fuel availability, costs, safety, resale values of vehicles and equipment and other relevant factors.

(b) Phase-in of requirements

The plan revision required under this section shall contain provisions requiring that at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operator in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area. For the applicable model years (MY) specified in the following table and thereafter, the specified percentage shall be as provided in the table for the vehicle types set forth in the table:

CLEAN FUEL VEHICLE PHASE-IN REQUIREMENTS FOR FLEETS

Vehicle Type	MY1998	MY1999	MY2000
Light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles	30%	50%	70%
Heavy-duty trucks above 8,500 lbs. GVWR	50%	50%	50%

The term MY refers to model year.

(c) Accelerated standard for light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles

Notwithstanding the model years for which clean-fuel vehicle standards are applicable as provided in section 7583 of this title, for purposes of this section, light duty[1] trucks of up to 6,000 lbs. GVWR and light-duty vehicles manufactured in model years 1998 through model year 2000 shall be treated as clean-fuel vehicles only if such vehicles comply with the standards applicable under section 7583 of this title for vehicles in the same class for the model year 2001. The requirements of subsection (b) of this section shall take effect on the earlier of the following:

(1) The first model year after model year 1997 in which new light-duty trucks up to 6,000 lbs. GVWR and light-duty vehicles which comply with the model year 2001 standards under section 7583 of this title are offered for sale in California.

(2) Model year 2001.

Whenever the effective date of subsection (b) of this section is delayed pursuant to paragraph (1) of this subsection, the phase-in schedule under subsection (b) of this section shall be modified to commence with the model year referred to in paragraph (1) in lieu of model year 1998.

(d) Choice of vehicles and fuel

The plan revision under this subsection shall provide that the choice of clean-fuel vehicles and clean alternative fuels shall be made by the covered fleet operator subject to the requirements of this subsection.

(e) Availability of clean alternative fuel

The plan revision shall require fuel providers to make clean alternative fuel available to covered fleet operators at locations at which covered fleet vehicles are centrally fueled.

(f) Credits

(1) Issuance of credits

The State plan revision required under this section shall provide for the issuance by the State of appropriate credits to a fleet operator for any of the following (or any combination thereof):

(A) The purchase of more clean-fuel vehicles than required under this section.

(B) The purchase of clean fuel[2] vehicles which meet more stringent standards established by the Administrator pursuant to paragraph (4).

(C) The purchase of vehicles in categories which are not covered by this section but

[1] So in original. Probably should be ''light-duty''.

[2] So in original. Probably should be ''clean-fuel''.

which meet standards established for such vehicles under paragraph (4).

(2) Use of credits; limitations based on weight classes

(A) Use of credits

Credits under this subsection may be used by the person holding such credits to demonstrate compliance with this section or may be traded or sold for use by any other person to demonstrate compliance with other requirements applicable under this section in the same nonattainment area. Credits obtained at any time may be held or banked for use at any later time, and when so used, such credits shall maintain the same value as if used at an earlier date.

(B) Limitations based on weight classes

Credits issued with respect to the purchase of vehicles of up to 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles of more than 8,500 lbs. GVWR. Credits issued with respect to the purchase of vehicles of more than 8,500 lbs. GVWR may not be used to demonstrate compliance by any person with the requirements applicable under this subsection to vehicles weighing up to 8,500 lbs. GVWR.

(C) Weighting

Credits issued for purchase of a clean fuel[2] vehicle under this subsection shall be adjusted with appropriate weighting to reflect the level of emission reduction achieved by the vehicle.

(3) Regulations and administration

Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program. The State shall administer the credit program established under this subsection.

(4) Standards for issuing credits for cleaner vehicles

Solely for purposes of issuing credits under paragraph (1)(B), the Administrator shall establish under this paragraph standards for Ultra-Low Emission Vehicles (''ULEV''s) and Zero Emissions Vehicles (''ZEV''s) which shall be more stringent than those otherwise applicable to clean-fuel vehicles under this part. The Administrator shall certify clean fuel[2] vehicles as complying with such more stringent standards, and administer and enforce such more stringent standards, in the same manner as in the case of the otherwise applicable clean-fuel vehicle standards established under this section. The standards established by the Administrator under this paragraph for vehicles under 8,500 lbs. GVWR or greater shall conform as closely as possible to standards which are established by the State of California for ULEV and ZEV vehicles in the same class. For vehicles of 8,500 lbs. GVWR or more, the Administrator shall promulgate comparable standards for purposes of this subsection.

(5) Early fleet credits

The State plan revision shall provide credits under this subsection to fleet operators that purchase vehicles certified to meet clean-fuel vehicle standards under this part during any period after approval of the plan revision and prior to the effective date of the fleet program under this section.

(g) Availability to public

At any facility owned or operated by a department, agency, or instrumentality of the United States where vehicles subject to this subsection are supplied with clean alternative fuel, such fuel shall be offered for sale to the public for use in other vehicles during reasonable business times and subject to national security concerns, unless such fuel is commercially available for vehicles in the vicinity of such Federal facilities.

(h) Transportation control measures

The Administrator shall by rule, within 1 year after November 15, 1990, ensure that certain transportation control measures including time-of-day or day-of-week restrictions, and other similar measures that restrict vehicle usage, do not apply to any clean-fuel vehicle that meets the requirements of this section. This subsection shall apply notwithstanding subchapter I of this chapter.

(July 14, 1955, ch. 360, title II, § 246, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2520.)

§ 7587. Vehicle conversions

(a) Conversion of existing and new conventional vehicles to clean-fuel vehicles

The requirements of section 7586 of this title may be met through the conversion of existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles which comply with the applicable requirements of that section. For purposes of such provisions the conversion of a vehicle to clean fuel[1] vehicle shall be treated as the purchase of a clean fuel[1] vehicle. Nothing in this part shall be construed to provide that any covered fleet operator subject to fleet vehicle purchase requirements under section 7586 of this title shall be required to convert existing or new gasoline or diesel-powered vehicles to clean-fuel vehicles or to purchase converted vehicles.

(b) Regulations

The Administrator shall, within 24 months after November 15, 1990, consistent with the requirements of this subchapter applicable to new vehicles, promulgate regulations governing conversions of conventional vehicles to clean-fuel vehicles. Such regulations shall establish criteria for such conversions which will ensure that a converted vehicle will comply with the standards applicable under this part to clean-fuel vehicles. Such regulations shall provide for the application to such conversions of the same provisions of this subchapter (including provisions relating to administration enforcement) as are applicable to standards under section[2] 7582, 7583, 7584, and 7585 of this title, except that in the case of conversions the Administrator may modify the applicable regulations implementing

[1] So in original. Probably should be ''clean-fuel''.

[2] So in original. Probably should be ''sections''.

such provisions as the Administrator deems necessary to implement this part.

(c) Enforcement

Any person who converts conventional vehicles to clean fuel[1] vehicles pursuant to subsection (b) of this section, shall be considered a manufacturer for purposes of sections 7525 and 7541 of this title and related enforcement provisions. Nothing in the preceding sentence shall require a person who performs such conversions to warrant any part or operation of a vehicle other than as required under this part. Nothing in this paragraph shall limit the applicability of any other warranty to unrelated parts or operations.

(d) Tampering

The conversion from a vehicle capable of operating on gasoline or diesel fuel only to a clean-fuel vehicle shall not be considered a violation of section 7522(a)(3) of this title if such conversion complies with the regulations promulgated under subsection (b) of this section.

(e) Safety

The Secretary of Transportation shall, if necessary, promulgate rules under applicable motor vehicle laws regarding the safety of vehicles converted from existing and new vehicles to clean-fuel vehicles.

(July 14, 1955, ch. 360, title II, § 247, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2523.)

§ 7588. Federal agency fleets

(a) Additional provisions applicable

The provisions of this section shall apply, in addition to the other provisions of this part, in the case of covered fleet vehicles owned or operated by an agency, department, or instrumentality of the United States, except as otherwise provided in subsection (e) of this section.

(b) Cost of vehicles to Federal agency

Notwithstanding the provisions of sections 601–611 of title 40, the Administrator of General Services shall not include the incremental costs of clean-fuel vehicles in the amount to be reimbursed by Federal agencies if the Administrator of General Services determines that appropriations provided pursuant to this paragraph are sufficient to provide for the incremental cost of such vehicles over the cost of comparable conventional vehicles.

(c) Limitations on appropriations

Funds appropriated pursuant to the authorization under this paragraph shall be applicable only—

(1) to the portion of the cost of acquisition, maintenance and operation of vehicles acquired under this subparagraph which exceeds the cost of acquisition, maintenance and operation of comparable conventional vehicles;

(2) to the portion of the costs of fuel storage and dispensing equipment attributable to such vehicles which exceeds the costs for such purposes required for conventional vehicles; and

(3) to the portion of the costs of acquisition of clean-fuel vehicles which represents a reduction in revenue from the disposal of such vehicles as compared to revenue resulting from the disposal of comparable conventional vehicles.

(d) Vehicle costs

The incremental cost of vehicles acquired under this part over the cost of comparable conventional vehicles shall not be applied to any calculation with respect to a limitation under law on the maximum cost of individual vehicles which may be required by the United States.

(e) Exemptions

The requirements of this part shall not apply to vehicles with respect to which the Secretary of Defense has certified to the Administrator that an exemption is needed based on national security consideration.

(f) Acquisition requirement

Federal agencies, to the extent practicable, shall obtain clean-fuel vehicles from original equipment manufacturers.

(g) Authorization of appropriations

There are authorized to be appropriated such sums as may be required to carry out the provisions of this section: *Provided*, That such sums as are appropriated for the Administrator of General Services pursuant to the authorization under this section shall be added to the General Supply Fund established in section 321 of title 40.

(July 14, 1955, ch. 360, title II, § 248, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2524.)

CODIFICATION

In subsec. (b), ''sections 601–611 of title 40'' substituted for ''section 211 of the Federal Property and Administrative Services Act of 1949'', and, in subsec. (g), ''the General Supply Fund established in section 321 of title 40'' substituted for ''the General Supply Fund established in section 109 of the Federal Property and Administrative Services Act of 1949'', on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

ABOLITION OF GENERAL SUPPLY FUND

The General Supply Fund, referred to in subsec. (g), was abolished and its capital assets and balances transferred to the Acquisition Services Fund by section 3(a)–(c) of Pub. L. 109–313, set out as an Acquisition Services Fund note under section 321 of Title 40, Public Buildings, Property, and Works.

§ 7589. California pilot test program

(a) Establishment

The Administrator shall establish a pilot program in the State of California to demonstrate the effectiveness of clean-fuel vehicles in controlling air pollution in ozone nonattainment areas.

(b) Applicability

The provisions of this section shall only apply to light-duty trucks and light-duty vehicles, and such provisions shall apply only in the State of California, except as provided in subsection (f) of this section.

(c) Program requirements

Not later than 24 months after November 15, 1990, the Administrator shall promulgate regula-

tions establishing requirements under this section applicable in the State of California. The regulations shall provide the following:

(1) Clean-fuel vehicles

Clean-fuel vehicles shall be produced, sold, and distributed (in accordance with normal business practices and applicable franchise agreements) to ultimate purchasers in California (including owners of covered fleets referred to in section 7586 of this title) in numbers that meet or exceed the following schedule:

Model Years	Number of Clean-Fuel Vehicles
1996, 1997, 1998	150,000 vehicles
1999 and thereafter	300,000 vehicles

(2) Clean alternative fuels

(A) Within 2 years after November 15, 1990, the State of California shall submit a revision of the applicable implementation plan under part D of subchapter I of this chapter and section 7410 of this title containing a clean fuel plan that requires that clean alternative fuels on which the clean-fuel vehicles required under this paragraph can operate shall be produced and distributed by fuel suppliers and made available in California. At a minimum, sufficient clean alternative fuels shall be produced, distributed and made available to assure that all clean-fuel vehicles required under this section can operate, to the maximum extent practicable, exclusively on such fuels in California. The State shall require that clean alternative fuels be made available and offered for sale at an adequate number of locations with sufficient geographic distribution to ensure convenient refueling with clean alternative fuels, considering the number of, and type of, such vehicles sold and the geographic distribution of such vehicles within the State. The State shall determine the clean alternative fuels to be produced, distributed, and made available based on motor vehicle manufacturers' projections of future sales of such vehicles and consultations with the affected local governments and fuel suppliers.

(B) The State may by regulation grant persons subject to the requirements prescribed under this paragraph an appropriate amount of credits for exceeding such requirements, and any person granted credits may transfer some or all of the credits for use by one or more persons in demonstrating compliance with such requirements. The State may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as the State finds appropriate.

(C) The State may also by regulation establish specifications for any clean alternative fuel produced and made available under this paragraph as the State finds necessary to reduce or eliminate an unreasonable risk to public health, welfare, or safety associated with its use or to ensure acceptable vehicle maintenance and performance characteristics.

(D) If a retail gasoline dispensing facility would have to remove or replace one or more motor vehicle fuel underground storage tanks and accompanying piping in order to comply with the provisions of this section, and it had removed and replaced such tank or tanks and accompanying piping in order to comply with subtitle I of the Solid Waste Disposal Act [42 U.S.C. 6991 et seq.] prior to November 15, 1990, it shall not be required to comply with this subsection until a period of 7 years has passed from the date of the removal and replacement of such tank or tanks.

(E) Nothing in this section authorizes any State other than California to adopt provisions regarding clean alternative fuels.

(F) If the State of California fails to adopt a clean fuel program that meets the requirements of this paragraph, the Administrator shall, within 4 years after November 15, 1990, establish a clean fuel program for the State of California under this paragraph and section 7410(c) of this title that meets the requirements of this paragraph.

(d) Credits for motor vehicle manufacturers

(1) The Administrator may (by regulation) grant a motor vehicle manufacturer an appropriate amount of credits toward fulfillment of such manufacturer's share of the requirements of subsection (c)(1) of this section for any of the following (or any combination thereof):

(A) The sale of more clean-fuel vehicles than required under subsection (c)(1) of this section.

(B) The sale of clean fuel[1] vehicles which meet standards established by the Administrator as provided in paragraph (3) which are more stringent than the clean-fuel vehicle standards otherwise applicable to such clean-fuel vehicle. A manufacturer granted credits under this paragraph may transfer some or all of the credits for use by one or more other manufacturers in demonstrating compliance with the requirements prescribed under this paragraph. The Administrator may make the credits available for use after consideration of enforceability, environmental, and economic factors and upon such terms and conditions as he finds appropriate. The Administrator shall grant credits in accordance with this paragraph, notwithstanding any requirements of State law or any credits granted with respect to the same vehicles under any State law, rule, or regulation.

(2) REGULATIONS AND ADMINISTRATION.—The Administrator shall administer the credit program established under this subsection. Within 12 months after November 15, 1990, the Administrator shall promulgate regulations for such credit program.

(3) STANDARDS FOR ISSUING CREDITS FOR CLEANER VEHICLES.—The more stringent standards and other requirements (including requirements relating to the weighting of credits) established by the Administrator for purposes of the credit program under 7585(e)[2] of this title (relating to credits for clean fuel[1] vehicles in the fleets program) shall also apply for purposes of the credit program under this paragraph.

[1] So in original. Probably should be ''clean-fuel''.

[2] So in original. Probably should be ''section 7586(f)''.

(e) Program evaluation

(1) Not later than June 30, 1994 and again in connection with the report under paragraph (2), the Administrator shall provide a report to the Congress on the status of the California Air Resources Board Low-Emissions Vehicles and Clean Fuels Program. Such report shall examine the capability, from a technological standpoint, of motor vehicle manufacturers and motor vehicle fuel suppliers to comply with the requirements of such program and with the requirements of the California Pilot Program under this section.

(2) Not later than June 30, 1998, the Administrator shall complete and submit a report to Congress on the effectiveness of the California pilot program under this section. The report shall evaluate the level of emission reductions achieved under the program, the costs of the program, the advantages and disadvantages of extending the program to other nonattainment areas, and desirability of continuing or expanding the program in California.

(3) The program under this section cannot be extended or terminated by the Administrator except by Act of Congress enacted after November 15, 1990. Section 7507 of this title does not apply to the program under this section.

(f) Voluntary opt-in for other States

(1) EPA regulations

Not later than 2 years after November 15, 1990, the Administrator shall promulgate regulations establishing a voluntary opt-in program under this subsection pursuant to which—

(A) clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California under this section, and

(B) clean alternative fuels required to be produced and distributed under this section by fuel suppliers and made available in California[3]

may also be sold and used in other States which submit plan revisions under paragraph (2).

(2) Plan revisions

Any State in which there is located all or part of an ozone nonattainment area classified under subpart[4] D of subchapter I of this chapter as Serious, Severe, or Extreme may submit a revision of the applicable implementation plan under part D of subchapter I of this chapter and section 7410 of this title to provide incentives for the sale or use in such an area or State of clean-fuel vehicles which are required to be produced, sold, and distributed in the State of California, and for the use in such an area or State of clean alternative fuels required to be produced and distributed by fuel suppliers and made available in California. Such plan provisions shall not take effect until 1 year after the State has provided notice of such provisions to motor vehicle manufacturers and to fuel suppliers.

(3) Incentives

The incentives referred to in paragraph (2) may include any or all of the following:

(A) A State registration fee on new motor vehicles registered in the State which are not clean-fuel vehicles in the amount of at least 1 percent of the cost of the vehicle. The proceeds of such fee shall be used to provide financial incentives to purchasers of clean-fuel vehicles and to vehicle dealers who sell high volumes or high percentages of clean-fuel vehicles and to defray the administrative costs of the incentive program.

(B) Provisions to exempt clean-fuel vehicles from high occupancy vehicle or trip reduction requirements.

(C) Provisions to provide preference in the use of existing parking spaces for clean-fuel vehicles.

The incentives under this paragraph shall not apply in the case of covered fleet vehicles.

(4) No sales or production mandate

The regulations and plan revisions under paragraphs (1) and (2) shall not include any production or sales mandate for clean-fuel vehicles or clean alternative fuels. Such regulations and plan revisions shall also provide that vehicle manufacturers and fuel suppliers may not be subject to penalties or sanctions for failing to produce or sell clean-fuel vehicles or clean alternative fuels.

(July 14, 1955, ch. 360, title II, § 249, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2525.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (c)(2)(D), is title II of Pub. L. 89–272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795. Subtitle I of the Act is classified generally to subchapter IX (§ 6991 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

November 15, 1990, referred to in subsec. (e)(3), was in the original ''the date of the Clean Air Act Amendments of 1990'', which was translated as meaning the date of enactment of Pub. L. 101–549, which enacted this section, to reflect the probable intent of Congress.

§ 7590. General provisions

(a) State refueling facilities

If any State adopts enforceable provisions in an implementation plan applicable to a nonattainment area which provides that existing State refueling facilities will be made available to the public for the purchase of clean alternative fuels or that State-operated refueling facilities for such fuels will be constructed and operated by the State and made available to the public at reasonable times, taking into consideration safety, costs, and other relevant factors, in approving such plan under section 7410 of this title and part D,[1] the Administrator may credit a State with the emission reductions for purposes of part D[1] attributable to such actions.

(b) No production mandate

The Administrator shall have no authority under this part to mandate the production of clean-fuel vehicles except as provided in the

[3] So in original. Probably should be followed by a comma.

[4] So in original. Probably should be ''part''.

[1] So in original. Probably should be ''part D of subchapter I of this chapter''.

California pilot test program or to specify as applicable the models, lines, or types of, or marketing or price practices, policies, or strategies for, vehicles subject to this part. Nothing in this part shall be construed to give the Administrator authority to mandate marketing or pricing practices, policies, or strategies for fuels.

(c) Tank and fuel system safety

The Secretary of Transportation shall, in accordance with chapter 301 of title 49, promulgate applicable regulations regarding the safety and use of fuel storage cylinders and fuel systems, including appropriate testing and retesting, in conversions of motor vehicles.

(d) Consultation with Department of Energy and Department of Transportation

The Administrator shall coordinate with the Secretaries of the Department of Energy and the Department of Transportation in carrying out the Administrator's duties under this part.

(July 14, 1955, ch. 360, title II, § 250, as added Pub. L. 101–549, title II, § 229(a), Nov. 15, 1990, 104 Stat. 2528.)

CODIFICATION

In subsec. (c), ''chapter 301 of title 49'' substituted for ''the National Motor Vehicle Traffic Safety Act of 1966 [15 U.S.C. 1381 et seq.]'', meaning ''the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.]'', on authority of Pub. L. 103–272, § 6(b), July 5, 1994, 108 Stat. 1378, the first section of which enacted subtitles II, III, and V to X of Title 49, Transportation.

SUBCHAPTER III—GENERAL PROVISIONS

§ 7601. Administration

(a) Regulations; delegation of powers and duties; regional officers and employees

(1) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations subject to section 7607(d) of this title, as he may deem necessary or expedient.

(2) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the chapter;

(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this chapter in implementing and enforcing the chapter, particularly in the review of new sources and in enforcement of the chapter; and

(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the chapter.

(b) Detail of Environmental Protection Agency personnel to air pollution control agencies

Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(c) Payments under grants; installments; advances or reimbursements

Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

(d) Tribal authority

(1) Subject to the provisions of paragraph (2), the Administrator—

(A) is authorized to treat Indian tribes as States under this chapter, except for purposes of the requirement that makes available for application by each State no less than one-half of 1 percent of annual appropriations under section 7405 of this title; and

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

(2) The Administrator shall promulgate regulations within 18 months after November 15, 1990, specifying those provisions of this chapter for which it is appropriate to treat Indian tribes as States. Such treatment shall be authorized only if—

(A) the Indian tribe has a governing body carrying out substantial governmental duties and powers;

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

(C) the Indian tribe is reasonably expected to be capable, in the judgment of the Administrator, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of this chapter and all applicable regulations.

(3) The Administrator may promulgate regulations which establish the elements of tribal implementation plans and procedures for approval or disapproval of tribal implementation plans and portions thereof.

(4) In any case in which the Administrator determines that the treatment of Indian tribes as identical to States is inappropriate or administratively infeasible, the Administrator may provide, by regulation, other means by which the Administrator will directly administer such provisions so as to achieve the appropriate purpose.

(5) Until such time as the Administrator promulgates regulations pursuant to this subsection, the Administrator may continue to provide financial assistance to eligible Indian tribes under section 7405 of this title.

(July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, §§ 3(b)(2), 15(c)(2), Dec. 31, 1970, 84 Stat. 1677, 1713;

Pub. L. 95–95, title III, § 305(e), Aug. 7, 1977, 91 Stat. 776; Pub. L. 101–549, title I, §§ 107(d), 108(i), Nov. 15, 1990, 104 Stat. 2464, 2467.)

CODIFICATION

Section was formerly classified to section 1857g of this title.

AMENDMENTS

1990—Subsec. (a)(1). Pub. L. 101–549, § 108(i), inserted ''subject to section 7607(d) of this title'' after ''regulations''.

Subsec. (d). Pub. L. 101–549, § 107(d), added subsec. (d).

1977—Subsec. (a). Pub. L. 95–95 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''Environmental Protection Agency'' for ''Department of Health, Education, and Welfare''.

Subsec. (b). Pub. L. 91–604, § 3(b)(2), substituted ''Environmental Protection Agency'' for ''Public Health Service'' and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

DISADVANTAGED BUSINESS CONCERNS; USE OF QUOTAS PROHIBITED

Title X of Pub. L. 101–549 provided that:

''SEC. 1001. DISADVANTAGED BUSINESS CONCERNS.

''(a) IN GENERAL.—In providing for any research relating to the requirements of the amendments made by the Clean Air Act Amendments of 1990 [Pub. L. 101–549, see Tables for classification] which uses funds of the Environmental Protection Agency, the Administrator of the Environmental Protection Agency shall, to the extent practicable, require that not less than 10 percent of total Federal funding for such research will be made available to disadvantaged business concerns.

''(b) DEFINITION.—

''(1)(A) For purposes of subsection (a), the term 'disadvantaged business concern' means a concern—

''(i) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals or, in the case of a publicly traded company, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

''(ii) the management and daily business operations of which are controlled by such individuals.

''(B)(i) A for-profit business concern is presumed to be a disadvantaged business concern for purposes of subsection (a) if it is at least 51 percent owned by, or in the case of a concern which is a publicly traded company at least 51 percent of the stock of the company is owned by, one or more individuals who are members of the following groups:

''(I) Black Americans.

''(II) Hispanic Americans.

''(III) Native Americans.

''(IV) Asian Americans.

''(V) Women.

''(VI) Disabled Americans.

''(ii) The presumption established by clause (i) may be rebutted with respect to a particular business concern if it is reasonably established that the individual or individuals referred to in that clause with respect to that business concern are not experiencing impediments to establishing or developing such concern as a result of the individual's identification as a member of a group specified in that clause.

''(C) The following institutions are presumed to be disadvantaged business concerns for purposes of subsection (a):

''(i) Historically black colleges and universities, and colleges and universities having a student body in which 40 percent of the students are Hispanic.

''(ii) Minority institutions (as that term is defined by the Secretary of Education pursuant to the General Education Provision Act (20 U.S.C. 1221 et seq.)).

''(iii) Private and voluntary organizations controlled by individuals who are socially and economically disadvantaged.

''(D) A joint venture may be considered to be a disadvantaged business concern under subsection (a), notwithstanding the size of such joint venture, if—

''(i) a party to the joint venture is a disadvantaged business concern; and

''(ii) that party owns at least 51 percent of the joint venture.

A person who is not an economically disadvantaged individual or a disadvantaged business concern, as a party to a joint venture, may not be a party to more than 2 awarded contracts in a fiscal year solely by reason of this subparagraph.

''(E) Nothing in this paragraph shall prohibit any member of a racial or ethnic group that is not listed in subparagraph (B)(i) from establishing that they have been impeded in establishing or developing a business concern as a result of racial or ethnic discrimination.

''SEC. 1002. USE OF QUOTAS PROHIBITED.—Nothing in this title shall permit or require the use of quotas or a requirement that has the effect of a quota in determining eligibility under section 1001.''

§ 7602. Definitions

When used in this chapter—

(a) The term ''Administrator'' means the Administrator of the Environmental Protection Agency.

(b) The term ''air pollution control agency'' means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

(c) The term ''interstate air pollution control agency'' means—

(1) an air pollution control agency established by two or more States, or

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

(d) The term ''State'' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term ''person'' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term ''municipality'' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term ''air pollutant'' means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term ''air pollutant'' is used.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.

(i) The term ''Federal land manager'' means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms ''major stationary source'' and ''major emitting facility'' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms ''emission limitation'' and ''emission standard'' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under this chapter..[1]

(*l*) The term ''standard of performance'' means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term ''means of emission limitation'' means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term ''primary standard attainment date'' means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(*o*) The term ''delayed compliance order'' means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term ''schedule and timetable of compliance'' means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(q) For purposes of this chapter, the term ''applicable implementation plan'' means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 7410 of this title, or promulgated under section 7410(c) of this title, or promulgated or approved pursuant to regulations promulgated under section 7601(d) of this title and which implements the relevant requirements of this chapter.

(r) INDIAN TRIBE.—The term ''Indian tribe'' means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village, which is Federally recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(s) VOC.—The term ''VOC'' means volatile organic compound, as defined by the Administrator.

(t) PM–10.—The term ''PM–10'' means particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers, as measured by such method as the Administrator may determine.

(u) NAAQS AND CTG.—The term ''NAAQS'' means national ambient air quality standard. The term ''CTG'' means a Control Technique Guideline published by the Administrator under section 7408 of this title.

(v) NO_x.—The term ''NO_x'' means oxides of nitrogen.

(w) CO.—The term ''CO'' means carbon monoxide.

(x) SMALL SOURCE.—The term ''small source'' means a source that emits less than 100 tons of regulated pollutants per year, or any class of persons that the Administrator determines, through regulation, generally lack technical ability or knowledge regarding control of air pollution.

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[1] So in original.

(y) FEDERAL IMPLEMENTATION PLAN.—The term ''Federal implementation plan'' means a plan (or portion thereof) promulgated by the Administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a State implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques (including economic incentives, such as marketable permits or auctions of emissions allowances), and provides for attainment of the relevant national ambient air quality standard.

(z) STATIONARY SOURCE.—The term ''stationary source'' means generally any source of an air pollutant except those emissions resulting directly from an internal combustion engine for transportation purposes or from a nonroad engine or nonroad vehicle as defined in section 7550 of this title.

(July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 400, renumbered Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 504; Pub. L. 91–604, § 15(a)(1), (c)(1), Dec. 31, 1970, 84 Stat. 1710, 1713; Pub. L. 95–95, title II, § 218(c), title III, § 301, Aug. 7, 1977, 91 Stat. 761, 769; Pub. L. 95–190, § 14(a)(76), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§ 101(d)(4), 107(a), (b), 108(j), 109(b), title III, § 302(e), title VII, § 709, Nov. 15, 1990, 104 Stat. 2409, 2464, 2468, 2470, 2574, 2684.)

CODIFICATION

Section was formerly classified to section 1857h of this title.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (b) and (d) of this section were contained in a section 1857e of this title, act July 14, 1955, ch. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1990—Subsec. (b)(1) to (3). Pub. L. 101–549, § 107(a)(1), (2), struck out ''or'' at end of par. (3) and substituted periods for semicolons at end of pars. (1) to (3).

Subsec. (b)(5). Pub. L. 101–549, § 107(a)(3), added par. (5).

Subsec. (g). Pub. L. 101–549, § 108(j)(2), inserted at end ''Such term includes any precursors to the formation of any air pollutant, to the extent the Administrator has identified such precursor or precursors for the particular purpose for which the term 'air pollutant' is used.''

Subsec. (h). Pub. L. 101–549, § 109(b), inserted before period at end '', whether caused by transformation, conversion, or combination with other air pollutants''.

Subsec. (k). Pub. L. 101–549, § 303(e), inserted before period at end '', and any design, equipment, work practice or operational standard promulgated under this chapter.''

Subsec. (q). Pub. L. 101–549, § 101(d)(4), added subsec. (q).

Subsec. (r). Pub. L. 101–549, § 107(b), added subsec. (r).

Subsecs. (s) to (y). Pub. L. 101–549, § 108(j)(1), added subsecs. (s) to (y).

Subsec. (z). Pub. L. 101–549, § 709, added subsec. (z).

1977—Subsec. (d). Pub. L. 95–95, § 218(c), inserted ''and includes the Commonwealth of the Northern Mariana Islands'' after ''American Samoa''.

Subsec. (e). Pub. L. 95–190 substituted ''individual, corporation'' for ''individual corporation''.

Pub. L. 95–95, § 301(b), expanded definition of ''person'' to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

Subsec. (g). Pub. L. 95–95, § 301(c), expanded definition of ''air pollutant'' so as, expressly, to include physical, chemical, biological, and radioactive substances or matter emitted into or otherwise entering the ambient air.

Subsecs. (i) to (p). Pub. L. 95–95, § 301(a), added subsecs. (i) to (p).

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(1), substituted definition of ''Administrator'' as meaning Administrator of the Environmental Protection Agency for definition of ''Secretary'' as meaning Secretary of Health, Education, and Welfare.

Subsecs. (g), (h). Pub. L. 91–604, § 15(a)(1), added subsec. (g) defining ''air pollutant'', redesignated former subsec. (g) as (h) and substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90–148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

§ 7603. Emergency powers

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to public health or welfare, or the environment, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of public health or welfare or the environment by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect public health or welfare or the environment. Prior to taking any action under this section, the Administrator shall consult with appropriate State and local authorities and attempt to confirm the accuracy of the information on which the action proposed to be taken is based. Any order issued by the Administrator under this section shall be effective upon issuance and shall remain in effect for a period of not more than 60 days, unless the Administrator brings an action pursuant to the first sentence of this section before the expiration of that period. Whenever the Administrator brings such an action within the 60-day period, such order shall remain in effect for an additional 14 days or for such longer period as may be authorized by the court in which such action is brought.

(July 14, 1955, ch. 360, title III, § 303, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705; amended Pub. L. 95–95, title III, § 302(a), Aug. 7, 1977, 91 Stat. 770; Pub. L. 101–549, title VII, § 704, Nov. 15, 1990, 104 Stat. 2681.)

CODIFICATION

Section was formerly classified to section 1857h–1 of this title.

PRIOR PROVISIONS

A prior section 303 of act July 14, 1955, was renumbered section 310 by Pub. L. 91–604 and is classified to section 7610 of this title.

AMENDMENTS

1990—Pub. L. 101–549, § 704(2)–(5), struck out subsec. (a) designation before ''Notwithstanding any other'', struck out subsec. (b) which related to violation of or failure or refusal to comply with subsec. (a) orders, and substituted new provisions for provisions following first sentence which read as follows: ''If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.''

Pub. L. 101–549, § 704(1), which directed that ''public health or welfare, or the environment'' be substituted for ''the health of persons and that appropriate State or local authorities have not acted to abate such sources'', was executed by making the substitution for ''the health of persons, and that appropriate State or local authorities have not acted to abate such sources'' to reflect the probable intent of Congress.

1977—Pub. L. 95–95 designated existing provisions as subsec. (a), inserted provisions that, if it is not practicable to assure prompt protection of the health of persons solely by commencement of a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources), that, prior to taking any action under this section, the Administrator consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking, that the order be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period, and that, whenever the Administrator brings such an action within such period, such order be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7604. Citizen suits

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties (except for actions under paragraph (2)). The district courts of the United States shall have jurisdiction to compel (consistent with paragraph (2) of this subsection) agency action unreasonably delayed, except that an action to compel agency action referred to in section 7607(b) of this title which is unreasonably delayed may only be filed in a United States District Court within the circuit in which such action would be reviewable under section 7607(b) of this title. In any such action for unreasonable delay, notice to the entities referred to in subsection (b)(1)(A) of this section shall be provided 180 days before commencing such action.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.[1]

(2) under subsection (a)(2) of this section prior to 60 days after the plaintiff has given notice of such action to the Administrator,

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(i)(3)(A) or (f)(4) of this title or an order issued by the Administrator pursuant to section 7413(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator; service of complaint; consent judgment

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In any action under this section, the Administrator, if not a party, may intervene as a matter of right at any time in the proceeding. A judgment in an action under this section to which the United States is not a party shall not, however, have any binding effect upon the United States.

(3) Whenever any action is brought under this section the plaintiff shall serve a copy of the complaint on the Attorney General of the United States and on the Administrator. No consent judgment shall be entered in an action brought under this section in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator during which time the Government may submit its comments on the proposed consent judgment to the court and parties or may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) "Emission standard or limitation under this chapter" defined

For purposes of this section, the term ''emission standard or limitation under this chapter'' means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or[2]

(3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment),,[3] section 7419 of this title (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545(e) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under subchapter VI of this chapter (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise);[4] or

(4) any other standard, limitation, or schedule established under any permit issued pursuant to subchapter V of this chapter or under any applicable State implementation plan approved by the Administrator, any permit term or condition, and any requirement to obtain a permit as a condition of operations.[5]

which is in effect under this chapter (including a requirement applicable by reason of section

[1] So in original. The period probably should be ''\, or''.

[2] So in original. The word ''or'' probably should not appear.

[3] So in original.

[4] So in original. The semicolon probably should be a comma.

[5] So in original. The period probably should be a comma.

7418 of this title) or under an applicable implementation plan.

(g) Penalty fund

(1) Penalties received under subsection (a) of this section shall be deposited in a special fund in the United States Treasury for licensing and other services. Amounts in such fund are authorized to be appropriated and shall remain available until expended, for use by the Administrator to finance air compliance and enforcement activities. The Administrator shall annually report to the Congress about the sums deposited into the fund, the sources thereof, and the actual and proposed uses thereof.

(2) Notwithstanding paragraph (1) the court in any action under this subsection[6] to apply civil penalties shall have discretion to order that such civil penalties, in lieu of being deposited in the fund referred to in paragraph (1), be used in beneficial mitigation projects which are consistent with this chapter and enhance the public health or the environment. The court shall obtain the view of the Administrator in exercising such discretion and selecting any such projects. The amount of any such payment in any such action shall not exceed $100,000.

(July 14, 1955, ch. 360, title III, § 304, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1706; amended Pub. L. 95–95, title III, § 303(a)–(c), Aug. 7, 1977, 91 Stat. 771, 772; Pub. L. 95–190, § 14(a) (77), (78), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title III, § 302(f), title VII, § 707(a)–(g), Nov. 15, 1990, 104 Stat. 2574, 2682, 2683.)

REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

CODIFICATION

Section was formerly classified to section 1857h–2 of this title.

PRIOR PROVISIONS

A prior section 304 of act July 14, 1955, was renumbered section 311 by Pub. L. 91–604 and is classified to section 7611 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 707(a), (f), in closing provisions, inserted before period at end ", and to apply any appropriate civil penalties (except for actions under paragraph (2))" and inserted sentences at end giving courts jurisdiction to compel agency action unreasonably delayed and requiring 180 days notice prior to commencement of action.

Subsec. (a)(1), (3). Pub. L. 101–549, § 707(g), inserted "to have violated (if there is evidence that the alleged violation has been repeated) or" before "to be in violation".

Subsec. (b). Pub. L. 101–549, § 302(f), substituted "section 7412(i)(3)(A) or (f)(4)" for "section 7412(c)(1)(B)" in closing provisions.

Subsec. (c)(2). Pub. L. 101–549, § 707(c), amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In such action under this section, the Administrator, if not a party, may intervene as a matter of right."

Subsec. (c)(3). Pub. L. 101–549, § 707(d), added subsec. (c)(3).

Subsec. (f)(3). Pub. L. 101–549, § 707(e), struck out "any condition or requirement of section 7413(d) of this title (relating to certain enforcement orders)" before ", section 7419 of this title", substituted "subchapter VI of this chapter" for "part B of subchapter I of this chapter", and substituted "; or" for period at end.

Subsec. (f)(4). Pub. L. 101–549, § 707(e), which directed that par. (4) be added at end of subsec. (f), was executed by adding par. (4) after par. (3), to reflect the probable intent of Congress.

Subsec. (g). Pub. L. 101–549, § 707(b), added subsec. (g).

1977—Subsec. (a)(3). Pub. L. 95–190, § 14(a)(77), inserted "or modified" after "new".

Pub. L. 95–95, § 303(a), added subsec. (a)(3).

Subsec. (e). Pub. L. 95–95, § 303(c), inserted provisions which prohibited any construction of this section or any other law of the United States which would prohibit, exclude, or restrict any State, local, or interstate authority from bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court against the United States or bringing any administrative enforcement action or obtaining any administrative remedy or sanction against the United States in any State or local administrative agency, department, or instrumentality under State or local law.

Subsec. (f)(3). Pub. L. 95–190, § 14(a)(78), inserted ", or" after "(relating to ozone protection)", substituted "any condition or requirement under an" for "requirements under an", and struck out "or" before "section 7491".

Pub. L. 95–95, § 303(b), added par. (3).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 707(g) of Pub. L. 101–549 provided that: "The amendment made by this subsection [amending this section] shall take effect with respect to actions brought after the date 2 years after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990]."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of reporting provisions in subsec. (g)(1) of this section, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 6th item on page 165 of House Document No. 103–7.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[6] So in original. Probably should be "this section".

§ 7605. Representation in litigation

(a) Attorney General; attorneys appointed by Administrator

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

(b) Memorandum of understanding regarding legal representation

In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

(July 14, 1955, ch. 360, title III, § 305, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 95–95, title III, § 304(a), Aug. 7, 1977, 91 Stat. 772.)

CODIFICATION

Section was formerly classified to section 1857h–3 of this title.

PRIOR PROVISIONS

A prior section 305 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 505, was renumbered section 312 by Pub. L. 91–604 and is classified to section 7612 of this title.

Another prior section 305 of act July 14, 1955, ch. 360, title III, formerly § 12, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, was renumbered section 305 by Pub. L. 89–272, renumbered section 308 by Pub. L. 90–148, and renumbered section 315 by Pub. L. 91–604, and is classified to section 7615 of this title.

AMENDMENTS

1977—Pub. L. 95–95 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7606. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person who is convicted of any offense under section 7413(c) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected. For convictions arising under section 7413(c)(2) of this title, the condition giving rise to the conviction also shall be considered to include any substantive violation of this chapter associated with the violation of 7413(c)(2) of this title. The Administrator may extend this prohibition to other facilities owned or operated by the convicted person.

(b) Notification procedures

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Federal agency contracts

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(July 14, 1955, ch. 360, title III, § 306, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 101–549, title VII, § 705, Nov. 15, 1990, 104 Stat. 2682.)

CODIFICATION

Subsec. (e) of this section, which required the President to annually report to Congress on measures taken toward implementing the purpose and intent of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a

note under section 1113 of Title 31, Money and Finance. See, also, the 14th item on page 20 of House Document No. 103–7.

Section was formerly classified to section 1857h–4 of this title.

PRIOR PROVISIONS

A prior section 306 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, was renumbered section 313 by Pub. L. 91–604 and is classified to section 7613 of this title.

Another prior section 306 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, renumbered § 306, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992, renumbered § 309, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506, renumbered § 316, Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857*l* of this title, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549 substituted ''section 7413(c)'' for ''section 7413(c)(1)'' and inserted sentences at end relating to convictions arising under section 7413(c)(2) of this title and extension of prohibition to other facilities owned by convicted persons.

FEDERAL ACQUISITION REGULATION: CONTRACTOR CERTIFICATION OR CONTRACT CLAUSE FOR ACQUISITION OF COMMERCIAL ITEMS

Pub. L. 103–355, title VIII, § 8301(g), Oct. 13, 1994, 108 Stat. 3397, provided that: ''The Federal Acquisition Regulation may not contain a requirement for a certification by a contractor under a contract for the acquisition of commercial items, or a requirement that such a contract include a contract clause, in order to implement a prohibition or requirement of section 306 of the Clean Air Act (42 U.S.C. 7606) or a prohibition or requirement issued in the implementation of that section, since there is nothing in such section 306 that requires such a certification or contract clause.''

EXECUTIVE ORDER NO. 11602

Ex. Ord. No. 11602, June 29, 1971, 36 F.R. 12475, which related to the administration of the Clean Air Act with respect to Federal contracts, grants, or loans, was superseded by Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out below.

EX. ORD. NO. 11738. ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.) [42 U.S.C. 7401 et seq.], particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91–604) [this section], and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92–500) [33 U.S.C. 1368], it is hereby ordered as follows:

SECTION 1. *Policy*. It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act [this chapter] (hereinafter referred to as ''the Air Act'') and the Federal Water Pollution Control Act (hereinafter referred to as ''the Water Act'') [33 U.S.C. 1251 et seq.].

SEC. 2. *Designation of Facilities*. (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as ''the Administrator'') shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act [42 U.S.C. 7413(c)(1)] or section 309(c) of the Water Act [33 U.S.C. 1319(c)]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans*. (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations*. The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations*. The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance*. The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement*. The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress*. (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such ex-

emption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions*. The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability*. This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity*. Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [formerly set out above], and section 306 of the Air Act [this section].

SEC. 12. *Order Superseded*. Executive Order No. 11602 of June 29, 1971, is hereby superseded.

RICHARD NIXON.

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

In connection with any determination under section 7410(f) of this title, or for purposes of obtaining information under section 7521(b)(4)[1] or 7545(c)(3) of this title, any investigation, monitoring, reporting requirement, entry, compliance inspection, or administrative enforcement proceeding under the[2] chapter (including but not limited to section 7413, section 7414, section 7420, section 7429, section 7477, section 7524, section 7525, section 7542, section 7603, or section 7606 of this title),,[3] the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[4] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title,,[3] any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5)[1] of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412 of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and pub-

[1] See References in Text note below.

[2] So in original. Probably should be "this".

[3] So in original.

[4] So in original. Probably should be "subsection,".

lishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement. Where a final decision by the Administrator defers performance of any nondiscretionary statutory action to a later time, any person may challenge the deferral pursuant to paragraph (1).

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to[5] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title, or emission standard or limitation under section 7412(d) of this title, any standard under section 7412(f) of this title, or any regulation under section 7412(g)(1)(D) and (F) of this title, or any regulation under section 7412(m) or (n) of this title,

(D) the promulgation of any requirement for solid waste combustion under section 7429 of this title,

(E) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(F) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(G) the promulgation or revision of any regulation under subchapter IV–A of this chapter (relating to control of acid deposition),

(H) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(I) promulgation or revision of regulations under subchapter VI of this chapter (relating to stratosphere and ozone protection),

(J) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(K) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title, and the revision of a standard under section 7521(a)(3) of this title,

(L) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(M) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(N) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement),

(O) the promulgation or revision of any regulation pertaining to consumer and commercial products under section 7511b(e) of this title,

(P) the promulgation or revision of any regulation pertaining to field citations under section 7413(d)(3) of this title,

(Q) the promulgation or revision of any regulation pertaining to urban buses or the clean-fuel vehicle, clean-fuel fleet, and clean fuel programs under part C of subchapter II of this chapter,

(R) the promulgation or revision of any regulation pertaining to nonroad engines or nonroad vehicles under section 7547 of this title,

(S) the promulgation or revision of any regulation relating to motor vehicle compliance program fees under section 7552 of this title,

(T) the promulgation or revision of any regulation under subchapter IV–A of this chapter (relating to acid deposition),

(U) the promulgation or revision of any regulation under section 7511b(f) of this title pertaining to marine vessels, and

(V) such other actions as the Administrator may determine.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

[5] So in original. The word ''to'' probably should not appear.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a ''rule''). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the ''comment period''). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

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

(B) contrary to constitutional right, power, privilege, or immunity;

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

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(h) Public participation

It is the intent of Congress that, consistent with the policy of subchapter II of chapter 5 of title 5, the Administrator in promulgating any regulation under this chapter, including a regulation subject to a deadline, shall ensure a reasonable period for public participation of at least 30 days, except as otherwise expressly provided in section[6] 7407(d), 7502(a), 7511(a) and (b), and 7512(a) and (b) of this title.

(July 14, 1955, ch. 360, title III, § 307, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1707; amended Pub. L. 92–157, title III, § 302(a), Nov. 18, 1971, 85 Stat. 464; Pub. L. 93–319, § 6(c), June 22, 1974, 88 Stat. 259; Pub. L. 95–95, title III, §§ 303(d), 305(a), (c), (f)–(h), Aug. 7, 1977, 91 Stat. 772, 776, 777; Pub. L. 95–190, § 14(a)(79), (80), Nov. 16, 1977, 91 Stat. 1404; Pub. L. 101–549, title I, §§ 108(p), 110(5), title III, § 302(g), (h), title VII, §§ 702(c), 703, 706, 707(h), 710(b), Nov. 15, 1990, 104 Stat. 2469, 2470, 2574, 2681–2684.)

REFERENCES IN TEXT

Section 7521(b)(4) of this title, referred to in subsec. (a), was repealed by Pub. L. 101–549, title II, § 230(2), Nov. 15, 1990, 104 Stat. 2529.

Section 7521(b)(5) of this title, referred to in subsec. (b)(1), was repealed by Pub. L. 101–549, title II, § 230(3), Nov. 15, 1990, 104 Stat. 2529.

Section 1857c–10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original ''section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)'', meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93–319, § 3, 88 Stat. 248, (which was classified to section 1857c–10 of this title) as in effect prior to the enactment of Pub. L. 95–95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95–95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93–319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93–319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 7413(d) of this title was subsequently amended generally by Pub. L. 101–549, title VII, § 701, Nov. 15, 1990, 104 Stat. 2672, and, as so amended, no longer relates to final compliance orders. Section 117(b) of Pub. L. 95–95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Part C of subchapter I of this chapter, referred to in subsec. (d)(1)(J), was in the original ''subtitle C of title I'', and was translated as reading ''part C of title I'' to reflect the probable intent of Congress, because title I does not contain subtitles.

CODIFICATION

In subsec. (h), ''subchapter II of chapter 5 of title 5'' was substituted for ''the Administrative Procedures Act'' on authority of Pub. L. 89–554, § 7(b), Sept. 6, 1966, 80 Stat. 631, the first section of which enacted Title 5, Government Organization and Employees.

Section was formerly classified to section 1857h–5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, was renumbered section 314 by Pub. L. 91–604 and is classified to section 7614 of this title.

Another prior section 307 of act July 14, 1955, ch. 360, title III, formerly § 14, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401, was renumbered section 307 by Pub. L. 89–272, renumbered section 310 by Pub. L. 90–148, and renumbered section 317 by Pub. L. 91–604, and is set out as a Short Title note under section 7401 of this title.

[6] So in original. Probably should be ''sections''.

AMENDMENTS

1990—Subsec. (a). Pub. L. 101–549, § 703, struck out par. (1) designation at beginning, inserted provisions authorizing issuance of subpoenas and administration of oaths for purposes of investigations, monitoring, reporting requirements, entries, compliance inspections, or administrative enforcement proceedings under this chapter, and struck out ''or section 7521(b)(5)'' after ''section 7410(f)''.

Subsec. (b)(1). Pub. L. 101–549, § 706(2), which directed amendment of second sentence by striking ''under section 7413(d) of this title'' immediately before ''under section 7419 of this title'', was executed by striking ''under section 7413(d) of this title,'' before ''under section 7419 of this title'', to reflect the probable intent of Congress.

Pub. L. 101–549, § 706(1), inserted at end: ''The filing of a petition for reconsideration by the Administrator of any otherwise final rule or action shall not affect the finality of such rule or action for purposes of judicial review nor extend the time within which a petition for judicial review of such rule or action under this section may be filed, and shall not postpone the effectiveness of such rule or action.''

Pub. L. 101–549, § 702(c), inserted ''or revising regulations for enhanced monitoring and compliance certification programs under section 7414(a)(3) of this title,'' before ''or any other final action of the Administrator''.

Pub. L. 101–549, § 302(g), substituted ''section 7412'' for ''section 7412(c)''.

Subsec. (b)(2). Pub. L. 101–549, § 707(h), inserted sentence at end authorizing challenge to deferrals of performance of nondiscretionary statutory actions.

Subsec. (d)(1)(C). Pub. L. 101–549, § 110(5)(A), amended subpar. (C) generally. Prior to amendment, subpar. (C) read as follows: ''the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,''.

Subsec. (d)(1)(D), (E). Pub. L. 101–549, § 302(h), added subpar. (D) and redesignated former subpar. (D) as (E). Former subpar. (E) redesignated (F).

Subsec. (d)(1)(F). Pub. L. 101–549, § 302(h), redesignated subpar. (E) as (F). Former subpar. (F) redesignated (G).

Pub. L. 101–549, § 110(5)(B), amended subpar. (F) generally. Prior to amendment, subpar. (F) read as follows: ''promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),''.

Subsec. (d)(1)(G), (H). Pub. L. 101–549, § 302(h), redesignated subpars. (F) and (G) as (G) and (H), respectively. Former subpar. (H) redesignated (I).

Subsec. (d)(1)(I). Pub. L. 101–549, § 710(b), which directed that subpar. (H) be amended by substituting ''subchapter VI of this chapter'' for ''part B of subchapter I of this chapter'', was executed by making the substitution in subpar. (I), to reflect the probable intent of Congress and the intervening redesignation of subpar. (H) as (I) by Pub. L. 101–549, § 302(h), see below.

Pub. L. 101–549, § 302(h), redesignated subpar. (H) as (I). Former subpar. (I) redesignated (J).

Subsec. (d)(1)(J) to (M). Pub. L. 101–549, § 302(h), redesignated subpars. (I) to (L) as (J) to (M), respectively. Former subpar. (M) redesignated (N).

Subsec. (d)(1)(N). Pub. L. 101–549, § 302(h), redesignated subpar. (M) as (N). Former subpar. (N) redesignated (O).

Pub. L. 101–549, § 110(5)(C), added subpar. (N) and redesignated former subpar. (N) as (U).

Subsec. (d)(1)(O) to (T). Pub. L. 101–549, § 302(h), redesignated subpars. (N) to (S) as (O) to (T), respectively. Former subpar. (T) redesignated (U).

Pub. L. 101–549, § 110(5)(C), added subpars. (O) to (T).

Subsec. (d)(1)(U). Pub. L. 101–549, § 302(h), redesignated subpar. (T) as (U). Former subpar. (U) redesignated (V).

Pub. L. 101–549, § 110(5)(C), redesignated former subpar. (N) as (U).

Subsec. (d)(1)(V). Pub. L. 101–549, § 302(h), redesignated subpar. (U) as (V).

Subsec. (h). Pub. L. 101–549, § 108(p), added subsec. (h).

1977—Subsec. (b)(1). Pub. L. 95–190 in text relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia inserted provision respecting requirements under sections 7411 and 7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in text relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit inserted provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c–10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95–95, § 305(c), (h), inserted rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, inserted provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95–95, § 305(a), added subsec. (d).

Subsec. (e). Pub. L. 95–95, § 303(d), added subsec. (e).

Subsec. (f). Pub. L. 95–95, § 305(f), added subsec. (f).

Subsec. (g). Pub. L. 95–95, § 305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93–319 inserted reference to the Administrator's action under section 1857c–10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92–157 substituted reference to section ''7545(c)(3)'' for ''7545(c)(4)'' of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other

officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95–95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95–95, see section 406(a) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

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

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, § 308, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1708.)

CODIFICATION

Section was formerly classified to section 1857h–6 of this title.

PRIOR PROVISIONS

A prior section 308 of act July 14, 1955, was renumbered section 315 by Pub. L. 91–604 and is classified to section 7615 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7609. Policy review

(a) Environmental impact

The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) Unsatisfactory legislation, action, or regulation

In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(July 14, 1955, ch. 360, title III, § 309, as added Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1709.)

CODIFICATION

Section was formerly classified to section 1857h–7 of this title.

PRIOR PROVISIONS

A prior section 309 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered § 306, Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), 79 Stat. 992; renumbered § 309, Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316, Dec. 31, 1970, Pub. L. 91–604, § 12(a), 84 Stat. 1705, related to appropriations and was classified to section 1857*l* of this title, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7610. Other authority

(a) Authority and responsibilities under other laws not affected

Except as provided in subsection (b) of this section, this chapter shall not be construed as

superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) Nonduplication of appropriations

No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter.

(July 14, 1955, ch. 360, title III, § 310, formerly § 10, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 303, Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 505; renumbered § 310 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857i of this title.

PRIOR PROVISIONS

A prior section 310 of act July 14, 1955, was renumbered section 317 by Pub. L. 91–604 and is set out as a Short Title note under section 7401 of this title.

Provisions similar to those in subsec. (a) of this section were contained in section 1857f of this title, act July 14, 1955, ch. 360, § 7, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88–206.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary''.

1967—Subsec. (b). Pub. L. 90–148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7611. Records and audit

(a) Recipients of assistance to keep prescribed records

Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(July 14, 1955, ch. 360, title III, § 311, formerly § 11, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 304, Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; amended Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 505; renumbered § 311 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857j of this title.

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' and ''Secretary of Health, Education, and Welfare''.

1967—Pub. L. 90–148 reenacted section without change.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95–95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95–95 [this chapter], see section 406(b) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7612. Economic impact analyses

(a) Cost-benefit analysis

The Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis (as established under subsection (f) of this section), shall conduct a comprehensive analysis of the impact of this chapter on the public health, economy, and environment of the United States. In performing such analysis, the Administrator should consider the costs, benefits and other effects associated with compliance with each standard issued for—

(1) a criteria air pollutant subject to a standard issued under section 7409 of this title;

(2) a hazardous air pollutant listed under section 7412 of this title, including any technology-based standard and any risk-based standard for such pollutant;

(3) emissions from mobile sources regulated under subchapter II of this chapter;

(4) a limitation under this chapter for emissions of sulfur dioxide or nitrogen oxides;

(5) a limitation under subchapter VI of this chapter on the production of any ozone-depleting substance; and

(6) any other section of this chapter.

(b) Benefits

In describing the benefits of a standard described in subsection (a) of this section, the Administrator shall consider all of the economic, public health, and environmental benefits of efforts to comply with such standard. In any case

where numerical values are assigned to such benefits, a default assumption of zero value shall not be assigned to such benefits unless supported by specific data. The Administrator shall assess how benefits are measured in order to assure that damage to human health and the environment is more accurately measured and taken into account.

(c) Costs

In describing the costs of a standard described in subsection (a) of this section, the Administrator shall consider the effects of such standard on employment, productivity, cost of living, economic growth, and the overall economy of the United States.

(d) Initial report

Not later than 12 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, shall submit a report to the Congress that summarizes the results of the analysis described in subsection (a) of this section, which reports—

(1) all costs incurred previous to November 15, 1990, in the effort to comply with such standards; and

(2) all benefits that have accrued to the United States as a result of such costs.

(e) Omitted

(f) Appointment of Advisory Council on Clean Air Compliance Analysis

Not later than 6 months after November 15, 1990, the Administrator, in consultation with the Secretary of Commerce and the Secretary of Labor, shall appoint an Advisory Council on Clean Air Compliance Analysis of not less than nine members (hereafter in this section referred to as the ''Council''). In appointing such members, the Administrator shall appoint recognized experts in the fields of the health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields that the Administrator determines to be appropriate.

(g) Duties of Advisory Council

The Council shall—

(1) review the data to be used for any analysis required under this section and make recommendations to the Administrator on the use of such data;

(2) review the methodology used to analyze such data and make recommendations to the Administrator on the use of such methodology; and

(3) prior to the issuance of a report required under subsection (d) or (e) of this section, review the findings of such report, and make recommendations to the Administrator concerning the validity and utility of such findings.

(July 14, 1955, ch. 360, title III, § 312, formerly § 305, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 505; renumbered § 312 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713; Pub. L. 95–95, title II, § 224(c), Aug. 7, 1977, 91 Stat. 767; Pub. L. 101–549, title VIII, § 812(a), Nov. 15, 1990, 104 Stat. 2691.)

CODIFICATION

Subsec. (e) of this section, which required the Administrator, in consultation with the Secretary of Commerce, the Secretary of Labor, and the Council on Clean Air Compliance Analysis, to submit a report to Congress that updates the report issued pursuant to subsec. (d) of this section, and which, in addition, makes projections into the future regarding expected costs, benefits, and other effects of compliance with standards pursuant to this chapter as listed in subsec. (a) of this section, terminated, effective May 15, 2000, pursuant to section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance. See, also, the 4th item on page 163 of House Document No. 103–7.

Section was formerly classified to section 1857j–1 of this title.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions which related to: in subsec. (a), detailed cost estimate, comprehensive cost and economic impact studies, and annual reevaluation; in subsec. (b), personnel study and report to President and Congress; and in subsec. (c), cost-effectiveness analyses.

1977—Subsec. (c). Pub. L. 95–95 added subsec. (c).

1970—Pub. L. 91–604, § 15(c)(2), substituted ''Administrator'' for ''Secretary'' wherever appearing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95–95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as a note under section 7401 of this title.

TERMINATION OF ADVISORY COUNCILS

Advisory councils established after Jan. 5, 1973, to terminate not later than the expiration of the 2-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such 2-year period, or in the case of a council established by Congress, its duration is otherwise provided by law. See sections 3(2) and 14 of Pub. L. 92–463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

EQUIVALENT AIR QUALITY CONTROLS AMONG TRADING NATIONS

Section 811 of Pub. L. 101–549 provided that:

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

''(1) all nations have the responsibility to adopt and enforce effective air quality standards and requirements and the United States, in enacting this Act [see Tables for classification], is carrying out its responsibility in this regard;

''(2) as a result of complying with this Act, businesses in the United States will make significant capital investments and incur incremental costs in implementing control technology standards;

''(3) such compliance may impair the competitiveness of certain United States jobs, production, processes, and products if foreign goods are produced under less costly environmental standards and requirements than are United States goods; and

''(4) mechanisms should be sought through which the United States and its trading partners can agree to eliminate or reduce competitive disadvantages.

''(b) ACTION BY THE PRESIDENT.—

''(1) IN GENERAL.—Within 18 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress a report—

''(A) identifying and evaluating the economic effects of—

"(i) the significant air quality standards and controls required under this Act, and

"(ii) the differences between the significant standards and controls required under this Act and similar standards and controls adopted and enforced by the major trading partners of the United States,

on the international competitiveness of United States manufacturers; and

"(B) containing a strategy for addressing such economic effects through trade consultations and negotiations.

"(2) ADDITIONAL REPORTING REQUIREMENTS.—(A) The evaluation required under paragraph (1)(A) shall examine the extent to which the significant air quality standards and controls required under this Act are comparable to existing internationally-agreed norms.

"(B) The strategy required to be developed under paragraph (1)(B) shall include recommended options (such as the harmonization of standards and trade adjustment measures) for reducing or eliminating competitive disadvantages caused by differences in standards and controls between the United States and each of its major trading partners.

"(3) PUBLIC COMMENT.—Interested parties shall be given an opportunity to submit comments regarding the evaluations and strategy required in the report under paragraph (1). The President shall take any such comment into account in preparing the report.

"(4) INTERIM REPORT.—Within 9 months after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], the President shall submit to the Congress an interim report on the progress being made in complying with paragraph (1)."

GAO REPORTS ON COSTS AND BENEFITS

Section 812(b) of Pub. L. 101–549, which directed Comptroller General, commencing on second year after Nov. 15, 1990, and annually thereafter, in consultation with other agencies, to report to Congress on pollution control strategies and technologies required by Clean Air Act Amendments of 1990, was repealed by Pub. L. 104–316, title I, § 122(r), Oct. 19, 1996, 110 Stat. 3838.

§ 7613. Repealed. Pub. L. 101–549, title VIII, § 803, Nov. 15, 1990, 104 Stat. 2689

Section, act July 14, 1955, ch. 360, title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 313 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713; Aug. 7, 1977, Pub. L. 95–95, title III, § 302(b), 91 Stat. 771, required annual report to Congress on progress of programs under this chapter.

§ 7614. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with sections 3141–3144, 3146, and 3147 of title 40. The Secretary of Labor shall have, with respect to the labor standards specified in this subsection,[1] the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 3145 of title 40.

(July 14, 1955, ch. 360, title III, § 314, formerly § 307, as added Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 506; renumbered § 314 and amended Pub. L. 91–604, §§ 12(a), 15(c)(2), Dec. 31, 1970, 84 Stat. 1705, 1713.)

REFERENCES IN TEXT

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

In text, "sections 3141–3144, 3146, and 3147 of title 40" substituted for "the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a–5)" and "section 3145 of title 40" substituted for "section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c)", on authority of Pub. L. 107–217, § 5(c), Aug. 21, 2002, 116 Stat. 1303, the first section of which enacted Title 40, Public Buildings, Property, and Works.

Section was formerly classified to section 1857j–3 of this title.

AMENDMENTS

1970—Pub. L. 91–604, § 15(c)(2), substituted "Administrator" for "Secretary" meaning the Secretary of Health, Education, and Welfare.

§ 7615. Separability

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby.

(July 14, 1955, ch. 360, title III, § 315, formerly § 12, as added Pub. L. 88–206, § 1, Dec. 17, 1963, 77 Stat. 401; renumbered § 305, Pub. L. 89–272, title I, § 101(4), Oct. 20, 1965, 79 Stat. 992; renumbered § 308 and amended, Pub. L. 90–148, § 2, Nov. 21, 1967, 81 Stat. 506; renumbered § 315, Pub. L. 91–604, § 12(a), Dec. 31, 1970, 84 Stat. 1705.)

CODIFICATION

Section was formerly classified to section 1857k of this title.

AMENDMENTS

1967—Pub. L. 90–148 reenacted section without change.

§ 7616. Sewage treatment grants

(a) Construction

No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this chapter except as provided in subsection (b) of this section.

(b) Withholding, conditioning, or restriction of construction grants

The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) of this section only if he determines that—

(1) such treatment works will not comply with applicable standards under section 7411 or 7412 of this title,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the in-

[1] So in original. Probably should be "section,".

crease in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of subchapter I of this chapter applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.[1]

(3) the construction of such treatment works would create new sewage treatment capacity which—

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan, or

(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of subchapter I of this chapter applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) National Environmental Policy Act

Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.

(July 14, 1955, ch. 360, title III, § 316, as added Pub. L. 95–95, title III, § 306, Aug. 7, 1977, 91 Stat. 777.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (c), probably means the National Environmental Policy Act of 1969, Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 2(a), 80 Stat. 954; renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(c), 88 Stat. 265, authorized appropriations for air pollution control, prior to repeal by section 306 of Pub. L. 95–95. See section 7626 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

[1] So in original. The period probably should be a comma.

§ 7617. Economic impact assessment

(a) Notice of proposed rulemaking; substantial revisions

This section applies to action of the Administrator in promulgating or revising—

(1) any new source standard of performance under section 7411 of this title,

(2) any regulation under section 7411(d) of this title,

(3) any regulation under part B[1] of subchapter I of this chapter (relating to ozone and stratosphere protection),

(4) any regulation under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality),

(5) any regulation establishing emission standards under section 7521 of this title and any other regulation promulgated under that section,

(6) any regulation controlling or prohibiting any fuel or fuel additive under section 7545(c) of this title, and

(7) any aircraft emission standard under section 7571 of this title.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after August 7, 1977. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

(b) Preparation of assessment by Administrator

Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 7607(d)(2) of this title and shall be available to the public as provided in section 7607(d)(4) of this title. Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a) of this section. Each such explanation shall be part of the statements of basis and purpose required under sections 7607(d)(3) and 7607(d)(6) of this title.

(c) Analysis

Subject to subsection (d) of this section, the assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary de-

[1] See References in Text note below.

pending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

(2) the potential inflationary or recessionary effects of the standard or regulation;

(3) the effects on competition of the standard or regulation with respect to small business;

(4) the effects of the standard or regulation on consumer costs; and

(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any action referred to in subsection (a) of this section.

(d) Extensiveness of assessment

The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this chapter.

(e) Limitations on construction of section

Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this chapter;

(2) to preclude the Administrator from carrying out his responsibility under this chapter to protect public health and welfare; or

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

(f) Citizen suits

The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 7604(a)(2) of this title, relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 7604(a)(2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) Costs

In the case of any provision of this chapter in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.

(July 14, 1955, ch. 360, title III, § 317, as added Pub. L. 95–95, title III, § 307, Aug. 7, 1977, 91 Stat. 778; amended Pub. L. 95–623, § 13(d), Nov. 9, 1978, 92 Stat. 3458.)

REFERENCES IN TEXT

Part B of subchapter I of this chapter, referred to in subsec. (a)(3), was repealed by Pub. L. 101–549, title VI, § 601, Nov. 15, 1990, 104 Stat. 2648. See subchapter VI (§ 7671 et seq.) of this chapter.

CODIFICATION

Another section 317 of act July 14, 1955, is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95–623 substituted ''section 7411'' for ''section 7411(b)''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7618. Repealed. Pub. L. 101–549, title I, § 108(q), Nov. 15, 1990, 104 Stat. 2469

Section, act July 14, 1955, ch. 360, title III, § 318, as added Aug. 7, 1977, Pub. L. 95–95, title III, § 308, 91 Stat. 780, related to financial disclosure and conflicts of interest.

§ 7619. Air quality monitoring

(a) In general

After notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

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

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(b) Air quality monitoring data influenced by exceptional events

(1) Definition of exceptional event

In this section:

(A) In general

The term ''exceptional event'' means an event that—

(i) affects air quality;

(ii) is not reasonably controllable or preventable;

(iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and

(iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

(B) Exclusions

In this subsection, the term ''exceptional event'' does not include—

(i) stagnation of air masses or meteorological inversions;

(ii) a meteorological event involving high temperatures or lack of precipitation; or

(iii) air pollution relating to source noncompliance.

(2) Regulations

(A) Proposed regulations

Not later than March 1, 2006, after consultation with Federal land managers and State air pollution control agencies, the Administrator shall publish in the Federal Register proposed regulations governing the review and handling of air quality monitoring data influenced by exceptional events.

(B) Final regulations

Not later than 1 year after the date on which the Administrator publishes proposed regulations under subparagraph (A), and after providing an opportunity for interested persons to make oral presentations of views, data, and arguments regarding the proposed regulations, the Administrator shall promulgate final regulations governing the review and handling or[1] air quality monitoring data influenced by an exceptional event that are consistent with paragraph (3).

(3) Principles and requirements

(A) Principles

In promulgating regulations under this section, the Administrator shall follow—

(i) the principle that protection of public health is the highest priority;

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

(iii) the principle that all ambient air quality data should be included in a timely manner,[2] an appropriate Federal air quality database that is accessible to the public;

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

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

(B) Requirements

Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

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

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

(4) Interim provision

Until the effective date of a regulation promulgated under paragraph (2), the following guidance issued by the Administrator shall continue to apply:

(A) Guidance on the identification and use of air quality data affected by exceptional events (July 1986).

(B) Areas affected by PM–10 natural events, May 30, 1996.

(C) Appendices I, K, and N to part 50 of title 40, Code of Federal Regulations.

(July 14, 1955, ch. 360, title III, § 319, as added Pub. L. 95–95, title III, § 309, Aug. 7, 1977, 91 Stat. 781; amended Pub. L. 109–59, title VI, § 6013(a), Aug. 10, 2005, 119 Stat. 1882.)

AMENDMENTS

2005—Pub. L. 109–59 designated existing provisions as subsec. (a), inserted heading, substituted ''After notice and opportunity for public hearing'' for ''Not later than one year after August 7, 1977, and after notice and opportunity for public hearing'', and added subsec. (b).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7620. Standardized air quality modeling

(a) Conferences

Not later than six months after August 7, 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality).

(b) Conferees

The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the Na-

[1] So in original. Probably should be ''of''.

[2] So in original. Probably should be followed by ''in''.

tional Science Foundation;[1] the National Oceanic and Atmospheric Administration, and the National Institute of Standards and Technology.

(c) Comments; transcripts

Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

(d) Promulgation and revision of regulations relating to air quality modeling

The comments submitted and the transcript maintained pursuant to subsection (c) of this section shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under part C of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, § 320, as added Pub. L. 95–95, title III, § 310, Aug. 7, 1977, 91 Stat. 782; amended Pub. L. 100–418, title V, § 5115(c), Aug. 23, 1988, 102 Stat. 1433.)

AMENDMENTS

1988—Subsec. (b). Pub. L. 100–418 substituted ''National Institute of Standards and Technology'' for ''National Bureau of Standards''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7621. Employment effects

(a) Continuous evaluation of potential loss or shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) Request for investigation; hearings; record; report

Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this chapter, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

(c) Subpenas; confidential information; witnesses; penalty

In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 7419 of this title (relating to primary nonferrous smelter orders), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph,[1] the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Limitations on construction of section

Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this chapter.

[1] So in original. The semicolon probably should be a comma.

[1] So in original. Probably should be ''subsection,''

(July 14, 1955, ch. 360, title III, § 321, as added Pub. L. 95–95, title III, § 311, Aug. 7, 1977, 91 Stat. 782.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY OF POTENTIAL DISLOCATION OF EMPLOYEES

Section 403(e) of Pub. L. 95–95 provided that the Secretary of Labor, in consultation with the Administrator, conduct a study of potential dislocation of employees due to implementation of laws administered by the Administrator and that the Secretary submit to Congress the results of the study not more than one year after Aug. 7, 1977.

§ 7622. Employee protection

(a) Discharge or discrimination prohibited

No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or a proceeding for the administration or enforcement of any requirement imposed under this chapter or under any applicable implementation plan,

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

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Complaint charging unlawful discharge or discrimination; investigation; order

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the ''Secretary'') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph[1] shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement of order by Secretary

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Enforcement of order by person on whose behalf order was issued

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation

[1] So in original.

(including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violation by employee

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter.

(July 14, 1955, ch. 360, title III, § 322, as added Pub. L. 95–95, title III, § 312, Aug. 7, 1977, 91 Stat. 783.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7623. Repealed. Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831

Section, act July 14, 1955, ch. 360, title III, § 323, as added Aug. 7, 1977, Pub. L. 95–95, title III, § 313, 91 Stat. 785; amended Nov. 16, 1977, Pub. L. 95–190, § 14(a)(81), 91 Stat. 1404; S. Res. 4, Feb. 4, 1977; H. Res. 549, Mar. 25, 1980; July 2, 1980, Pub. L. 96–300, § 1(a), 94 Stat. 831, established a National Commission on Air Quality, prescribed numerous subjects for study and report to Congress, enumerated specific questions for study and investigation, required specific identification of loss or irretrievable commitment of resources, and provided for appointment and confirmation of its membership, cooperation of Federal executive agencies, submission of a National Academy of Sciences study to Congress, compensation and travel expenses, termination of Commission, appointment and compensation of staff, and public participation.

EFFECTIVE DATE OF REPEAL

Section 1(c) of Pub. L. 96–300 provided that this section is repealed on date on which National Commission on Air Quality ceases to exist pursuant to provisions of former subsec. (g) of this section, which provided that not later than Mar. 1, 1981, a report be submitted containing results of all Commission studies and investigations and that Commission cease to exist on Mar. 1, 1981, if report is not submitted on Mar. 1, 1981, or Commission would cease to exist on such date, but not later than May 1, 1981, as determined and ordered by Commission if report is submitted on Mar. 1, 1981.

NATIONAL COMMISSION ON AIR QUALITY; EXTENSION PROHIBITION

Section 1(d) of Pub. L. 96–300 provided that nothing in any other authority of law shall be construed to authorize or permit the extension of the National Commission on Air Quality pursuant to any Executive order or other Executive or agency action.

§ 7624. Cost of vapor recovery equipment

(a) Costs to be borne by owner of retail outlet

The regulations under this chapter applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b) of this section, such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after August 7, 1977, may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

(b) Payment by lessee

The regulations of the Administrator referred to in subsection (a) of this section shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.

(July 14, 1955, ch. 360, title III, § 323, formerly § 324, as added Pub. L. 95–95, title III, § 314(a), Aug. 7, 1977, 91 Stat. 788; amended Pub. L. 95–190, § 14(a)(82), Nov. 16, 1977, 91 Stat. 1404; renumbered § 323 and amended Pub. L. 96–300, § 1(b), (c), July 2, 1980, 94 Stat. 831.)

PRIOR PROVISIONS

A prior section 323 of act July 14, 1955, was classified to section 7623 of this title prior to repeal by Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831.

AMENDMENTS

1980—Pub. L. 96–300, § 1(b), which directed that last sentence of this section be struck out was probably intended to strike sentence purportedly added by Pub. L. 95–190. See 1977 Amendment note below and section 7623(i) of this title.

1977—Pub. L. 95–190 which purported to amend subsec. (j) of this section by inserting "The Commission may appoint and fix the pay of such staff as it deems necessary." after "(j)" was not executed to this section because it did not contain a subsec. (j). See 1980 Amendment note above.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7625. Vapor recovery for small business marketers of petroleum products

(a) Marketers of gasoline

The regulations under this chapter applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have—

(1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

(2) 66 percent at the end of such second year, and

(3) 100 percent at the end of the third year.

(b) State requirements

Nothing in subsection (a) of this section shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

(c) Refiners

For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 7624[1] of this title or under regulations of the Administrator, unless such person—

(1)(A) is a refiner, or[2]

(B) controls, is controlled by, or is under common control with, a refiner,

(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

(2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this section, the term ''refiner'' shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, ''control'' of a corporation means ownership of more than 50 percent of its stock.

(July 14, 1955, ch. 360, title III, § 324, formerly § 325, as added Pub. L. 95–95, title III, § 314(b), Aug. 7, 1977, 91 Stat. 789; renumbered § 324, Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831.)

REFERENCES IN TEXT

Section 7624 of this title, referred to in subsec. (c), was in the original ''section 324 of this Act'', meaning section 324 of the Act July 14, 1955. Sections 324 and 325 of that Act, were renumbered sections 323 and 324, respectively, by Pub. L. 96–300, § 1(b), July 2, 1980, 94 Stat. 831, and are classified to sections 7624 and 7625, respectively, of this title.

PRIOR PROVISIONS

A prior section 324 of act July 14, 1955, was renumbered section 323 by Pub. L. 96–300 and is classified to section 7624 of this title.

[1] See References in Text note below.

[2] So in original. The word ''or'' probably should appear at the end of subpar. (B).

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7625–1. Exemptions for certain territories

(a)(1) Upon petition by the governor[1] of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this chapter other than section 7412 of this title or any requirement under section 7410 of this title or part D of subchapter I of this chapter necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 7607(d) of this title and any exemption under this subsection shall be considered final action by the Administrator for the purposes of section 7607(b) of this title.

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Natural Resources of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this subsection and of the approval or rejection of such petition and the basis for such action.

(b) Notwithstanding any other provision of this chapter, any fossil fuel fired steam electric power plant operating within Guam as of December 8, 1983, is hereby exempted from:

(1) any requirement of the new source performance standards relating to sulfur dioxide promulgated under section 7411 of this title as of December 8, 1983; and

(2) any regulation relating to sulfur dioxide standards or limitations contained in a State implementation plan approved under section 7410 of this title as of December 8, 1983: *Provided*, That such exemption shall expire eighteen months after December 8, 1983, unless the Administrator determines that such plant is making all emissions reductions practicable to prevent exceedances of the national ambient air quality standards for sulfur dioxide.

(July 14, 1955, ch. 360, title III, § 325, as added Pub. L. 98–213, § 11, Dec. 8, 1983, 97 Stat. 1461; amended Pub. L. 101–549, title VIII, § 806, Nov. 15, 1990, 104 Stat. 2689; Pub. L. 103–437, § 15(s), Nov. 2, 1994, 108 Stat. 4594.)

PRIOR PROVISIONS

A prior section 325 of act July 14, 1955, was renumbered section 326 by Pub. L. 98–213 and is classified to section 7625a of this title.

Another prior section 325 of act July 14, 1955, was renumbered section 324 by Pub. L. 96–300 and is classified to section 7625 of this title.

[1] So in original. Probably should be capitalized.

AMENDMENTS

1994—Subsec. (a)(2). Pub. L. 103–437 substituted ''Natural Resources'' for ''Interior and Insular Affairs'' before ''of the House''.

1990—Subsec. (a)(1). Pub. L. 101–549, which directed the insertion of ''the Virgin Islands,'' after ''American Samoa,'' in ''[s]ection 324(a)(1) of the Clean Air Act (42 U.S.C. 7625–1(a)(1))'', was executed by making the insertion in subsec. (a)(1) of this section to reflect the probable intent of Congress.

CHANGE OF NAME

Committee on Energy and Commerce of House of Representatives treated as referring to Committee on Commerce of House of Representatives by section 1(a) of Pub. L. 104–14, set out as a note preceding section 21 of Title 2, The Congress. Committee on Commerce of House of Representatives changed to Committee on Energy and Commerce of House of Representatives, and jurisdiction over matters relating to securities and exchanges and insurance generally transferred to Committee on Financial Services of House of Representatives by House Resolution No. 5, One Hundred Seventh Congress, Jan. 3, 2001.

§ 7625a. Statutory construction

The parenthetical cross references in any provision of this chapter to other provisions of the chapter, or other provisions of law, where the words ''relating to'' or ''pertaining to'' are used, are made only for convenience, and shall be given no legal effect.

(July 14, 1955, ch. 360, title III, § 326, as added Pub. L. 95–190, § 14(a)(84), Nov. 16, 1977, 91 Stat. 1404; renumbered § 325, Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831; renumbered § 326, Pub. L. 98–213, § 11, Dec. 8, 1983, 97 Stat. 1461.)

PRIOR PROVISIONS

A prior section 326 of act July 14, 1955, was renumbered section 327 by Pub. L. 98–213 and is classified to section 7626 of this title.

§ 7626. Authorization of appropriations

(a) In general

There are authorized to be appropriated to carry out this chapter such sums as may be necessary for the 7 fiscal years commencing after November 15, 1990.

(b) Grants for planning

There are authorized to be appropriated (1) not more than $50,000,000 to carry out section 7505 of this title beginning in fiscal year 1991, to be available until expended, to develop plan revisions required by subpart 2, 3, or 4 of part D of subchapter I of this chapter, and (2) not more than $15,000,000 for each of the 7 fiscal years commencing after November 15, 1990, to make grants to the States to prepare implementation plans as required by subpart 2, 3, or 4 of part D of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, § 327, formerly § 325, as added Pub. L. 95–95, title III, § 315, Aug. 7, 1977, 91 Stat. 790; renumbered § 327 and amended Pub. L. 95–190, § 14(a)(83), Nov. 16, 1977, 91 Stat. 1404; renumbered § 326, Pub. L. 96–300, § 1(c), July 2, 1980, 94 Stat. 831; renumbered § 327, Pub. L. 98–213, § 11, Dec. 8, 1983, 97 Stat. 1461; Pub. L. 101–549, title VIII, § 822, Nov. 15, 1990, 104 Stat. 2699.)

PRIOR PROVISIONS

Provisions similar to those in this section were contained in section 1857*l* of this title, act July 14, 1955, ch. 360, title III, § 316, formerly § 13, as added Dec. 17, 1963, Pub. L. 88–206, § 1, 77 Stat. 401; renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89–272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89–675, § 2(a), 80 Stat. 954; renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90–148, § 2, 81 Stat. 506; renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91–604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93–15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93–319, § 13(c), 88 Stat. 265, prior to repeal by section 306 of Pub. L. 95–95.

AMENDMENTS

1990—Pub. L. 101–549 amended section generally, substituting present provisions for provisions authorizing specific appropriations for certain programs and periods and appropriations of $200,000,000 for fiscal years 1978 through 1981 to carry out the other programs under this chapter.

1977—Subsec. (b)(4). Pub. L. 95–190 substituted ''section 7403(a)(5)'' for ''section 7403(b)(5)''.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7627. Air pollution from Outer Continental Shelf activities

(a) Applicable requirements for certain areas

(1) In general

Not later than 12 months after November 15, 1990, following consultation with the Secretary of the Interior and the Commandant of the United States Coast Guard, the Administrator, by rule, shall establish requirements to control air pollution from Outer Continental Shelf sources located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minutes (''OCS sources'') to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of subchapter I of this chapter. For such sources located within 25 miles of the seaward boundary of such States, such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting. New OCS sources shall comply with such requirements on the date of promulgation and existing OCS sources shall comply on the date 24 months thereafter. The Administrator shall update such requirements as necessary to maintain consistency with onshore regulations. The authority of this subsection shall supersede section 5(a)(8) of the Outer Continental Shelf Lands Act [43 U.S.C. 1334(a)(8)] but shall not repeal or modify any other Federal, State, or local authorities with respect to air quality. Each requirement established under this section shall be treated, for purposes of sections 7413, 7414, 7416, 7420, and 7604 of this title, as a standard under section 7411 of this title and a violation of any

such requirement shall be considered a violation of section 7411(e) of this title.

(2) Exemptions

The Administrator may exempt an OCS source from a specific requirement in effect under regulations under this subsection if the Administrator finds that compliance with a pollution control technology requirement is technically infeasible or will cause an unreasonable threat to health and safety. The Administrator shall make written findings explaining the basis of any exemption issued pursuant to this subsection and shall impose another requirement equal to or as close in stringency to the original requirement as possible. The Administrator shall ensure that any increase in emissions due to the granting of an exemption is offset by reductions in actual emissions, not otherwise required by this chapter, from the same source or other sources in the area or in the corresponding onshore area. The Administrator shall establish procedures to provide for public notice and comment on exemptions proposed pursuant to this subsection.

(3) State procedures

Each State adjacent to an OCS source included under this subsection may promulgate and submit to the Administrator regulations for implementing and enforcing the requirements of this subsection. If the Administrator finds that the State regulations are adequate, the Administrator shall delegate to that State any authority the Administrator has under this chapter to implement and enforce such requirements. Nothing in this subsection shall prohibit the Administrator from enforcing any requirement of this section.

(4) Definitions

For purposes of subsections (a) and (b) of this section—

(A) Outer Continental Shelf

The term ''Outer Continental Shelf'' has the meaning provided by section 2 of the Outer Continental Shelf Lands Act (43 U.S.C. 1331).

(B) Corresponding onshore area

The term ''corresponding onshore area'' means, with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of subchapter I of this chapter.

(C) Outer Continental Shelf source

The terms ''Outer Continental Shelf source'' and ''OCS source'' include any equipment, activity, or facility which—

(i) emits or has the potential to emit any air pollutant,

(ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], and

(iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

Such activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.

(D) New and existing OCS sources

The term ''new OCS source'' means an OCS source which is a new source within the meaning of section 7411(a) of this title. The term ''existing OCS source'' means any OCS source other than a new OCS source.

(b) Requirements for other offshore areas

For portions of the United States Gulf Coast Outer Continental Shelf that are adjacent to the States not covered by subsection (a) of this section which are Texas, Louisiana, Mississippi, and Alabama, the Secretary shall consult with the Administrator to assure coordination of air pollution control regulation for Outer Continental Shelf emissions and emissions in adjacent onshore areas. Concurrently with this obligation, the Secretary shall complete within 3 years of November 15, 1990, a research study examining the impacts of emissions from Outer Continental Shelf activities in such areas that fail to meet the national ambient air quality standards for either ozone or nitrogen dioxide. Based on the results of this study, the Secretary shall consult with the Administrator and determine if any additional actions are necessary. There are authorized to be appropriated such sums as may be necessary to provide funding for the study required under this section.

(c) Coastal waters

(1) The study report of section 7412(n)[1] of this title shall apply to the coastal waters of the United States to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(2) The regulatory requirements of section 7412(n)[1] of this title shall apply to the coastal waters of the States which are subject to subsection (a) of this section, to the same extent and in the same manner as such requirements apply to the Great Lakes, the Chesapeake Bay, and their tributary waters.

(July 14, 1955, ch. 360, title III, § 328, as added Pub. L. 101–549, title VIII, § 801, Nov. 15, 1990, 104 Stat. 2685.)

REFERENCES IN TEXT

The Outer Continental Shelf Lands Act, referred to in subsec. (a)(4)(C)(ii), is act Aug. 7, 1953, ch. 345, 67 Stat.

[1] So in original. Probably should be section ''7412(m)''.

462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

TRANSFER OF FUNCTIONS

For transfer of authorities, functions, personnel, and assets of the Coast Guard, including the authorities and functions of the Secretary of Transportation relating thereto, to the Department of Homeland Security, and for treatment of related references, see sections 468(b), 551(d), 552(d), and 557 of Title 6, Domestic Security, and the Department of Homeland Security Reorganization Plan of November 25, 2002, as modified, set out as a note under section 542 of Title 6.

§ 7628. Demonstration grant program for local governments

(a) Grant program

(1) In general

The Administrator shall establish a demonstration program under which the Administrator shall provide competitive grants to assist local governments (such as municipalities and counties), with respect to local government buildings—

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

(B) to achieve operational cost savings, through the application of cost-effective technologies and practices, as verified by the Administrator.

(2) Cost sharing

(A) In general

The Federal share of the cost of an activity carried out using a grant provided under this section shall be 40 percent.

(B) Waiver of non-Federal share

The Administrator may waive up to 100 percent of the local share of the cost of any grant under this section should the Administrator determine that the community is economically distressed, pursuant to objective economic criteria established by the Administrator in published guidelines.

(3) Maximum amount

The amount of a grant provided under this subsection shall not exceed $1,000,000.

(b) Guidelines

(1) In general

Not later than 1 year after December 19, 2007, the Administrator shall issue guidelines to implement the grant program established under subsection (a).

(2) Requirements

The guidelines under paragraph (1) shall establish—

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

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

(C) a requirement that each local government that receives a grant under this section shall achieve facility-wide cost savings, through renovation of existing local government buildings using cost-effective technologies and practices, of at least 40 percent as compared to the baseline operational costs of the buildings before the renovation (as calculated assuming a 3-year, weather-normalized average).

(c) Compliance with State and local law

Nothing in this section or any program carried out using a grant provided under this section supersedes or otherwise affects any State or local law, to the extent that the State or local law contains a requirement that is more stringent than the relevant requirement of this section.

(d) Authorization of appropriations

There is authorized to be appropriated to carry out this section $20,000,000 for each of fiscal years 2007 through 2012.

(e) Reports

(1) In general

The Administrator shall provide annual reports to Congress on cost savings achieved and actions taken and recommendations made under this section, and any recommendations for further action.

(2) Final report

The Administrator shall issue a final report at the conclusion of the program, including findings, a summary of total cost savings achieved, and recommendations for further action.

(f) Termination

The program under this section shall terminate on September 30, 2012.

(g) Definitions

In this section, the terms ''cost-effective technologies and practices'' and ''operating[1] cost savings'' shall have the meanings defined in section 17061 of this title.

(July 14, 1955, ch. 360, title III, § 329, as added Pub. L. 110–140, title IV, § 493, Dec. 19, 2007, 121 Stat. 1652.)

EFFECTIVE DATE

Section effective on the date that is 1 day after Dec. 19, 2007, see section 1601 of Pub. L. 110–140, set out as a note under section 1824 of Title 2, The Congress.

SUBCHAPTER IV—NOISE POLLUTION

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2584, is classified to subchapter IV–A (§ 7651 et seq.) of this chapter.

§ 7641. Noise abatement

(a) Office of Noise Abatement and Control

The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry

[1] So in original. Probably should be ''operational''.

out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) Investigation techniques; report and recommendations

In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) Abatement of noise from Federal activities

In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

(July 14, 1955, ch. 360, title IV, § 402, as added Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709.)

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2585, is classified to section 7651a of this title.

Section was formerly classified to section 1858 of this title.

§ 7642. Authorization of appropriations

There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this subchapter.

(July 14, 1955, ch. 360, title IV, § 403, as added Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1710.)

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2589, is classified to section 7651b of this title.

Section was formerly classified to section 1858a of this title.

SUBCHAPTER IV–A—ACID DEPOSITION CONTROL

CODIFICATION

Another title IV of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709, is classified principally to subchapter IV (§ 7641 et seq.) of this chapter.

§ 7651. Findings and purposes

(a) Findings

The Congress finds that—

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

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

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

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

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

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

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

(b) Purposes

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

(July 14, 1955, ch. 360, title IV, § 401, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2584.)

CODIFICATION

Another section 401 of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709, is set out as a Short Title note under section 7401 of this title.

ACID DEPOSITION STANDARDS

Section 404 of Pub. L. 101–549 directed Administrator of Environmental Protection Agency, not later than 36 months after Nov. 15, 1990, to transmit to Congress a report on the feasibility and effectiveness of an acid deposition standard or standards to protect sensitive and critically sensitive aquatic and terrestrial resources.

INDUSTRIAL SO_2 EMISSIONS

Section 406 of Pub. L. 101–549 provided that:

''(a) REPORT.—Not later than January 1, 1995 and every 5 years thereafter, the Administrator of the Environmental Protection Agency shall transmit to the

Congress a report containing an inventory of national annual sulfur dioxide emissions from industrial sources (as defined in title IV of the Act [42 U.S.C. 7651 et seq.]), including units subject to section 405(g)(6) of the Clean Air Act [42 U.S.C. 7651d(g)(6)], for all years for which data are available, as well as the likely trend in such emissions over the following twenty-year period. The reports shall also contain estimates of the actual emission reduction in each year resulting from promulgation of the diesel fuel desulfurization regulations under section 214 [42 U.S.C. 7548].

''(b) 5.60 MILLION TON CAP.—Whenever the inventory required by this section indicates that sulfur dioxide emissions from industrial sources, including units subject to section 405(g)(5) of the Clean Air Act [42 U.S.C. 7651d(g)(5)], may reasonably be expected to reach levels greater than 5.60 million tons per year, the Administrator of the Environmental Protection Agency shall take such actions under the Clean Air Act [42 U.S.C. 7401 et seq.] as may be appropriate to ensure that such emissions do not exceed 5.60 million tons per year. Such actions may include the promulgation of new and revised standards of performance for new sources, including units subject to section 405(g)(5) of the Clean Air Act, under section 111(b) of the Clean Air Act [42 U.S.C. 7411(b)], as well as promulgation of standards of performance for existing sources, including units subject to section 405(g)(5) of the Clean Air Act, under authority of this section. For an existing source regulated under this section, 'standard of performance' means a standard which the Administrator determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

''(c) ELECTION.—Regulations promulgated under section 405(b) of the Clean Air Act [42 U.S.C. 7651d(b)] shall not prohibit a source from electing to become an affected unit under section 410 of the Clean Air Act [42 U.S.C. 7651i].''

[For termination, effective May 15, 2000, of reporting provisions in section 406(a) of Pub. L. 101–549, set out above, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 10th item on page 162 of House Document No. 103–7.]

SENSE OF CONGRESS ON EMISSION REDUCTIONS COSTS

Section 407 of Pub. L. 101–549 provided that: ''It is the sense of the Congress that the Clean Air Act Amendments of 1990 [Pub. L. 101–549, see Tables for classification], through the allowance program, allocates the costs of achieving the required reductions in emissions of sulfur dioxide and oxides of nitrogen among sources in the United States. Broad based taxes and emissions fees that would provide for payment of the costs of achieving required emissions reductions by any party or parties other than the sources required to achieve the reductions are undesirable.''

MONITORING OF ACID RAIN PROGRAM IN CANADA

Section 408 of Pub. L. 101–549 provided that:

''(a) REPORTS TO CONGRESS.—The Administrator of the Environmental Protection Agency, in consultation with the Secretary of State, the Secretary of Energy, and other persons the Administrator deems appropriate, shall prepare and submit a report to Congress on January 1, 1994, January 1, 1999, and January 1, 2005.

''(b) CONTENTS.—The report to Congress shall analyze the current emission levels of sulfur dioxide and nitrogen oxides in each of the provinces participating in Canada's acid rain control program, the amount of emission reductions of sulfur dioxide and oxides of nitrogen achieved by each province, the methods utilized by each province in making those reductions, the costs to each province and the employment impacts in each province of making and maintaining those reductions.

''(c) COMPLIANCE.—Beginning on January 1, 1999, the reports shall also assess the degree to which each province is complying with its stated emissions cap.''

§ 7651a. Definitions

As used in this subchapter:

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

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

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

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

(A) For each utility unit that was in commercial operation prior to January 1, 1985, the baseline shall be the annual average quantity of mmBtu's consumed in fuel during calendar years 1985, 1986, and 1987, as recorded by the Department of Energy pursuant to Form 767. For any utility unit for which such form was not filed, the baseline shall be the level specified for such unit in the 1985 National Acid Precipitation Assessment Program (NAPAP) Emissions Inventory, Version 2, National Utility Reference File (NURF) or in a corrected data base as established by the Administrator pursuant to paragraph (3).[1] For nonutility units, the baseline is the NAPAP Emissions Inventory, Version 2. The Administrator, in the Administrator's sole discretion, may exclude periods during which a unit is shutdown for a continuous period of four calendar months or longer, and make appropriate adjustments under this paragraph. Upon petition of the owner or operator of any unit, the Administrator may make appropriate baseline adjustments for accidents that caused prolonged outages.

(B) For any other nonutility unit that is not included in the NAPAP Emissions Inventory, Version 2, or a corrected data base as established by the Administrator pursuant to paragraph (3),[1] the baseline shall be the annual average quantity, in mmBtu consumed in fuel by that unit, as calculated pursuant to a method which the administrator shall prescribe by regulation to be promulgated not later than eighteen months after November 15, 1990.

(C) The Administrator shall, upon application or on his own motion, by December 31, 1991, supplement data needed in support of this subchapter and correct any factual errors in data from which affected Phase II units' baselines or actual 1985 emission rates have been calculated. Corrected data shall be used for purposes of issuing allowances

[1] So in original. The reference to ''paragraph (3)'' probably should be to ''subparagraph (C)''.

under the[2] subchapter. Such corrections shall not be subject to judicial review, nor shall the failure of the Administrator to correct an alleged factual error in such reports be subject to judicial review.

(5) The term ''capacity factor'' means the ratio between the actual electric output from a unit and the potential electric output from that unit.

(6) The term ''compliance plan'' means, for purposes of the requirements of this subchapter, either—

(A) a statement that the source will comply with all applicable requirements under this subchapter, or

(B) where applicable, a schedule and description of the method or methods for compliance and certification by the owner or operator that the source is in compliance with the requirements of this subchapter.

(7) The term ''continuous emission monitoring system'' (CEMS) means the equipment as required by section 7651k of this title, used to sample, analyze, measure, and provide on a continuous basis a permanent record of emissions and flow (expressed in pounds per million British thermal units (lbs/mmBtu), pounds per hour (lbs/hr) or such other form as the Administrator may prescribe by regulations under section 7651k of this title).

(8) The term ''existing unit'' means a unit (including units subject to section 7411 of this title) that commenced commercial operation before November 15, 1990. Any unit that commenced commercial operation before November 15, 1990, which is modified, reconstructed, or repowered after November 15, 1990, shall continue to be an existing unit for the purposes of this subchapter. For the purposes of this subchapter, existing units shall not include simple combustion turbines, or units which serve a generator with a nameplate capacity of 25MWe or less.

(9) The term ''generator'' means a device that produces electricity and which is reported as a generating unit pursuant to Department of Energy Form 860.

(10) The term ''new unit'' means a unit that commences commercial operation on or after November 15, 1990.

(11) The term ''permitting authority'' means the Administrator, or the State or local air pollution control agency, with an approved permitting program under part B[3] of title III of the Act.

(12) The term ''repowering'' means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990. Notwithstanding the provisions of section 7651h(a) of this title, for the purpose of this subchapter, the term ''repowering'' shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(13) The term ''reserve'' means any bank of allowances established by the Administrator under this subchapter.

(14) The term ''State'' means one of the 48 contiguous States and the District of Columbia.

(15) The term ''unit'' means a fossil fuel-fired combustion device.

(16) The term ''actual 1985 emission rate'', for electric utility units means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emissions Inventory, Version 2, National Utility Reference File. For nonutility units, the term ''actual 1985 emission rate'' means the annual sulfur dioxide or nitrogen oxides emission rate in pounds per million Btu as reported in the NAPAP Emission Inventory, Version 2.

(17)(A) The term ''utility unit'' means—

(i) a unit that serves a generator in any State that produces electricity for sale, or

(ii) a unit that, during 1985, served a generator in any State that produced electricity for sale.

(B) Notwithstanding subparagraph (A), a unit described in subparagraph (A) that—

(i) was in commercial operation during 1985, but

(ii) did not, during 1985, serve a generator in any State that produced electricity for sale shall not be a utility unit for purposes of this subchapter.

(C) A unit that cogenerates steam and electricity is not a ''utility unit'' for purposes of this subchapter unless the unit is constructed for the purpose of supplying, or commences construction after November 15, 1990, and supplies, more than one-third of its potential electric output capacity and more than 25 megawatts electrical output to any utility power distribution system for sale.

(18) The term ''allowable 1985 emissions rate'' means a federally enforceable emissions limitation for sulfur dioxide or oxides of nitrogen, applicable to the unit in 1985 or the limitation applicable in such other subsequent year as determined by the Administrator if such a limitation for 1985 does not exist. Where the emissions limitation for a unit is not expressed in pounds of emissions per million Btu, or the averaging period of that emissions limitation is not expressed on an annual basis, the Administrator shall calculate the annual equivalent of that emissions limitation in pounds per million Btu to establish the allowable 1985 emissions rate.

(19) The term ''qualifying phase I technology'' means a technological system of con-

[2] So in original. Probably should be ''this''.

[3] See References in Text note below.

tinuous emission reduction which achieves a 90 percent reduction in emissions of sulfur dioxide from the emissions that would have resulted from the use of fuels which were not subject to treatment prior to combustion.

(20) The term ''alternative method of compliance'' means a method of compliance in accordance with one or more of the following authorities:

(A) a substitution plan submitted and approved in accordance with subsections[4] 7651c(b) and (c) of this title;

(B) a Phase I extension plan approved by the Administrator under section 7651c(d) of this title, using qualifying phase I technology as determined by the Administrator in accordance with that section; or

(C) repowering with a qualifying clean coal technology under section 7651h of this title.

(21) The term ''commenced'' as applied to construction of any new electric utility unit means that an owner or operator has undertaken a continuous program of construction or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction.

(22) The term ''commenced commercial operation'' means to have begun to generate electricity for sale.

(23) The term ''construction'' means fabrication, erection, or installation of an affected unit.

(24) The term ''industrial source'' means a unit that does not serve a generator that produces electricity, a ''nonutility unit'' as defined in this section, or a process source as defined in section 7651i(e)[5] of this title.

(25) The term ''nonutility unit'' means a unit other than a utility unit.

(26) The term ''designated representative'' means a responsible person or official authorized by the owner or operator of a unit to represent the owner or operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.

(27) The term ''life-of-the-unit, firm power contractual arrangement'' means a unit participation power sales agreement under which a utility or industrial customer reserves, or is entitled to receive, a specified amount or percentage of capacity and associated energy generated by a specified generating unit (or units) and pays its proportional amount of such unit's total costs, pursuant to a contract either—

(A) for the life of the unit;

(B) for a cumulative term of no less than 30 years, including contracts that permit an election for early termination; or

(C) for a period equal to or greater than 25 years or 70 percent of the economic useful life of the unit determined as of the time the unit was built, with option rights to purchase or re-lease some portion of the capacity and associated energy generated by the unit (or units) at the end of the period.

(28) The term ''basic Phase II allowance allocations'' means:

(A) For calendar years 2000 through 2009 inclusive, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4), and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1); (i) and (j) of section 7651d of this title.

(B) For each calendar year beginning in 2010, allocations of allowances made by the Administrator pursuant to section 7651b of this title and subsections (b)(1), (3), and (4); (c)(1), (2), (3), and (5); (d)(1), (2), (4) and (5); (e); (f); (g)(1), (2), (3), (4), and (5); (h)(1) and (3); (i) and (j) of section 7651d of this title.

(29) The term ''Phase II bonus allowance allocations'' means, for calendar year 2000 through 2009, inclusive, and only for such years, allocations made by the Administrator pursuant to section 7651b of this title, subsections (a)(2), (b)(2), (c)(4), (d)(3) (except as otherwise provided therein), and (h)(2) of section 7651d of this title, and section 7651e of this title.

(July 14, 1955, ch. 360, title IV, § 402, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2585.)

REFERENCES IN TEXT

Part B of title III of the Act, referred to in par. (11), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§ 7661 et seq.) of this chapter.

CODIFICATION

Another section 402 of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1709, is classified to section 7641 of this title.

§ 7651b. Sulfur dioxide allowance program for existing and new units

(a) Allocations of annual allowances for existing and new units

(1)[1] For the emission limitation programs under this subchapter, the Administrator shall allocate annual allowances for the unit, to be held or distributed by the designated representative of the owner or operator of each affected unit at an affected source in accordance with this subchapter, in an amount equal to the annual tonnage emission limitation calculated under section 7651c, 7651d, 7651e, 7651h, or 7651i of this title except as otherwise specifically provided elsewhere in this subchapter. Except as provided in sections 7651d(a)(2), 7651d(a)(3), 7651h and 7651i of this title, beginning January 1, 2000, the Administrator shall not allocate annual allowances to emit sulfur dioxide pursuant to section 7651d of this title in such an amount as would result in total annual emissions of sulfur dioxide from utility units in excess of 8.90 million tons except that the Administrator shall not take into account unused allowances carried

[4] So in original. Probably should be ''section''.

[5] So in original. Probably should be section ''7651i(d)''.

[1] So in original. No pars. (2) and (3) have been enacted.

forward by owners and operators of affected units or by other persons holding such allowances, following the year for which they were allocated. If necessary to meeting the restrictions imposed in the preceding sentence, the Administrator shall reduce, pro rata, the basic Phase II allowance allocations for each unit subject to the requirements of section 7651d of this title. Subject to the provisions of section 7651*o* of this title, the Administrator shall allocate allowances for each affected unit at an affected source annually, as provided in paragraphs (2) and (3)[1] and section 7651g of this title. Except as provided in sections 7651h and 7651i of this title, the removal of an existing affected unit or source from commercial operation at any time after November 15, 1990 (whether before or after January 1, 1995, or January 1, 2000) shall not terminate or otherwise affect the allocation of allowances pursuant to section 7651c or 7651d of this title to which the unit is entitled. Allowances shall be allocated by the Administrator without cost to the recipient, except for allowances sold by the Administrator pursuant to section 7651*o* of this title. Not later than December 31, 1991, the Administrator shall publish a proposed list of the basic Phase II allowance allocations, the Phase II bonus allowance allocations and, if applicable, allocations pursuant to section 7651d(a)(3) of this title for each unit subject to the emissions limitation requirements of section 7651d of this title for the year 2000 and the year 2010. After notice and opportunity for public comment, but not later than December 31, 1992, the Administrator shall publish a final list of such allocations, subject to the provisions of section 7651d(a)(2) of this title. Any owner or operator of an existing unit subject to the requirements of section 7651d(b) or (c) of this title who is considering applying for an extension of the emission limitation requirement compliance deadline for that unit from January 1, 2000, until not later than December 31, 2000, pursuant to section 7651h of this title, shall notify the Administrator no later than March 31, 1991. Such notification shall be used as the basis for estimating the basic Phase II allowances under this subsection. Prior to June 1, 1998, the Administrator shall publish a revised final statement of allowance allocations, subject to the provisions of section 7651d(a)(2) of this title and taking into account the effect of any compliance date extensions granted pursuant to section 7651h of this title on such allocations. Any person who may make an election concerning the amount of allowances to be allocated to a unit or units shall make such election and so inform the Administrator not later than March 31, 1991, in the case of an election under section 7651d of this title (or June 30, 1991, in the case of an election under section 7651e of this title). If such person fails to make such election, the Administrator shall set forth for each unit owned or operated by such person, the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for the owner or operator of the unit. If such person is a Governor who may make an election under section 7651e of this title and the Governor fails to make an election, the Administrator shall set forth for each unit in the State the amount of allowances reflecting the election that would, in the judgment of the Administrator, provide the greatest benefit for units in the State.

(b) Allowance transfer system

Allowances allocated under this subchapter may be transferred among designated representatives of the owners or operators of affected sources under this subchapter and any other person who holds such allowances, as provided by the allowance system regulations to be promulgated by the Administrator not later than eighteen months after November 15, 1990. Such regulations shall establish the allowance system prescribed under this section, including, but not limited to, requirements for the allocation, transfer, and use of allowances under this subchapter. Such regulations shall prohibit the use of any allowance prior to the calendar year for which the allowance was allocated, and shall provide, consistent with the purposes of this subchapter, for the identification of unused allowances, and for such unused allowances to be carried forward and added to allowances allocated in subsequent years, including allowances allocated to units subject to Phase I requirements (as described in section 7651c of this title) which are applied to emissions limitations requirements in Phase II (as described in section 7651d of this title). Transfers of allowances shall not be effective until written certification of the transfer, signed by a responsible official of each party to the transfer, is received and recorded by the Administrator. Such regulations shall permit the transfer of allowances prior to the issuance of such allowances. Recorded pre-allocation transfers shall be deducted by the Administrator from the number of allowances which would otherwise be allocated to the transferor, and added to those allowances allocated to the transferee. Pre-allocation transfers shall not affect the prohibition contained in this subsection against the use of allowances prior to the year for which they are allocated.

(c) Interpollutant trading

Not later than January 1, 1994, the Administrator shall furnish to the Congress a study evaluating the environmental and economic consequences of amending this subchapter to permit trading sulfur dioxide allowances for nitrogen oxides allowances.

(d) Allowance tracking system

(1) The Administrator shall promulgate, not later than 18 months after November 15, 1990, a system for issuing, recording, and tracking allowances, which shall specify all necessary procedures and requirements for an orderly and competitive functioning of the allowance system. All allowance allocations and transfers shall, upon recordation by the Administrator, be deemed a part of each unit's permit requirements pursuant to section 7651g of this title, without any further permit review and revision.

(2) In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such tem-

porary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned.

(e) New utility units

After January 1, 2000, it shall be unlawful for a new utility unit to emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit held for the unit by the unit's owner or operator. Such new utility units shall not be eligible for an allocation of sulfur dioxide allowances under subsection (a)(1) of this section, unless the unit is subject to the provisions of subsection (g)(2) or (3) of section 7651d of this title. New utility units may obtain allowances from any person, in accordance with this subchapter. The owner or operator of any new utility unit in violation of this subsection shall be liable for fulfilling the obligations specified in section 7651j of this title.

(f) Nature of allowances

An allowance allocated under this subchapter is a limited authorization to emit sulfur dioxide in accordance with the provisions of this subchapter. Such allowance does not constitute a property right. Nothing in this subchapter or in any other provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization. Nothing in this section relating to allowances shall be construed as affecting the application of, or compliance with, any other provision of this chapter to an affected unit or source, including the provisions related to applicable National Ambient Air Quality Standards and State implementation plans. Nothing in this section shall be construed as requiring a change of any kind in any State law regulating electric utility rates and charges or affecting any State law regarding such State regulation or as limiting State regulation (including any prudency review) under such a State law. Nothing in this section shall be construed as modifying the Federal Power Act [16 U.S.C. 791a et seq.] or as affecting the authority of the Federal Energy Regulatory Commission under that Act. Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established. Allowances, once allocated to a person by the Administrator, may be received, held, and temporarily or permanently transferred in accordance with this subchapter and the regulations of the Administrator without regard to whether or not a permit is in effect under subchapter V of this chapter or section 7651g of this title with respect to the unit for which such allowance was originally allocated and recorded. Each permit under this subchapter and each permit issued under subchapter V of this chapter for any affected unit shall provide that the affected unit may not emit an annual tonnage of sulfur dioxide in excess of the allowances held for that unit.

(g) Prohibition

It shall be unlawful for any person to hold, use, or transfer any allowance allocated under this subchapter, except in accordance with regulations promulgated by the Administrator. It shall be unlawful for any affected unit to emit sulfur dioxide in excess of the number of allowances held for that unit for that year by the owner or operator of the unit. Upon the allocation of allowances under this subchapter, the prohibition contained in the preceding sentence shall supersede any other emission limitation applicable under this subchapter to the units for which such allowances are allocated. Allowances may not be used prior to the calendar year for which they are allocated. Nothing in this section or in the allowance system regulations shall relieve the Administrator of the Administrator's permitting, monitoring and enforcement obligations under this chapter, nor relieve affected sources of their requirements and liabilities under this chapter.

(h) Competitive bidding for power supply

Nothing in this subchapter shall be construed to interfere with or impair any program for competitive bidding for power supply in a State in which such program is established.

(i) Applicability of antitrust laws

(1) Nothing in this section affects—

(A) the applicability of the antitrust laws to the transfer, use, or sale of allowances, or

(B) the authority of the Federal Energy Regulatory Commission under any provision of law respecting unfair methods of competition or anticompetitive acts or practices.

(2) As used in this section, ''antitrust laws'' means those Acts set forth in section 12 of title 15.

(j) Public Utility Holding Company Act

The acquisition or disposition of allowances pursuant to this subchapter including the issuance of securities or the undertaking of any other financing transaction in connection with such allowances shall not be subject to the provisions of the Public Utility Holding Company Act of 1935.[2]

(July 14, 1955, ch. 360, title IV, § 403, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2589.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (f), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Public Utility Holding Company Act of 1935, referred to in subsec. (j), is title I of act Aug. 26, 1935, ch. 687, 49 Stat. 803, as amended, which was classified generally to chapter 2C (§ 79 et seq.) of Title 15, Commerce and Trade, prior to repeal by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Another section 403 of act July 14, 1955, as added by Pub. L. 91–604, § 14, Dec. 31, 1970, 84 Stat. 1710, is classified to section 7642 of this title.

[2] See References in Text note below.

FOSSIL FUEL USE

Section 402 of title IV of Pub. L. 101–549 provided that:

''(a) CONTRACTS FOR HYDROELECTRIC ENERGY.—Any person who, after the date of the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990], enters into a contract under which such person receives hydroelectric energy in return for the provision of electric energy by such person shall use allowances held by such person as necessary to satisfy such person's obligations under such contract.

''(b) FEDERAL POWER MARKETING ADMINISTRATION.—A Federal Power Marketing Administration shall not be subject to the provisions and requirements of this title [enacting this subchapter, amending sections 7410, 7411, and 7479 of this title, and enacting provisions set out as notes under sections 7403, 7411, and 7651 of this title] with respect to electric energy generated by hydroelectric facilities and marketed by such Power Marketing Administration. Any person who sells or provides electric energy to a Federal Power Marketing Administration shall comply with the provisions and requirements of this title.''

§ 7651c. Phase I sulfur dioxide requirements

(a) Emission limitations

(1) After January 1, 1995, each source that includes one or more affected units listed in table A is an affected source under this section. After January 1, 1995, it shall be unlawful for any affected unit (other than an eligible phase I unit under subsection (d)(2) of this section) to emit sulfur dioxide in excess of the tonnage limitation stated as a total number of allowances in table A for phase I, unless (A) the emissions reduction requirements applicable to such unit have been achieved pursuant to subsection (b) or (d) of this section, or (B) the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions, except that, after January 1, 2000, the emissions limitations established in this section shall be superseded by those established in section 7651d of this title. The owner or operator of any unit in violation of this section shall be fully liable for such violation including, but not limited to, liability for fulfilling the obligations specified in section 7651j of this title.

(2) Not later than December 31, 1991, the Administrator shall determine the total tonnage of reductions in the emissions of sulfur dioxide from all utility units in calendar year 1995 that will occur as a result of compliance with the emissions limitation requirements of this section, and shall establish a reserve of allowances equal in amount to the number of tons determined thereby not to exceed a total of 3.50 million tons. In making such a determination, the Administrator shall compute for each unit subject to the emissions limitation requirements of this section the difference between:

(A) the product of its baseline multiplied by the lesser of each unit's allowable 1985 emissions rate and its actual 1985 emissions rate, divided by 2,000, and

(B) the product of each unit's baseline multiplied by 2.50 lbs/mmBtu divided by 2,000,

and sum the computations. The Administrator shall adjust the foregoing calculation to reflect projected calendar year 1995 utilization of the units subject to the emissions limitations of this subchapter that the Administrator finds would have occurred in the absence of the imposition of such requirements. Pursuant to subsection (d) of this section, the Administrator shall allocate allowances from the reserve established hereinunder until the earlier of such time as all such allowances in the reserve are allocated or December 31, 1999.

(3) In addition to allowances allocated pursuant to paragraph (1), in each calendar year beginning in 1995 and ending in 1999, inclusive, the Administrator shall allocate for each unit on Table A that is located in the States of Illinois, Indiana, or Ohio (other than units at Kyger Creek, Clifty Creek and Joppa Steam), allowances in an amount equal to 200,000 multiplied by the unit's pro rata share of the total number of allowances allocated for all units on Table A in the 3 States (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) pursuant to paragraph (1). Such allowances shall be excluded from the calculation of the reserve under paragraph (2).

(b) Substitutions

The owner or operator of an affected unit under subsection (a) of this section may include in its section 7651g of this title permit application and proposed compliance plan a proposal to reassign, in whole or in part, the affected unit's sulfur dioxide reduction requirements to any other unit(s) under the control of such owner or operator. Such proposal shall specify—

(1) the designation of the substitute unit or units to which any part of the reduction obligations of subsection (a) of this section shall be required, in addition to, or in lieu of, any original affected units designated under such subsection;

(2) the original affected unit's baseline, the actual and allowable 1985 emissions rate for sulfur dioxide, and the authorized annual allowance allocation stated in table A;

(3) calculation of the annual average tonnage for calendar years 1985, 1986, and 1987, emitted by the substitute unit or units, based on the baseline for each unit, as defined in section 7651a(d)[1] of this title, multiplied by the lesser of the unit's actual or allowable 1985 emissions rate;

(4) the emissions rates and tonnage limitations that would be applicable to the original and substitute affected units under the substitution proposal;

(5) documentation, to the satisfaction of the Administrator, that the reassigned tonnage limits will, in total, achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution; and

(6) such other information as the Administrator may require.

(c) Administrator's action on substitution proposals

(1) The Administrator shall take final action on such substitution proposal in accordance with section 7651g(c) of this title if the substitution proposal fulfills the requirements of this subsection. The Administrator may approve a

[1] So in original. Probably should be section ''7651a(4)''.

substitution proposal in whole or in part and with such modifications or conditions as may be consistent with the orderly functioning of the allowance system and which will ensure the emissions reductions contemplated by this subchapter. If a proposal does not meet the requirements of subsection (b) of this section, the Administrator shall disapprove it. The owner or operator of a unit listed in table A shall not substitute another unit or units without the prior approval of the Administrator.

(2) Upon approval of a substitution proposal, each substitute unit, and each source with such unit, shall be deemed affected under this subchapter, and the Administrator shall issue a permit to the original and substitute affected source and unit in accordance with the approved substitution plan and section 7651g of this title. The Administrator shall allocate allowances for the original and substitute affected units in accordance with the approved substitution proposal pursuant to section 7651b of this title. It shall be unlawful for any source or unit that is allocated allowances pursuant to this section to emit sulfur dioxide in excess of the emissions limitation provided for in the approved substitution permit and plan unless the owner or operator of each unit governed by the permit and approved substitution plan holds allowances to emit not less than the units[2] total annual emissions. The owner or operator of any original or substitute affected unit operated in violation of this subsection shall be fully liable for such violation, including liability for fulfilling the obligations specified in section 7651j of this title. If a substitution proposal is disapproved, the Administrator shall allocate allowances to the original affected unit or units in accordance with subsection (a) of this section.

(d) Eligible phase I extension units

(1) The owner or operator of any affected unit subject to an emissions limitation requirement under this section may petition the Administrator in its permit application under section 7651g of this title for an extension of 2 years of the deadline for meeting such requirement, provided that the owner or operator of any such unit holds allowances to emit not less than the unit's total annual emissions for each of the 2 years of the period of extension. To qualify for such an extension, the affected unit must either employ a qualifying phase I technology, or transfer its phase I emissions reduction obligation to a unit employing a qualifying phase I technology. Such transfer shall be accomplished in accordance with a compliance plan, submitted and approved under section 7651g of this title, that shall govern operations at all units included in the transfer, and that specifies the emissions reduction requirements imposed pursuant to this subchapter.

(2) Such extension proposal shall—

(A) specify the unit or units proposed for designation as an eligible phase I extension unit;

(B) provide a copy of an executed contract, which may be contingent upon the Administrator approving the proposal, for the design engineering, and construction of the qualifying phase I technology for the extension unit, or for the unit or units to which the extension unit's emission reduction obligation is to be transferred;

(C) specify the unit's or units' baseline, actual 1985 emissions rate, allowable 1985 emissions rate, and projected utilization for calendar years 1995 through 1999;

(D) require CEMS on both the eligible phase I extension unit or units and the transfer unit or units beginning no later than January 1, 1995; and

(E) specify the emission limitation and number of allowances expected to be necessary for annual operation after the qualifying phase I technology has been installed.

(3) The Administrator shall review and take final action on each extension proposal in order of receipt, consistent with section 7651g of this title, and for an approved proposal shall designate the unit or units as an eligible phase I extension unit. The Administrator may approve an extension proposal in whole or in part, and with such modifications or conditions as may be necessary, consistent with the orderly functioning of the allowance system, and to ensure the emissions reductions contemplated by the[3] subchapter.

(4) In order to determine the number of proposals eligible for allocations from the reserve under subsection (a)(2) of this section and the number of allowances remaining available after each proposal is acted upon, the Administrator shall reduce the total number of allowances remaining available in the reserve by the number of allowances calculated according to subparagraphs (A), (B) and (C) until either no allowances remain available in the reserve for further allocation or all approved proposals have been acted upon. If no allowances remain available in the reserve for further allocation before all proposals have been acted upon by the Administrator, any pending proposals shall be disapproved. The Administrator shall calculate allowances equal to—

(A) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1995 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000;

(B) the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or the projected emissions tonnage for calendar year 1996 of each eligible phase I extension unit, as designated under paragraph (3), and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000; and

(C) the amount by which (i) the product of each unit's baseline multiplied by an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (ii) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection multiplied by a factor of 3.

[2] So in original. Probably should be ''unit's''.

[3] So in original. Probably should be ''this''.

(5) Each eligible Phase I extension unit shall receive allowances determined under subsection (a)(1) or (c) of this section. In addition, for calendar year 1995, the Administrator shall allocate to each eligible Phase I extension unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1995 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. In calendar year 1996, the Administrator shall allocate for each eligible unit, from the allowance reserve created pursuant to subsection (a)(2) of this section, allowances equal to the difference between the lesser of the average annual emissions in calendar years 1988 and 1989 or its projected emissions tonnage for calendar year 1996 and the product of the unit's baseline multiplied by an emission rate of 2.50 lbs/mmBtu, divided by 2,000. It shall be unlawful for any source or unit subject to an approved extension plan under this subsection to emit sulfur dioxide in excess of the emissions limitations provided for in the permit and approved extension plan, unless the owner or operator of each unit governed by the permit and approved plan holds allowances to emit not less than the unit's total annual emissions.

(6) In addition to allowances specified in paragraph (5), the Administrator shall allocate for each eligible Phase I extension unit employing qualifying Phase I technology, for calendar years 1997, 1998, and 1999, additional allowances, from any remaining allowances in the reserve created pursuant to subsection (a)(2) of this section, following the reduction in the reserve provided for in paragraph (4), not to exceed the amount by which (A) the product of each eligible unit's baseline times an emission rate of 1.20 lbs/mmBtu, divided by 2,000, exceeds (B) the tonnage level specified under subparagraph (E) of paragraph (2) of this subsection.

(7) After January 1, 1997, in addition to any liability under this chapter, including under section 7651j of this title, if any eligible phase I extension unit employing qualifying phase I technology or any transfer unit under this subsection emits sulfur dioxide in excess of the annual tonnage limitation specified in the extension plan, as approved in paragraph (3) of this subsection, the Administrator shall, in the calendar year following such excess, deduct allowances equal to the amount of such excess from such unit's annual allowance allocation.

(e) Allocation of allowances

(1) In the case of a unit that receives authorization from the Governor of the State in which such unit is located to make reductions in the emissions of sulfur dioxide prior to calendar year 1995 and that is part of a utility system that meets the following requirements: (A) the total coal-fired generation within the utility system as a percentage of total system generation decreased by more than 20 percent between January 1, 1980, and December 31, 1985; and (B) the weighted capacity factor of all coal-fired units within the utility system averaged over the period from January 1, 1985, through December 31, 1987, was below 50 percent, the Administrator shall allocate allowances under this paragraph for the unit pursuant to this subsection. The Administrator shall allocate allowances for a unit that is an affected unit pursuant to section 7651d of this title (but is not also an affected unit under this section) and part of a utility system that includes 1 or more affected units under section 7651d of this title for reductions in the emissions of sulfur dioxide made during the period 1995–1999 if the unit meets the requirements of this subsection and the requirements of the preceding sentence, except that for the purposes of applying this subsection to any such unit, the prior year concerned as specified below, shall be any year after January 1, 1995 but prior to January 1, 2000.

(2) In the case of an affected unit under this section described in subparagraph (A),[4] the allowances allocated under this subsection for early reductions in any prior year may not exceed the amount which (A) the product of the unit's baseline multiplied by the unit's 1985 actual sulfur dioxide emission rate (in lbs. per mmBtu), divided by 2,000, exceeds (B) the allowances specified for such unit in Table A. In the case of an affected unit under section 7651d of this title described in subparagraph (A),[4] the allowances awarded under this subsection for early reductions in any prior year may not exceed the amount by which (i) the product of the quantity of fossil fuel consumed by the unit (in mmBtu) in the prior year multiplied by the lesser of 2.50 or the most stringent emission rate (in lbs. per mmBtu) applicable to the unit under the applicable implementation plan, divided by 2,000, exceeds (ii) the unit's actual tonnage of sulfur dioxide emission for the prior year concerned. Allowances allocated under this subsection for units referred to in subparagraph (A)[4] may be allocated only for emission reductions achieved as a result of physical changes or changes in the method of operation made after November 15, 1990, including changes in the type or quality of fossil fuel consumed.

(3) In no event shall the provisions of this paragraph[5] be interpreted as an event of force majeur[6] or a commercial impractibility[7] or in any other way as a basis for excused nonperformance by a utility system under a coal sales contract in effect before November 15, 1990.

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)

State	Plant Name	Generator	Phase I Allowances
Alabama	Colbert	1	13,570
		2	15,310
		3	15,400
		4	15,410
		5	37,180
	E.C. Gaston	1	18,100
		2	18,540
		3	18,310
		4	19,280
		5	59,840

[4] So in original. Probably should be "paragraph (1)".
[5] So in original. Probably should be "subsection".
[6] So in original. Probably should be "majeure".
[7] So in original. Probably should be "impracticability".

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
Florida	Big Bend	1	28,410
		2	27,100
		3	26,740
	Crist	6	19,200
		7	31,680
Georgia	Bowen	1	56,320
		2	54,770
		3	71,750
		4	71,740
	Hammond	1	8,780
		2	9,220
		3	8,910
		4	37,640
	J. McDonough	1	19,910
		2	20,600
	Wansley	1	70,770
		2	65,430
	Yates	1	7,210
		2	7,040
		3	6,950
		4	8,910
		5	9,410
		6	24,760
		7	21,480
Illinois	Baldwin	1	42,010
		2	44,420
		3	42,550
	Coffeen	1	11,790
		2	35,670
	Grand Tower	4	5,910
	Hennepin	2	18,410
	Joppa Steam	1	12,590
		2	10,770
		3	12,270
		4	11,360
		5	11,420
		6	10,620
	Kincaid	1	31,530
		2	33,810
	Meredosia	3	13,890
	Vermilion	2	8,880
Indiana	Bailly	7	11,180
		8	15,630
	Breed	1	18,500
	Cayuga	1	33,370
		2	34,130
	Clifty Creek	1	20,150
		2	19,810
		3	20,410
		4	20,080
		5	19,360
		6	20,380
	E. W. Stout	5	3,880
		6	4,770
		7	23,610
	F. B. Culley	2	4,290
		3	16,970
	F. E. Ratts	1	8,330
		2	8,480
	Gibson	1	40,400
		2	41,010
		3	41,080
		4	40,320
	H. T. Pritchard	6	5,770
	Michigan City	12	23,310
	Petersburg	1	16,430
		2	32,380
	R. Gallagher	1	6,490
		2	7,280
		3	6,530
		4	7,650
	Tanners Creek	4	24,820
	Wabash River	1	4,000
		2	2,860
		3	3,750
		5	3,670
		6	12,280
	Warrick	4	26,980
Iowa	Burlington	1	10,710
	Des Moines	7	2,320
	George Neal	1	1,290
	M.L. Kapp	2	13,800
	Prairie Creek	4	8,180
	Riverside	5	3,990
Kansas	Quindaro	2	4,220
Kentucky	Coleman	1	11,250
		2	12,840
		3	12,340
	Cooper	1	7,450
		2	15,320
	E.W. Brown	1	7,110
		2	10,910
		3	26,100
	Elmer Smith	1	6,520
		2	14,410
	Ghent	1	28,410
	Green River	4	7,820
	H.L. Spurlock	1	22,780
	Henderson II	1	13,340
		2	12,310
	Paradise	3	59,170
	Shawnee	10	10,170
Maryland	Chalk Point	1	21,910
		2	24,330
	C. P. Crane	1	10,330
		2	9,230
	Morgantown	1	35,260
		2	38,480
Michigan	J. H. Campbell	1	19,280
		2	23,060
Minnesota	High Bridge	6	4,270
Mississippi	Jack Watson	4	17,910
		5	36,700
Missouri	Asbury	1	16,190
	James River	5	4,850
	Labadie	1	40,110
		2	37,710
		3	40,310
		4	35,940
	Montrose	1	7,390
		2	8,200
		3	10,090
	New Madrid	1	28,240
		2	32,480
	Sibley	3	15,580
	Sioux	1	22,570
		2	23,690
	Thomas Hill	1	10,250
		2	19,390
New Hampshire	Merrimack	1	10,190
		2	22,000
New Jersey	B.L. England	1	9,060
		2	11,720
New York	Dunkirk	3	12,600
		4	14,060
	Greenidge	4	7,540
	Milliken	1	11,170
		2	12,410
	Northport	1	19,810
		2	24,110
		3	26,480
	Port Jefferson	3	10,470
		4	12,330
Ohio	Ashtabula	5	16,740

TABLE A.—AFFECTED SOURCES AND UNITS IN PHASE I AND THEIR SULFUR DIOXIDE ALLOWANCES (TONS)—CONTINUED

State	Plant Name	Generator	Phase I Allowances
	Avon Lake	8	11,650
		9	30,480
	Cardinal	1	34,270
		2	38,320
	Conesville	1	4,210
		2	4,890
		3	5,500
		4	48,770
	Eastlake	1	7,800
		2	8,640
		3	10,020
		4	14,510
		5	34,070
	Edgewater	4	5,050
	Gen. J.M. Gavin	1	79,080
		2	80,560
	Kyger Creek	1	19,280
		2	18,560
		3	17,910
		4	18,710
		5	18,740
	Miami Fort	5	760
		6	11,380
		7	38,510
	Muskingum River	1	14,880
		2	14,170
		3	13,950
		4	11,780
		5	40,470
	Niles	1	6,940
		2	9,100
	Picway	5	4,930
	R.E. Burger	3	6,150
		4	10,780
		5	12,430
	W.H. Sammis	5	24,170
		6	39,930
		7	43,220
	W.C. Beckjord	5	8,950
		6	23,020
Pennsylvania	Armstrong	1	14,410
		2	15,430
	Brunner Island	1	27,760
		2	31,100
		3	53,820
	Cheswick	1	39,170
	Conemaugh	1	59,790
		2	66,450
	Hatfield's Ferry	1	37,830
		2	37,320
		3	40,270
	Martins Creek	1	12,660
		2	12,820
	Portland	1	5,940
		2	10,230
	Shawville	1	10,320
		2	10,320
		3	14,220
		4	14,070
	Sunbury	3	8,760
		4	11,450
Tennessee	Allen	1	15,320
		2	16,770
		3	15,670
	Cumberland	1	86,700
		2	94,840
	Gallatin	1	17,870
		2	17,310
		3	20,020
		4	21,260
	Johnsonville	1	7,790
		2	8,040
		3	8,410
		4	7,990
		5	8,240
		6	7,890
		7	8,980
		8	8,700
		9	7,080
		10	7,550
West Virginia	Albright	3	12,000
	Fort Martin	1	41,590
		2	41,200
	Harrison	1	48,620
		2	46,150
		3	41,500
	Kammer	1	18,740
		2	19,460
		3	17,390
	Mitchell	1	43,980
		2	45,510
	Mount Storm	1	43,720
		2	35,580
		3	42,430
Wisconsin	Edgewater	4	24,750
	La Crosse/Genoa	3	22,700
	Nelson Dewey	1	6,010
		2	6,680
	N. Oak Creek	1	5,220
		2	5,140
		3	5,370
		4	6,320
	Pulliam	8	7,510
	S. Oak Creek	5	9,670
		6	12,040
		7	16,180
		8	15,790

(f) Energy conservation and renewable energy

(1) Definitions

As used in this subsection:

(A) Qualified energy conservation measure

The term ''qualified energy conservation measure'' means a cost effective measure, as identified by the Administrator in consultation with the Secretary of Energy, that increases the efficiency of the use of electricity provided by an electric utility to its customers.

(B) Qualified renewable energy

The term ''qualified renewable energy'' means energy derived from biomass, solar, geothermal, or wind as identified by the Administrator in consultation with the Secretary of Energy.

(C) Electric utility

The term ''electric utility'' means any person, State agency, or Federal agency, which sells electric energy.

(2) Allowances for emissions avoided through energy conservation and renewable energy

(A) In general

The regulations under paragraph (4) of this subsection shall provide that for each ton of sulfur dioxide emissions avoided by an elec-

tric utility, during the applicable period, through the use of qualified energy conservation measures or qualified renewable energy, the Administrator shall allocate a single allowance to such electric utility, on a first-come-first-served basis from the Conservation and Renewable Energy Reserve established under subsection (g) of this section, up to a total of 300,000 allowances for allocation from such Reserve.

(B) Requirements for issuance

The Administrator shall allocate allowances to an electric utility under this subsection only if all of the following requirements are met:

(i) Such electric utility is paying for the qualified energy conservation measures or qualified renewable energy directly or through purchase from another person.

(ii) The emissions of sulfur dioxide avoided through the use of qualified energy conservation measures or qualified renewable energy are quantified in accordance with regulations promulgated by the Administrator under this subsection.

(iii)(I) Such electric utility has adopted and is implementing a least cost energy conservation and electric power plan which evaluates a range of resources, including new power supplies, energy conservation, and renewable energy resources, in order to meet expected future demand at the lowest system cost.

(II) The qualified energy conservation measures or qualified renewable energy, or both, are consistent with that plan.

(III) Electric utilities subject to the jurisdiction of a State regulatory authority must have such plan approved by such authority. For electric utilities not subject to the jurisdiction of a State regulatory authority such plan shall be approved by the entity with rate-making authority for such utility.

(iv) In the case of qualified energy conservation measures undertaken by a State regulated electric utility, the Secretary of Energy certifies that the State regulatory authority with jurisdiction over the electric rates of such electric utility has established rates and charges which ensure that the net income of such electric utility after implementation of specific cost effective energy conservation measures is at least as high as such net income would have been if the energy conservation measures had not been implemented. Upon the date of any such certification by the Secretary of Energy, all allowances which, but for this paragraph, would have been allocated under subparagraph (A) before such date, shall be allocated to the electric utility. This clause is not a requirement for qualified renewable energy.

(v) Such utility or any subsidiary of the utility's holding company owns or operates at least one affected unit.

(C) Period of applicability

Allowances under this subsection shall be allocated only with respect to kilowatt hours of electric energy saved by qualified energy conservation measures or generated by qualified renewable energy after January 1, 1992 and before the earlier of (i) December 31, 2000, or (ii) the date on which any electric utility steam generating unit owned or operated by the electric utility to which the allowances are allocated becomes subject to this subchapter (including those sources that elect to become affected by this subchapter, pursuant to section 7651i of this title).

(D) Determination of avoided emissions

(i) Application

In order to receive allowances under this subsection, an electric utility shall make an application which—

(I) designates the qualified energy conservation measures implemented and the qualified renewable energy sources used for purposes of avoiding emissions,[8]

(II) calculates, in accordance with subparagraphs (F) and (G), the number of tons of emissions avoided by reason of the implementation of such measures or the use of such renewable energy sources; and

(III) demonstrates that the requirements of subparagraph (B) have been met.

Such application for allowances by a State-regulated electric utility shall require approval by the State regulatory authority with jurisdiction over such electric utility. The authority shall review the application for accuracy and compliance with this subsection and the rules under this subsection. Electric utilities whose retail rates are not subject to the jurisdiction of a State regulatory authority shall apply directly to the Administrator for such approval.

(E) Avoided emissions from qualified energy conservation measures

For the purposes of this subsection, the emission tonnage deemed avoided by reason of the implementation of qualified energy conservation measures for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the kilowatt hours that would otherwise have been supplied by the utility during such year in the absence of such qualified energy conservation measures, by

(ii) 0.004,

and dividing by 2,000.

(F) Avoided emissions from the use of qualified renewable energy

The emissions tonnage deemed avoided by reason of the use of qualified renewable energy by an electric utility for any calendar year shall be a tonnage equal to the product of multiplying—

(i) the actual kilowatt hours generated by, or purchased from, qualified renewable energy, by

[8] So in original. The comma probably should be a semicolon.

(ii) 0.004,

and dividing by 2,000.

(G) Prohibitions

(i) No allowances shall be allocated under this subsection for the implementation of programs that are exclusively informational or educational in nature.

(ii) No allowances shall be allocated for energy conservation measures or renewable energy that were operational before January 1, 1992.

(3) Savings provision

Nothing in this subsection precludes a State or State regulatory authority from providing additional incentives to utilities to encourage investment in demand-side resources.

(4) Regulations

Not later than 18 months after November 15, 1990, and in conjunction with the regulations required to be promulgated under subsections (b) and (c) of this section, the Administrator shall, in consultation with the Secretary of Energy, promulgate regulations under this subsection. Such regulations shall list energy conservation measures and renewable energy sources which may be treated as qualified energy conservation measures and qualified renewable energy for purposes of this subsection. Allowances shall only be allocated if all requirements of this subsection and the rules promulgated to implement this subsection are complied with. The Administrator shall review the determinations of each State regulatory authority under this subsection to encourage consistency from electric utility to electric utility and from State to State in accordance with the Administrator's rules. The Administrator shall publish the findings of this review no less than annually.

(g) Conservation and Renewable Energy Reserve

The Administrator shall establish a Conservation and Renewable Energy Reserve under this subsection. Beginning on January 1, 1995, the Administrator may allocate from the Conservation and Renewable Energy Reserve an amount equal to a total of 300,000 allowances for emissions of sulfur dioxide pursuant to section 7651b of this title. In order to provide 300,000 allowances for such reserve, in each year beginning in calendar year 2000 and until calendar year 2009, inclusive, the Administrator shall reduce each unit's basic Phase II allowance allocation on the basis of its pro rata share of 30,000 allowances. If allowances remain in the reserve after January 2, 2010, the Administrator shall allocate such allowances for affected units under section 7651d of this title on a pro rata basis. For purposes of this subsection, for any unit subject to the emissions limitation requirements of section 7651d of this title, the term ''pro rata basis'' refers to the ratio which the reductions made in such unit's allowances in order to establish the reserve under this subsection bears to the total of such reductions for all such units.

(h) Alternative allowance allocation for units in certain utility systems with optional baseline

(1) Optional baseline for units in certain systems

In the case of a unit subject to the emissions limitation requirements of this section which (as of November 15, 1990)—

(A) has an emission rate below 1.0 lbs/mmBtu,

(B) has decreased its sulfur dioxide emissions rate by 60 percent or greater since 1980, and

(C) is part of a utility system which has a weighted average sulfur dioxide emissions rate for all fossil fueled-fired units below 1.0 lbs/mmBtu,

at the election of the owner or operator of such unit, the unit's baseline may be calculated (i) as provided under section 7651a(d)[9] of this title, or (ii) by utilizing the unit's average annual fuel consumption at a 60 percent capacity factor. Such election shall be made no later than March 1, 1991.

(2) Allowance allocation

Whenever a unit referred to in paragraph (1) elects to calculate its baseline as provided in clause (ii) of paragraph (1), the Administrator shall allocate allowances for the unit pursuant to section 7651b(a)(1) of this title, this section, and section 7651d of this title (as basic Phase II allowance allocations) in an amount equal to the baseline selected multiplied by the lower of the average annual emission rate for such unit in 1989, or 1.0 lbs./mmBtu. Such allowance allocation shall be in lieu of any allocation of allowances under this section and section 7651d of this title.

(July 14, 1955, ch. 360, title IV, § 404, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2592.)

§ 7651d. Phase II sulfur dioxide requirements

(a) Applicability

(1) After January 1, 2000, each existing utility unit as provided below is subject to the limitations or requirements of this section. Each utility unit subject to an annual sulfur dioxide tonnage emission limitation under this section is an affected unit under this subchapter. Each source that includes one or more affected units is an affected source. In the case of an existing unit that was not in operation during calendar year 1985, the emission rate for a calendar year after 1985, as determined by the Administrator, shall be used in lieu of the 1985 rate. The owner or operator of any unit operated in violation of this section shall be fully liable under this chapter for fulfilling the obligations specified in section 7651j of this title.

(2) In addition to basic Phase II allowance allocations, in each year beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall allocate up to 530,000 Phase II bonus allowances pursuant to subsections (b)(2), (c)(4), (d)(3)(A) and (B), and (h)(2) of this section and section 7651e of this

[9] So in original. Probably should be section ''7651a(4)''.

title. Not later than June 1, 1998, the Administrator shall calculate, for each unit granted an extension pursuant to section 7651h of this title the difference between (A) the number of allowances allocated for the unit in calendar year 2000, and (B) the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2000, and sum the computations. In each year, beginning in calendar year 2000 and ending in calendar year 2009, inclusive, the Administrator shall deduct from each unit's basic Phase II allowance allocation its pro rata share of 10 percent of the sum calculated pursuant to the preceding sentence.

(3) In addition to basic Phase II allowance allocations and Phase II bonus allowance allocations, beginning January 1, 2000, the Administrator shall allocate for each unit listed on Table A in section 7651c of this title (other than units at Kyger Creek, Clifty Creek, and Joppa Steam) and located in the States of Illinois, Indiana, Ohio, Georgia, Alabama, Missouri, Pennsylvania, West Virginia, Kentucky, or Tennessee allowances in an amount equal to 50,000 multiplied by the unit's pro rata share of the total number of basic allowances allocated for all units listed on Table A (other than units at Kyger Creek, Clifty Creek, and Joppa Steam). Allowances allocated pursuant to this paragraph shall not be subject to the 8,900,000 ton limitation in section 7651b(a) of this title.

(b) Units equal to, or above, 75 MWe and 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for any existing utility unit that serves a generator with nameplate capacity equal to, or greater, than 75 MWe and an actual 1985 emission rate equal to or greater than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate greater than 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with an actual 1985 emissions rate equal to or greater than 1.20 lbs/mmBtu whose annual average fuel consumption during 1985, 1986, and 1987 on a Btu basis exceeded 90 percent in the form of lignite coal which is located in a State in which, as of July 1, 1989, no county or portion of a county was designated nonattainment under section 7407 of this title for any pollutant subject to the requirements of section 7409 of this title to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(4) After January 1, 2000, the Administrator shall allocate annually for each unit, subject to the emissions limitation requirements of paragraph (1), which is located in a State with an installed electrical generating capacity of more than 30,000,000 kw in 1988 and for which was issued a prohibition order or a proposed prohibition order (from burning oil), which unit subsequently converted to coal between January 1, 1980 and December 31, 1985, allowances equal to the difference between (A) the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of its actual or allowable emissions rate during the first full calendar year after conversion, divided by 2,000, and (B) the number of allowances allocated for the unit pursuant to paragraph (1): *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of five thousand. If necessary to meeting the restriction imposed in the preceding sentence the Administrator shall reduce, pro rata, the annual allowances allocated for each unit under this paragraph.

(c) Coal or oil-fired units below 75 MWe and above 1.20 lbs/mmBtu

(1) Except as otherwise provided in paragraph (3), after January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, equal to, or greater than, 250 MWe to exceed an annual sulfur dioxide emissions limitation equal to the product of the unit's baseline multiplied by an emission rate equal to 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for a coal or oil-fired existing utility unit that serves a generator with nameplate capacity of less than 75 MWe and an actual 1985 emission rate equal to, or greater than, 1.20 lbs/mmBtu (excluding units subject to section 7411 of this title or to a federally enforceable emissions limitation for sulfur dioxide equivalent to an annual rate of less than 1.20 lbs/mmBtu) and which is a unit owned by a utility operating company whose aggregate nameplate fossil fuel steam-electric capacity is, as of December 31, 1989, less than 250 MWe, to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by the lesser of its actual 1985 emissions rate or its al-

lowable 1985 emissions rate, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which became operational on or before December 31, 1965, which is owned by a utility operating company with, as of December 31, 1989, a total fossil fuel steam-electric generating capacity greater than 250 MWe, and less than 450 MWe which serves fewer than 78,000 electrical customers as of November 15, 1990, to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by the lesser of its actual or allowable 1985 emission rate, divided by 2,000, unless the owner or operator holds allowances to emit not less than the units[1] total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions.

(4) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, inclusive, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) with an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu and less than 2.50 lbs/mmBtu and a baseline capacity factor of less than 60 percent, allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to 1.20 lbs/mmBtu multiplied by 50 percent of the difference, on a Btu basis, between the unit's baseline and the unit's fuel consumption at a 60 percent capacity factor.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit with a nameplate capacity below 75 MWe and an actual 1985 emissions rate equal to, or greater than, 1.20 lbs/mmBtu which is part of an electric utility system which, as of November 15, 1990, (A) has at least 20 percent of its fossil-fuel capacity controlled by flue gas desulfurization devices, (B) has more than 10 percent of its fossil-fuel capacity consisting of coal-fired units of less than 75 MWe, and (C) has large units (greater than 400 MWe) all of which have difficult or very difficult FGD Retrofit Cost Factors (according to the Emissions and the FGD Retrofit Feasibility at the 200 Top Emitting Generating Stations, prepared for the United States Environmental Protection Agency on January 10, 1986) to exceed an annual sulfur dioxide emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 2.5 lbs/mmBtu, divided by 2,000, unless the owner or operator holds allowances to emit not less than the unit's total annual emissions. After January 1, 2010, it shall be unlawful for each unit subject to the emissions limitation requirements of this paragraph to exceed an annual emissions tonnage limitation equal to the product of its baseline multiplied by an emissions rate of 1.20 lbs/mmBtu, divided by 2,000, unless the owner or operator holds for use allowances to emit not less than the unit's total annual emissions.

(d) Coal-fired units below 1.20 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is less than 0.60 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emission limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, it shall be unlawful for any existing coal-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emissions rate is equal to, or greater than, 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of its actual 1985 emissions rate or its allowable 1985 emissions rate, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(3)(A) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions rate multiplied by the unit's baseline adjusted to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(B) In addition to allowances allocated pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, at the election of the designated representative of the operating company, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (2) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the amount by which (i) the product of the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate multiplied by the unit's baseline adjusted

[1] So in original. Probably should be ''unit's''.

to reflect operation at a 60 percent capacity factor, divided by 2,000, exceeds (ii) the number of allowances allocated for the unit pursuant to paragraph (2) and section 7651b(a)(1) of this title as basic Phase II allowance allocations.

(C) An operating company with units subject to the emissions limitation requirements of this subsection may elect the allocation of allowances as provided under subparagraphs (A) and (B). Such election shall apply to the annual allowance allocation for each and every unit in the operating company subject to the emissions limitation requirements of this subsection. The Administrator shall allocate allowances pursuant to subparagraphs (A) and (B) only in accordance with this subparagraph.

(4) Notwithstanding any other provision of this section, at the election of the owner or operator, after January 1, 2000, the Administrator shall allocate in lieu of allocation, pursuant to paragraph (1), (2), (3), (5), or (6),[2] allowances for a unit subject to the emissions limitation requirements of this subsection which commenced commercial operation on or after January 1, 1981 and before December 31, 1985, which was subject to, and in compliance with, section 7411 of this title in an amount equal to the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 emissions rate, divided by 2,000.

(5) For the purposes of this section, in the case of an oil- and gas-fired unit which has been awarded a clean coal technology demonstration grant as of January 1, 1991, by the United States Department of Energy, beginning January 1, 2000, the Administrator shall allocate for the unit allowances in an amount equal to the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(e) Oil and gas-fired units equal to or greater than 0.60 lbs/mmBtu and less than 1.20 lbs/mmBtu

After January 1, 2000, it shall be unlawful for any existing oil and gas-fired utility unit the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is equal to, or greater than, 0.60 lbs/mmBtu, but less than 1.20 lbs/mmBtu to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by (A) the lesser of the unit's allowable 1985 emissions rate or its actual 1985 emissions rate and (B) a numerical factor of 120 percent divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(f) Oil and gas-fired units less than 0.60 lbs/mmBtu

(1) After January 1, 2000, it shall be unlawful for any oil and gas-fired existing utility unit the lesser of whose actual or allowable 1985 emission rate is less than 0.60 lbs/mmBtu and whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis was 90 percent or less in the form of natural gas to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's baseline multiplied by (A) the lesser of 0.60 lbs/mmBtu or the unit's allowable 1985 emissions, and (B) a numerical factor of 120 percent, divided by 2,000, unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) as basic Phase II allowance allocations and section 7651b(a)(1) of this title, beginning January 1, 2000, the Administrator shall,[3] in the case of any unit operated by a utility that furnishes electricity, electric energy, steam, and natural gas within an area consisting of a city and 1 contiguous county, and in the case of any unit owned by a State authority, the output of which unit is furnished within that same area consisting of a city and 1 contiguous county, the Administrator shall allocate for each unit in the utility its pro rata share of 7,000 allowances and for each unit in the State authority its pro rata share of 2,000 allowances.

(g) Units that commence operation between 1986 and December 31, 1995

(1) After January 1, 2000, it shall be unlawful for any utility unit that has commenced commercial operation on or after January 1, 1986, but not later than September 30, 1990 to exceed an annual tonnage emission limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the unit's allowable 1985 sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) After January 1, 2000, the Administrator shall allocate allowances pursuant to section 7651b of this title to each unit which is listed in table B of this paragraph in an annual amount equal to the amount specified in table B.

TABLE B

Unit	Allowances
Brandon Shores	8,907
Miller 4	9,197
TNP One 2	4,000
Zimmer 1	18,458
Spruce 1	7,647
Clover 1	2,796
Clover 2	2,796
Twin Oak 2	1,760
Twin Oak 1	9,158
Cross 1	6,401
Malakoff 1	1,759

Notwithstanding any other paragraph of this subsection, for units subject to this paragraph, the Administrator shall not allocate allowances pursuant to any other paragraph of this subsection, Provided[4] that the owner or operator of a unit listed on Table B may elect an allocation of allowances under another paragraph of this subsection in lieu of an allocation under this paragraph.

(3) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that commences commercial operation, or has commenced commercial oper-

[2] So in original. This subsection does not contain a paragraph (6).

[3] So in original. The words ''the Administrator shall,'' probably should not appear.

[4] So in original. Probably should not be capitalized.

ation, on or after October 1, 1990, but not later than December 31, 1992 allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(4) Beginning January 1, 2000, the Administrator shall allocate to the owner or operator of any utility unit that has commenced construction before December 31, 1990 and that commences commercial operation between January 1, 1993 and December 31, 1995, allowances in an amount equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 0.30 lbs/mmBtu or the unit's allowable sulfur dioxide emission rate (converted, if necessary, to pounds per mmBtu), divided by 2,000.

(5) After January 1, 2000, it shall be unlawful for any existing utility unit that has completed conversion from predominantly gas fired existing operation to coal fired operation between January 1, 1985 and December 31, 1987, for which there has been allocated a proposed or final prohibition order pursuant to section 301(b)[5] of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 et seq,[6] repealed 1987) to exceed an annual sulfur dioxide tonnage emissions limitation equal to the product of the unit's annual fuel consumption, on a Btu basis, at a 65 percent capacity factor multiplied by the lesser of 1.20 lbs/mmBtu or the unit's allowable 1987 sulfur dioxide emissions rate, divided by 2,000, unless the owner or operator of such unit has obtained allowances equal to its actual emissions.

(6)(A)[7] Unless the Administrator has approved a designation of such facility under section 7651i of this title, the provisions of this subchapter shall not apply to a ''qualifying small power production facility'' or ''qualifying cogeneration facility'' (within the meaning of section 796(17)(C) or 796(18)(B) of title 16) or to a ''new independent power production facility'' as defined in section 7651*o* of this title except[8] that clause (iii)[9] of such definition in section 7651*o* of this title shall not apply for purposes of this paragraph if, as of November 15, 1990,

(i) an applicable power sales agreement has been executed;

(ii) the facility is the subject of a State regulatory authority order requiring an electric utility to enter into a power sales agreement with, purchase capacity from, or (for purposes of establishing terms and conditions of the electric utility's purchase of power) enter into arbitration concerning, the facility;

(iii) an electric utility has issued a letter of intent or similar instrument committing to purchase power from the facility at a previously offered or lower price and a power sales agreement is executed within a reasonable period of time; or

(iv) the facility has been selected as a winning bidder in a utility competitive bid solicitation.

[5] See References in Text note below.

[6] So in original. Probably should be ''seq.,''.

[7] So in original. No subpar. (B) has been enacted.

[8] So in original. Probably should be preceded by a comma.

[9] So in original. Probably means clause ''(C)''.

(h) Oil and gas-fired units less than 10 percent oil consumed

(1) After January 1, 2000, it shall be unlawful for any oil- and gas-fired utility unit whose average annual fuel consumption during the period 1980 through 1989 on a Btu basis exceeded 90 percent in the form of natural gas to exceed an annual sulfur dioxide tonnage limitation equal to the product of the unit's baseline multiplied by the unit's actual 1985 emissions rate divided by 2,000 unless the owner or operator of such unit holds allowances to emit not less than the unit's total annual emissions.

(2) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances from the reserve created pursuant to subsection (a)(2) of this section in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(3) In addition to allowances allocated pursuant to paragraph (1) and section 7651b(a)(1) of this title, beginning January 1, 2010, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of paragraph (1) allowances in an amount equal to the unit's baseline multiplied by 0.050 lbs/mmBtu, divided by 2,000.

(i) Units in high growth States

(1) In addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, beginning January 1, 2000, the Administrator shall allocate annually allowances for each unit, subject to an emissions limitation requirement under this section, and located in a State that—

(A) has experienced a growth in population in excess of 25 percent between 1980 and 1988 according to State Population and Household Estimates, With Age, Sex, and Components of Change: 1981–1988 allocated by the United States Department of Commerce, and

(B) had an installed electrical generating capacity of more than 30,000,000 kw in 1988,

in an amount equal to the difference between (A) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of this section applicable to the unit adjusted to reflect the unit's annual average fuel consumption on a Btu basis of any three consecutive calendar years between 1980 and 1989 (inclusive) as elected by the owner or operator and (B) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of this section: *Provided*, That the number of allowances allocated pursuant to this subsection shall not exceed an annual total of 40,000. If necessary to meeting the 40,000 allowance restriction imposed under this subsection the Administrator shall reduce, pro rata, the additional annual allowances allocated to each unit under this subsection.

(2) Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II

allowance allocations, the Administrator shall allocate annually for each unit subject to the emissions limitation requirements of subsection (b)(1) of this section, (A) the lesser of whose actual or allowable 1980 emissions rate has declined by 50 percent or more as of November 15, 1990, (B) whose actual emissions rate is less than 1.2 lbs/mmBtu as of January 1, 2000, (C) which commenced operation after January 1, 1970, (D) which is owned by a utility company whose combined commercial and industrial kilowatt-hour sales have increased by more than 20 percent between calendar year 1980 and November 15, 1990, and (E) whose company-wide fossil-fuel sulfur dioxide emissions rate has declined 40 per centum or more from 1980 to 1988, allowances in an amount equal to the difference between (i) the number of allowances that would be allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section adjusted to reflect the unit's annual average fuel consumption on a Btu basis for any three consecutive years between 1980 and 1989 (inclusive) as elected by the owner or operator and (ii) the number of allowances allocated for the unit pursuant to the emissions limitation requirements of subsection (b)(1) of this section: *Provided*, That the number of allowances allocated pursuant to this paragraph shall not exceed an annual total of 5,000. If necessary to meeting the 5,000-allowance restriction imposed in the last clause of the preceding sentence the Administrator shall reduce, pro rata, the additional allowances allocated to each unit pursuant to this paragraph.

(j) Certain municipally owned power plants

Beginning January 1, 2000, in addition to allowances allocated pursuant to this section and section 7651b(a)(1) of this title as basic Phase II allowance allocations, the Administrator shall allocate annually for each existing municipally owned oil and gas-fired utility unit with nameplate capacity equal to, or less than, 40 MWe, the lesser of whose actual or allowable 1985 sulfur dioxide emission rate is less than 1.20 lbs/mmBtu, allowances in an amount equal to the product of the unit's annual fuel consumption on a Btu basis at a 60 percent capacity factor multiplied by the lesser of its allowable 1985 emission rate or its actual 1985 emission rate, divided by 2,000.

(July 14, 1955, ch. 360, title IV, § 405, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2605.)

REFERENCES IN TEXT

Section 301(b) of the Powerplant and Industrial Fuel Use Act of 1978, referred to in subsec. (g)(5), is section 301(b) of Pub. L. 95–620, which is classified to section 8341(b) of this title. A prior section 301(b) of Pub. L. 95–620, title III, Nov. 9, 1978, 92 Stat. 3305, which was formerly classified to section 8341(b) of this title, was repealed by Pub. L. 97–35, title X, § 1021(a), Aug. 13, 1981, 95 Stat. 614.

§ 7651e. Allowances for States with emissions rates at or below 0.80 lbs/mmBtu

(a) Election of Governor

In addition to basic Phase II allowance allocations, upon the election of the Governor of any State, with a 1985 state-wide annual sulfur dioxide emissions rate equal to or less than, 0.80 lbs/mmBtu, averaged over all fossil fuel-fired utility steam generating units, beginning January 1, 2000, and for each calendar year thereafter until and including 2009, the Administrator shall allocate, in lieu of other Phase II bonus allowance allocations, allowances from the reserve created pursuant to section 7651d(a)(2) of this title to all such units in the State in an amount equal to 125,000 multiplied by the unit's pro rata share of electricity generated in calendar year 1985 at fossil fuel-fired utility steam units in all States eligible for the election.

(b) Notification of Administrator

Pursuant to section 7651b(a)(1) of this title, each Governor of a State eligible to make an election under paragraph[1] (a) shall notify the Administrator of such election. In the event that the Governor of any such State fails to notify the Administrator of the Governor's elections, the Administrator shall allocate allowances pursuant to section 7651d of this title.

(c) Allowances after January 1, 2010

After January 1, 2010, the Administrator shall allocate allowances to units subject to the provisions of this section pursuant to section 7651d of this title.

(July 14, 1955, ch. 360, title IV, § 406, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2613.)

§ 7651f. Nitrogen oxides emission reduction program

(a) Applicability

On the date that a coal-fired utility unit becomes an affected unit pursuant to sections 7651c, 7651d,[1] 7651h of this title, or on the date a unit subject to the provisions of section 7651c(d) or 7651h(b) of this title, must meet the SO_2 reduction requirements, each such unit shall become an affected unit for purposes of this section and shall be subject to the emission limitations for nitrogen oxides set forth herein.

(b) Emission limitations

(1) Not later than eighteen months after November 15, 1990, the Administrator shall by regulation establish annual allowable emission limitations for nitrogen oxides for the types of utility boilers listed below, which limitations shall not exceed the rates listed below: *Provided*, That the Administrator may set a rate higher than that listed for any type of utility boiler if the Administrator finds that the maximum listed rate for that boiler type cannot be achieved using low NO_x burner technology. The maximum allowable emission rates are as follows:

(A) for tangentially fired boilers, 0.45 lb/mmBtu;

(B) for dry bottom wall-fired boilers (other than units applying cell burner technology), 0.50 lb/mmBtu.

After January 1, 1995, it shall be unlawful for any unit that is an affected unit on that date

[1] So in original. Probably should be "subsection".

[1] So in original. Probably should be followed by "or".

and is of the type listed in this paragraph to emit nitrogen oxides in excess of the emission rates set by the Administrator pursuant to this paragraph.

(2) Not later than January 1, 1997, the Administrator shall, by regulation, establish allowable emission limitations on a lb/mmBtu, annual average basis, for nitrogen oxides for the following types of utility boilers:

(A) wet bottom wall-fired boilers;

(B) cyclones;

(C) units applying cell burner technology;

(D) all other types of utility boilers.

The Administrator shall base such rates on the degree of reduction achievable through the retrofit application of the best system of continuous emission reduction, taking into account available technology, costs and energy and environmental impacts; and which is comparable to the costs of nitrogen oxides controls set pursuant to subsection (b)(1) of this section. Not later than January 1, 1997, the Administrator may revise the applicable emission limitations for tangentially fired and dry bottom, wall-fired boilers (other than cell burners) to be more stringent if the Administrator determines that more effective low NO_x burner technology is available: *Provided*, That, no unit that is an affected unit pursuant to section 7651c of this title and that is subject to the requirements of subsection (b)(1) of this section, shall be subject to the revised emission limitations, if any.

(c) Revised performance standards

(1)[2] Not later than January 1, 1993, the Administrator shall propose revised standards of performance to section 7411 of this title for nitrogen oxides emissions from fossil-fuel fired steam generating units, including both electric utility and nonutility units. Not later than January 1, 1994, the Administrator shall promulgate such revised standards of performance. Such revised standards of performance shall reflect improvements in methods for the reduction of emissions of oxides of nitrogen.

(d) Alternative emission limitations

The permitting authority shall, upon request of an owner or operator of a unit subject to this section, authorize an emission limitation less stringent than the applicable limitation established under subsection (b)(1) or (b)(2) of this section upon a determination that—

(1) a unit subject to subsection (b)(1) of this section cannot meet the applicable limitation using low NO_x burner technology; or

(2) a unit subject to subsection (b)(2) of this section cannot meet the applicable rate using the technology on which the Administrator based the applicable emission limitation.

The permitting authority shall base such determination upon a showing satisfactory to the permitting authority, in accordance with regulations established by the Administrator not later than eighteen months after November 15, 1990, that the owner or operator—

(1) has properly installed appropriate control equipment designed to meet the applicable emission rate;

(2) has properly operated such equipment for a period of fifteen months (or such other period of time as the Administrator determines through the regulations), and provides operating and monitoring data for such period demonstrating that the unit cannot meet the applicable emission rate; and

(3) has specified an emission rate that such unit can meet on an annual average basis.

The permitting authority shall issue an operating permit for the unit in question, in accordance with section 7651g of this title and part B[3] of title III—

(i) that permits the unit during the demonstration period referred to in subparagraph (2) above, to emit at a rate in excess of the applicable emission rate;

(ii) at the conclusion of the demonstration period to revise the operating permit to reflect the alternative emission rate demonstrated in paragraphs (2) and (3) above.

Units subject to subsection (b)(1) of this section for which an alternative emission limitation is established shall not be required to install any additional control technology beyond low NO_x burners. Nothing in this section shall preclude an owner or operator from installing and operating an alternative NO_x control technology capable of achieving the applicable emission limitation. If the owner or operator of a unit subject to the emissions limitation requirements of subsection (b)(1) of this section demonstrates to the satisfaction of the Administrator that the technology necessary to meet such requirements is not in adequate supply to enable its installation and operation at the unit, consistent with system reliability, by January 1, 1995, then the Administrator shall extend the deadline for compliance for the unit by a period of 15 months. Any owner or operator may petition the Administrator to make a determination under the previous sentence. The Administrator shall grant or deny such petition within 3 months of submittal.

(e) Emissions averaging

In lieu of complying with the applicable emission limitations under subsection (b)(1), (2), or (d) of this section, the owner or operator of two or more units subject to one or more of the applicable emission limitations set pursuant to these sections,[4] may petition the permitting authority for alternative contemporaneous annual emission limitations for such units that ensure that (1) the actual annual emission rate in pounds of nitrogen oxides per million Btu averaged over the units in question is a rate that is less than or equal to (2) the Btu-weighted average annual emission rate for the same units if they had been operated, during the same period of time, in compliance with limitations set in accordance with the applicable emission rates set pursuant to subsections (b)(1) and (2) of this section.

If the permitting authority determines, in accordance with regulations issued by the Administrator not later than eighteen months after

[2] So in original. No par. (2) has been enacted.

[3] See References in Text note below.

[4] So in original. Probably should be ''subsections,''.

November 15, 1990;[5] that the conditions in the paragraph above can be met, the permitting authority shall issue operating permits for such units, in accordance with section 7651g of this title and part B[3] of title III, that allow alternative contemporaneous annual emission limitations. Such emission limitations shall only remain in effect while both units continue operation under the conditions specified in their respective operating permits.

(July 14, 1955, ch. 360, title IV, § 407, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2613.)

REFERENCES IN TEXT

Part B of title III, referred to in subsecs. (d) and (e), means title III of the Clean Air Act, act July 14, 1955, ch. 360, as added, which is classified to subchapter III of this chapter, but title III does not contain parts. For provisions of the Clean Air Act relating to permits, see subchapter V (§ 7661 et seq.) of this chapter.

§ 7651g. Permits and compliance plans

(a) Permit program

The provisions of this subchapter shall be implemented, subject to section 7651b of this title, by permits issued to units subject to this subchapter (and enforced) in accordance with the provisions of subchapter V of this chapter, as modified by this subchapter. Any such permit issued by the Administrator, or by a State with an approved permit program, shall prohibit—

(1) annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator, or the designated representative of the owners or operators, of the unit hold for the unit,

(2) exceedances of applicable emissions rates,

(3) the use of any allowance prior to the year for which it was allocated, and

(4) contravention of any other provision of the permit.

Permits issued to implement this subchapter shall be issued for a period of 5 years, notwithstanding subchapter V of this chapter. No permit shall be issued that is inconsistent with the requirements of this subchapter, and subchapter V of this chapter as applicable.

(b) Compliance plan

Each initial permit application shall be accompanied by a compliance plan for the source to comply with its requirements under this subchapter. Where an affected source consists of more than one affected unit, such plan shall cover all such units, and for purposes of section 7661a(c) of this title, such source shall be considered a ''facility''. Nothing in this section regarding compliance plans or in subchapter V of this chapter shall be construed as affecting allowances. Except as provided under subsection (c)(1)(B) of this section, submission of a statement by the owner or operator, or the designated representative of the owners and operators, of a unit subject to the emissions limitation requirements of sections 7651c, 7651d, and 7651f of this title, that the unit will meet the applicable emissions limitation requirements of such sections in a timely manner or that, in the case of the emissions limitation requirements of sections 7651c and 7651d of this title, the owners and operators will hold allowances to emit not less than the total annual emissions of the unit, shall be deemed to meet the proposed and approved compliance planning requirements of this section and subchapter V of this chapter, except that, for any unit that will meet the requirements of this subchapter by means of an alternative method of compliance authorized under section 7651c(b), (c), (d), or (f) of this title[1] section 7651f(d) or (e) of this title, section 7651h of this title and section 7651i of this title, the proposed and approved compliance plan, permit application and permit shall include, pursuant to regulations promulgated by the Administrator, for each alternative method of compliance a comprehensive description of the schedule and means by which the unit will rely on one or more alternative methods of compliance in the manner and time authorized under this subchapter. Recordation by the Administrator of transfers of allowances shall amend automatically all applicable proposed or approved permit applications, compliance plans and permits. The Administrator may also require—

(1) for a source, a demonstration of attainment of national ambient air quality standards, and

(2) from the owner or operator of two or more affected sources, an integrated compliance plan providing an overall plan for achieving compliance at the affected sources.

(c) First phase permits

The Administrator shall issue permits to affected sources under sections 7651c and 7651f of this title.

(1) Permit application and compliance plan

(A) Not later than 27 months after November 15, 1990, the designated representative of the owners or operators, or the owner and operator, of each affected source under sections 7651c and 7651f of this title shall submit a permit application and compliance plan for that source in accordance with regulations issued by the Administrator under paragraph (3). The permit application and the compliance plan shall be binding on the owner or operator or the designated representative of owners and operators for purposes of this subchapter and section 7651a(a)[2] of this title, and shall be enforceable in lieu of a permit until a permit is issued by the Administrator for the source.

(B) In the case of a compliance plan for an affected source under sections 7651c and 7651f of this title for which the owner or operator proposes to meet the requirements of that section by reducing utilization of the unit as compared with its baseline or by shutting down the unit, the owner or operator shall include in the proposed compliance plan a specification of the unit or units that will provide electrical generation to compensate for the reduced output at the affected source, or a dem-

[5] So in original. The semicolon probably should be a comma.

[1] So in original. Probably should be followed by a comma.

[2] So in original. Section 7651a of this title does not contain subsections.

onstration that such reduced utilization will be accomplished through energy conservation or improved unit efficiency. The unit to be used for such compensating generation, which is not otherwise an affected unit under sections 7651c and 7651f of this title, shall be deemed an affected unit under section 7651c of this title, subject to all of the requirements for such units under this subchapter, except that allowances shall be allocated to such compensating unit in the amount of an annual limitation equal to the product of the unit's baseline multiplied by the lesser of the unit's actual 1985 emissions rate or its allowable 1985 emissions rate, divided by 2,000.

(2) EPA action on compliance plans

The Administrator shall review each proposed compliance plan to determine whether it satisfies the requirements of this subchapter, and shall approve or disapprove such plan within 6 months after receipt of a complete submission. If a plan is disapproved, it may be resubmitted for approval with such changes as the Administrator shall require consistent with the requirements of this subchapter and within such period as the Administrator prescribes as part of such disapproval.

(3) Regulations; issuance of permits

Not later than 18 months after November 15, 1990, the Administrator shall promulgate regulations, in accordance with subchapter V of this chapter, to implement a Federal permit program to issue permits for affected sources under this subchapter. Following promulgation, the Administrator shall issue a permit to implement the requirements of section 7651c of this title and the allowances provided under section 7651b of this title to the owner or operator of each affected source under section 7651c of this title. Such a permit shall supersede any permit application and compliance plan submitted under paragraph (1).

(4) Fees

During the years 1995 through 1999 inclusive, no fee shall be required to be paid under section 7661a(b)(3) of this title or under section 7410(a)(2)(L) of this title with respect to emissions from any unit which is an affected unit under section 7651c of this title.

(d) Second phase permits

(1) To provide for permits for (A) new electric utility steam generating units required under section 7651b(e) of this title to have allowances, (B) affected units or sources under section 7651d of this title, and (C) existing units subject to nitrogen oxide emission reductions under section 7651f of this title, each State in which one or more such units or sources are located shall submit in accordance with subchapter V of this chapter, a permit program for approval as provided by that subchapter. Upon approval of such program, for the units or sources subject to such approved program the Administrator shall suspend the issuance of permits as provided in subchapter V of this chapter.

(2) The owner or operator or the designated representative of each affected source under section 7651d of this title shall submit a permit application and compliance plan for that source to the permitting authority, not later than January 1, 1996.

(3) Not later than December 31, 1997, each State with an approved permit program shall issue permits to the owner or operator, or the designated representative of the owners and operators, of affected sources under section 7651d of this title that satisfy the requirements of subchapter V of this chapter and this subchapter and that submitted to such State a permit application and compliance plan pursuant to paragraph (2). In the case of a State without an approved permit program by July 1, 1996, the Administrator shall, not later than January 1, 1998, issue a permit to the owner or operator or the designated representative of each such affected source. In the case of affected sources for which applications and plans are timely received under paragraph (2), the permit application and the compliance plan, including amendments thereto, shall be binding on the owner or operator or the designated representative of the owners or operators and shall be enforceable as a permit for purposes of this subchapter and subchapter V of this chapter until a permit is issued by the permitting authority for the affected source. The provisions of section 558(c) of title 5 (relating to renewals) shall apply to permits issued by a permitting authority under this subchapter and subchapter V of this chapter.

(4) The permit issued in accordance with this subsection for an affected source shall provide that the affected units at the affected source may not emit an annual tonnage of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide the owner or operator or designated representative hold for the unit.

(e) New units

The owner or operator of each source that includes a new electric utility steam generating unit shall submit a permit application and compliance plan to the permitting authority not later than 24 months before the later of (1) January 1, 2000, or (2) the date on which the unit commences operation. The permitting authority shall issue a permit to the owner or operator, or the designated representative thereof, of the unit that satisfies the requirements of subchapter V of this chapter and this subchapter.

(f) Units subject to certain other limits

The owner or operator, or designated representative thereof, of any unit subject to an emission rate requirement under section 7651f of this title shall submit a permit application and compliance plan for such unit to the permitting authority, not later than January 1, 1998. The permitting authority shall issue a permit to the owner or operator that satisfies the requirements of subchapter V of this chapter and this subchapter, including any appropriate monitoring and reporting requirements.

(g) Amendment of application and compliance plan

At any time after the submission of an application and compliance plan under this section, the applicant may submit a revised application and compliance plan, in accordance with the requirements of this section. In considering any

permit application and compliance plan under this subchapter, the permitting authority shall ensure coordination with the applicable electric ratemaking authority, in the case of regulated utilities, and with unregulated public utilities.

(h) Prohibition

(1) It shall be unlawful for an owner or operator, or designated representative, required to submit a permit application or compliance plan under this subchapter to fail to submit such application or plan in accordance with the deadlines specified in this section or to otherwise fail to comply with regulations implementing this section.

(2) It shall be unlawful for any person to operate any source subject to this subchapter except in compliance with the terms and requirements of a permit application and compliance plan (including amendments thereto) or permit issued by the Administrator or a State with an approved permit program. For purposes of this subsection, compliance, as provided in section 7661c(f) of this title, with a permit issued under subchapter V of this chapter which complies with this subchapter for sources subject to this subchapter shall be deemed compliance with this subsection as well as section 7661a(a) of this title.

(3) In order to ensure reliability of electric power, nothing in this subchapter or subchapter V of this chapter shall be construed as requiring termination of operations of an electric utility steam generating unit for failure to have an approved permit or compliance plan, except that any such unit may be subject to the applicable enforcement provisions of section 7413 of this title.

(i) Multiple owners

No permit shall be issued under this section to an affected unit until the designated representative of the owners or operators has filed a certificate of representation with regard to matters under this subchapter, including the holding and distribution of allowances and the proceeds of transactions involving allowances. Where there are multiple holders of a legal or equitable title to, or a leasehold interest in, such a unit, or where a utility or industrial customer purchases power from an affected unit (or units) under life-of-the-unit, firm power contractual arrangements, the certificate shall state (1) that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in proportion to each holder's legal, equitable, leasehold, or contractual reservation or entitlement, or (2) if such multiple holders have expressly provided for a different distribution of allowances by contract, that allowances and the proceeds of transactions involving allowances will be deemed to be held or distributed in accordance with the contract. A passive lessor, or a person who has an equitable interest through such lessor, whose rental payments are not based, either directly or indirectly, upon the revenues or income from the affected unit shall not be deemed to be a holder of a legal, equitable, leasehold, or contractual interest for the purpose of holding or distributing allowances as provided in this subsection, during either the term of such leasehold or thereafter, unless expressly provided for in the leasehold agreement. Except as otherwise provided in this subsection, where all legal or equitable title to or interest in an affected unit is held by a single person, the certification shall state that all allowances received by the unit are deemed to be held for that person.

(July 14, 1955, ch. 360, title IV, § 408, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2616.)

§ 7651h. Repowered sources

(a) Availability

Not later than December 31, 1997, the owner or operator of an existing unit subject to the emissions limitation requirements of section 7651d(b) and (c) of this title may demonstrate to the permitting authority that one or more units will be repowered with a qualifying clean coal technology to comply with the requirements under section 7651d of this title. The owner or operator shall, as part of any such demonstration, provide, not later than January 1, 2000, satisfactory documentation of a preliminary design and engineering effort for such repowering and an executed and binding contract for the majority of the equipment to repower such unit and such other information as the Administrator may require by regulation. The replacement of an existing utility unit with a new utility unit using a repowering technology referred to in section 7651a(2)[1] of this title which is located at a different site, shall be treated as repowering of the existing unit for purposes of this subchapter, if—

(1) the replacement unit is designated by the owner or operator to replace such existing unit, and

(2) the existing unit is retired from service on or before the date on which the designated replacement unit enters commercial operation.

(b) Extension

(1) An owner or operator satisfying the requirements of subsection (a) of this section shall be granted an extension of the emission limitation requirement compliance date for that unit from January 1, 2000, to December 31, 2003. The extension shall be specified in the permit issued to the source under section 7651g of this title, together with any compliance schedule and other requirements necessary to meet second phase requirements by the extended date. Any unit that is granted an extension under this section shall not be eligible for a waiver under section 7411(j) of this title, and shall continue to be subject to requirements under this subchapter as if it were a unit subject to section 7651d of this title.

(2) If (A) the owner or operator of an existing unit has been granted an extension under paragraph (1) in order to repower such unit with a clean coal unit, and (B) such owner or operator demonstrates to the satisfaction of the Administrator that the repowering technology to be utilized by such unit has been properly constructed and tested on such unit, but nevertheless has been unable to achieve the emission reduction

[1] So in original. Probably should be section ''7651a(12)''.

limitations and is economically or technologically infeasible, such existing unit may be retrofitted or repowered with equipment or facilities utilizing another clean coal technology or other available control technology.

(c) Allowances

(1) For the period of the extension under this section, the Administrator shall allocate to the owner or operator of the affected unit, annual allowances for sulfur dioxide equal to the affected unit's baseline multiplied by the lesser of the unit's federally approved State Implementation Plan emissions limitation or its actual emission rate for 1995 in lieu of any other allocation. Such allowances may not be transferred or used by any other source to meet emission requirements under this subchapter. The source owner or operator shall notify the Administrator sixty days in advance of the date on which the affected unit for which the extension has been granted is to be removed from operation to install the repowering technology.

(2) Effective on that date, the unit shall be subject to the requirements of section 7651d of this title. Allowances for the year in which the unit is removed from operation to install the repowering technology shall be calculated as the product of the unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000, and prorated accordingly, and are transferable.

(3) Allowances for such existing utility units for calendar years after the year the repowering is complete shall be calculated as the product of the existing unit's baseline multiplied by 1.20 lbs/mmBtu, divided by 2,000.

(4) Notwithstanding the provisions of section 7651b(a) and (e) of this title, allowances shall be allocated under this section for a designated replacement unit which replaces an existing unit (as provided in the last sentence of subsection (a) of this section) in lieu of any further allocations of allowances for the existing unit.

(5) For the purpose of meeting the aggregate emissions limitation requirement set forth in section 7651b(a)(1) of this title, the units with an extension under this subsection shall be treated in each calendar year during the extension period as holding allowances allocated under paragraph (3).

(d) Control requirements

Any unit qualifying for an extension under this section that does not increase actual hourly emissions for any pollutant regulated under the[2] chapter shall not be subject to any standard of performance under section 7411 of this title. Notwithstanding the provisions of this subsection, no new unit (1) designated as a replacement for an existing unit, (2) qualifying for the extension under subsection (b) of this section, and (3) located at a different site than the existing unit shall receive an exemption from the requirements imposed under section 7411 of this title.

(e) Expedited permitting

State permitting authorities and, where applicable, the Administrator, are encouraged to give expedited consideration to permit applications under parts C and D of subchapter I of this chapter for any source qualifying for an extension under this section.

(f) Prohibition

It shall be unlawful for the owner or operator of a repowered source to fail to comply with the requirement of this section, or any regulations of permit requirements to implement this section, including the prohibition against emitting sulfur dioxide in excess of allowances held.

(July 14, 1955, ch. 360, title IV, § 409, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2619.)

§ 7651i. Election for additional sources

(a) Applicability

The owner or operator of any unit that is not, nor will become, an affected unit under section 7651b(e), 7651c, or 7651d of this title, or that is a process source under subsection (d) of this section, that emits sulfur dioxide, may elect to designate that unit or source to become an affected unit and to receive allowances under this subchapter. An election shall be submitted to the Administrator for approval, along with a permit application and proposed compliance plan in accordance with section 7651g of this title. The Administrator shall approve a designation that meets the requirements of this section, and such designated unit, or source, shall be allocated allowances, and be an affected unit for purposes of this subchapter.

(b) Establishment of baseline

The baseline for a unit designated under this section shall be established by the Administrator by regulation, based on fuel consumption and operating data for the unit for calendar years 1985, 1986, and 1987, or if such data is not available, the Administrator may prescribe a baseline based on alternative representative data.

(c) Emission limitations

Annual emissions limitations for sulfur dioxide shall be equal to the product of the baseline multiplied by the lesser of the unit's 1985 actual or allowable emission rate in lbs/mmBtu, or, if the unit did not operate in 1985, by the lesser of the unit's actual or allowable emission rate for a calendar year after 1985 (as determined by the Administrator), divided by 2,000.

(d) Process sources

Not later than 18 months after November 15, 1990, the Administrator shall establish a program under which the owner or operator of a process source that emits sulfur dioxide may elect to designate that source as an affected unit for the purpose of receiving allowances under this subchapter. The Administrator shall, by regulation, define the sources that may be designated; specify the emissions limitation; specify the operating, emission baseline, and other data requirements; prescribe CEMS or other monitoring requirements; and promulgate permit, reporting, and any other requirements necessary to implement such a program.

(e) Allowances and permits

The Administrator shall issue allowances to an affected unit under this section in an amount

[2] So in original. Probably should be ''this''.

equal to the emissions limitation calculated under subsection (c) or (d) of this section, in accordance with section 7651b of this title. Such allowance may be used in accordance with, and shall be subject to, the provisions of section 7651b of this title. Affected sources under this section shall be subject to the requirements of sections 7651b, 7651g, 7651j, 7651k, 7651*l*, and 7651m of this title.

(f) Limitation

Any unit designated under this section shall not transfer or bank allowances produced as a result of reduced utilization or shutdown, except that, such allowances may be transferred or carried forward for use in subsequent years to the extent that the reduced utilization or shutdown results from the replacement of thermal energy from the unit designated under this section, with thermal energy generated by any other unit or units subject to the requirements of this subchapter, and the designated unit's allowances are transferred or carried forward for use at such other replacement unit or units. In no case may the Administrator allocate to a source designated under this section allowances in an amount greater than the emissions resulting from operation of the source in full compliance with the requirements of this chapter. No such allowances shall authorize operation of a unit in violation of any other requirements of this chapter.

(g) Implementation

The Administrator shall issue regulations to implement this section not later than eighteen months after November 15, 1990.

(h) Small diesel refineries

The Administrator shall issue allowances to owners or operators of small diesel refineries who produce diesel fuel after October 1, 1993, meeting the requirements of subsection[1] 7545(i) of this title.

(1) Allowance period

Allowances may be allocated under this subsection only for the period from October 1, 1993, through December 31, 1999.

(2) Allowance determination

The number of allowances allocated pursuant to this paragraph shall equal the annual number of pounds of sulfur dioxide reduction attributable to desulfurization by a small refinery divided by 2,000. For the purposes of this calculation, the concentration of sulfur removed from diesel fuel shall be the difference between 0.274 percent (by weight) and 0.050 percent (by weight).

(3) Refinery eligibility

As used in this subsection, the term ''small refinery'' shall mean a refinery or portion of a refinery—

(A) which, as of November 15, 1990, has bona fide crude oil throughput of less than 18,250,000 barrels per year, as reported to the Department of Energy, and

(B) which, as of November 15, 1990, is owned or controlled by a refiner with a total combined bona fide crude oil throughput of less than 50,187,500 barrels per year, as reported to the Department of Energy.

(4) Limitation per refinery

The maximum number of allowances that can be annually allocated to a small refinery pursuant to this subsection is one thousand and five hundred.

(5) Limitation on total

In any given year, the total number of allowances allocated pursuant to this subsection shall not exceed thirty-five thousand.

(6) Required certification

The Administrator shall not allocate any allowances pursuant to this subsection unless the owner or operator of a small diesel refinery shall have certified, at a time and in a manner prescribed by the Administrator, that all motor diesel fuel produced by the refinery for which allowances are claimed, including motor diesel fuel for off-highway use, shall have met the requirements of subsection[1] 7545(i) of this title.

(July 14, 1955, ch. 360, title IV, § 410, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2621.)

§ 7651j. Excess emissions penalty

(a) Excess emissions penalty

The owner or operator of any unit or process source subject to the requirements of sections[1] 7651b, 7651c, 7651d, 7651e, 7651f or 7651h of this title, or designated under section 7651i of this title, that emits sulfur dioxide or nitrogen oxides for any calendar year in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the owner or operator holds for use for the unit for that calendar year shall be liable for the payment of an excess emissions penalty, except where such emissions were authorized pursuant to section 7410(f) of this title. That penalty shall be calculated on the basis of the number of tons emitted in excess of the unit's emissions limitation requirement or, in the case of sulfur dioxide, of the allowances the operator holds for use for the unit for that year, multiplied by $2,000. Any such penalty shall be due and payable without demand to the Administrator as provided in regulations to be issued by the Administrator by no later than eighteen months after November 15, 1990. Any such payment shall be deposited in the United States Treasury pursuant to the Miscellaneous Receipts Act.[2] Any penalty due and payable under this section shall not diminish the liability of the unit's owner or operator for any fine, penalty or assessment against the unit for the same violation under any other section of this chapter.

(b) Excess emissions offset

The owner or operator of any affected source that emits sulfur dioxide during any calendar year in excess of the unit's emissions limitation requirement or of the allowances held for the

[1] So in original. Probably should be ''section''.

[1] So in original. Probably should be ''section''.

[2] See References in Text note below.

unit for the calendar year, shall be liable to offset the excess emissions by an equal tonnage amount in the following calendar year, or such longer period as the Administrator may prescribe. The owner or operator of the source shall, within sixty days after the end of the year in which the excess emissions occured,[3] submit to the Administrator, and to the State in which the source is located, a proposed plan to achieve the required offsets. Upon approval of the proposed plan by the Administrator, as submitted, modified or conditioned, the plan shall be deemed at[4] a condition of the operating permit for the unit without further review or revision of the permit. The Administrator shall also deduct allowances equal to the excess tonnage from those allocated for the source for the calendar year, or succeeding years during which offsets are required, following the year in which the excess emissions occurred.

(c) Penalty adjustment

The Administrator shall, by regulation, adjust the penalty specified in subsection (a) of this section for inflation, based on the Consumer Price Index, on November 15, 1990, and annually thereafter.

(d) Prohibition

It shall be unlawful for the owner or operator of any source liable for a penalty and offset under this section to fail (1) to pay the penalty under subsection (a) of this section, (2) to provide, and thereafter comply with, a compliance plan as required by subsection (b) of this section, or (3) to offset excess emissions as required by subsection (b) of this section.

(e) Savings provision

Nothing in this subchapter shall limit or otherwise affect the application of section 7413, 7414, 7420, or 7604 of this title except as otherwise explicitly provided in this subchapter.

(July 14, 1955, ch. 360, title IV, § 411, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2623.)

REFERENCES IN TEXT

The Miscellaneous Receipts Act, referred to in subsec. (a), is not a recognized popular name for an act. For provisions relating to deposit of monies, see section 3302 of Title 31, Money and Finance.

§ 7651k. Monitoring, reporting, and recordkeeping requirements

(a) Applicability

The owner and operator of any source subject to this subchapter shall be required to install and operate CEMS on each affected unit at the source, and to quality assure the data for sulfur dioxide, nitrogen oxides, opacity and volumetric flow at each such unit. The Administrator shall, by regulations issued not later than eighteen months after November 15, 1990, specify the requirements for CEMS, for any alternative monitoring system that is demonstrated as providing information with the same precision, reliability, accessibility, and timeliness as that provided by CEMS, and for recordkeeping and reporting of information from such systems. Such regulations may include limitations or the use of alternative compliance methods by units equipped with an alternative monitoring system as may be necessary to preserve the orderly functioning of the allowance system, and which will ensure the emissions reductions contemplated by this subchapter. Where 2 or more units utilize a single stack, a separate CEMS shall not be required for each unit, and for such units the regulations shall require that the owner or operator collect sufficient information to permit reliable compliance determinations for each such unit.

(b) First phase requirements

Not later than thirty-six months after November 15, 1990, the owner or operator of each affected unit under section 7651c of this title, including, but not limited to, units that become affected units pursuant to subsections (b) and (c) and eligible units under subsection (d), shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a).

(c) Second phase requirements

Not later than January 1, 1995, the owner or operator of each affected unit that has not previously met the requirements of subsections (a) and (b) shall install and operate CEMS, quality assure the data, and keep records and reports in accordance with the regulations issued under subsection (a). Upon commencement of commercial operation of each new utility unit, the unit shall comply with the requirements of subsection (a).

(d) Unavailability of emissions data

If CEMS data or data from an alternative monitoring system approved by the Administrator under subsection (a) is not available for any affected unit during any period of a calendar year in which such data is required under this subchapter, and the owner or operator cannot provide information, satisfactory to the Administrator, on emissions during that period, the Administrator shall deem the unit to be operating in an uncontrolled manner during the entire period for which the data was not available and shall, by regulation which shall be issued not later than eighteen months after November 15, 1990, prescribe means to calculate emissions for that period. The owner or operator shall be liable for excess emissions fees and offsets under section 7651j of this title in accordance with such regulations. Any fee due and payable under this subsection shall not diminish the liability of the unit's owner or operator for any fine, penalty, fee or assessment against the unit for the same violation under any other section of this chapter.

(e) Prohibition

It shall be unlawful for the owner or operator of any source subject to this subchapter to operate a source without complying with the requirements of this section, and any regulations implementing this section.

(July 14, 1955, ch. 360, title IV, § 412, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2624.)

[3] So in original. Probably should be "occurred,".

[4] So in original.

INFORMATION GATHERING ON GREENHOUSE GASES CONTRIBUTING TO GLOBAL CLIMATE CHANGE

Section 821 of Pub. L. 101–549 provided that:

''(a) MONITORING.—The Administrator of the Environmental Protection Agency shall promulgate regulations within 18 months after the enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] to require that all affected sources subject to title V of the Clean Air Act [probably means title IV of the Clean Air Act as added by Pub. L. 101–549, which is classified to section 7651 et seq. of this title] shall also monitor carbon dioxide emissions according to the same timetable as in section 511(b) and (c) [probably means section 412(b) and (c) of the Clean Air Act, which is classified to section 7651k(b) and (c) of this title]. The regulations shall require that such data be reported to the Administrator. The provisions of section 511(e) of title V of the Clean Air Act [probably means section 412(e) of title IV of the Clean Air Act, which is classified to section 7651k(e) of this title] shall apply for purposes of this section in the same manner and to the same extent as such provision applies to the monitoring and data referred to in section 511 [probably means section 412 of the Clean Air Act, which is classified to section 7651k of this title].

''(b) PUBLIC AVAILABILITY OF CARBON DIOXIDE INFORMATION.—For each unit required to monitor and provide carbon dioxide data under subsection (a), the Administrator shall compute the unit's aggregate annual total carbon dioxide emissions, incorporate such data into a computer data base, and make such aggregate annual data available to the public.''

§ 7651*l*. General compliance with other provisions

Except as expressly provided, compliance with the requirements of this subchapter shall not exempt or exclude the owner or operator of any source subject to this subchapter from compliance with any other applicable requirements of this chapter.

(July 14, 1955, ch. 360, title IV, § 413, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

§ 7651m. Enforcement

It shall be unlawful for any person subject to this subchapter to violate any prohibition of, requirement of, or regulation promulgated pursuant to this subchapter shall be a violation of this chapter.[1] In addition to the other requirements and prohibitions provided for in this subchapter, the operation of any affected unit to emit sulfur dioxide in excess of allowances held for such unit shall be deemed a violation, with each ton emitted in excess of allowances held constituting a separate violation.

(July 14, 1955, ch. 360, title IV, § 414, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

§ 7651n. Clean coal technology regulatory incentives

(a) "Clean coal technology" defined

For purposes of this section, ''clean coal technology'' means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, process steam, or industrial products, which is not in widespread use as of November 15, 1990.

(b) Revised regulations for clean coal technology demonstrations

(1) Applicability

This subsection applies to physical or operational changes to existing facilities for the sole purpose of installation, operation, cessation, or removal of a temporary or permanent clean coal technology demonstration project. For the purposes of this section, a clean coal technology demonstration project shall mean a project using funds appropriated under the heading ''Department of Energy—Clean Coal Technology'', up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

(2) Temporary projects

Installation, operation, cessation, or removal of a temporary clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the State implementation plans for the State in which the project is located and other requirements necessary to attain and maintain the national ambient air quality standards during and after the project is terminated, shall not subject such facility to the requirements of section 7411 of this title or part C or D of subchapter I of this chapter.

(3) Permanent projects

For permanent clean coal technology demonstration projects that constitute repowering as defined in section 7651a(*l*)[1] of this title, any qualifying project shall not be subject to standards of performance under section 7411 of this title or to the review and permitting requirements of part C[2] for any pollutant the potential emissions of which will not increase as a result of the demonstration project.

(4) EPA regulations

Not later than 12 months after November 15, 1990, the Administrator shall promulgate regulations or interpretive rulings to revise requirements under section 7411 of this title and parts C and D,[2] as appropriate, to facilitate projects consistent in[3] this subsection. With respect to parts C and D,[2] such regulations or rulings shall apply to all areas in which EPA is the permitting authority. In those instances in which the State is the permitting authority under part C or D,[2] any State may adopt and submit to the Administrator for approval revisions to its implementation plan to apply the regulations or rulings promulgated under this subsection.

[1] So in original.

[1] So in original. Probably should be section ''7651a(12)''.

[2] See References in Text note below.

[3] So in original. Probably should be ''with''.

(c) Exemption for reactivation of very clean units

Physical changes or changes in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation shall not subject the unit to the requirements of section 7411 of this title or part C of the Act[2] where the unit (1) has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990 [November 15, 1990], and the emissions from such unit continue to be carried in the permitting authority's emissions inventory at the time of enactment, (2) was equipped prior to shut-down with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent, (3) is equipped with low-NO_x burners prior to the time of commencement, and (4) is otherwise in compliance with the requirements of this chapter.

(July 14, 1955, ch. 360, title IV, § 415, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2625.)

REFERENCES IN TEXT

Parts C and D and part C of the Act, referred to in subsecs. (b)(3), (4) and (c), probably mean parts C and D of subchapter I of this chapter.

§ 7651*o*. Contingency guarantee, auctions, reserve

(a) Definitions

For purposes of this section—

(1) The term ''independent power producer'' means any person who owns or operates, in whole or in part, one or more new independent power production facilities.

(2) The term ''new independent power production facility'' means a facility that—

(A) is used for the generation of electric energy, 80 percent or more of which is sold at wholesale;

(B) is nonrecourse project-financed (as such term is defined by the Secretary of Energy within 3 months of November 15, 1990);

(C) does not generate electric energy sold to any affiliate (as defined in section 79b(a)(11)[1] of title 15) of the facility's owner or operator unless the owner or operator of the facility demonstrates that it cannot obtain allowances from the affiliate; and

(D) is a new unit required to hold allowances under this subchapter.

(3) The term ''required allowances'' means the allowances required to operate such unit for so much of the unit's useful life as occurs after January 1, 2000.

(b) Special reserve of allowances

Within 36 months after November 15, 1990, the Administrator shall promulgate regulations establishing a Special Allowance Reserve containing allowances to be sold under this section. For purposes of establishing the Special Allowance Reserve, the Administrator shall withhold—

(1) 2.8 percent of the allocation of allowances for each year from 1995 through 1999 inclusive; and

(2) 2.8 percent of the basic Phase II allowance allocation of allowances for each year beginning in the year 2000

which would (but for this subsection) be issued for each affected unit at an affected source. The Administrator shall record such withholding for purposes of transferring the proceeds of the allowance sales under this subsection. The allowances so withheld shall be deposited in the Reserve under this section.

(c) Direct sale at $1,500 per ton

(1) Subaccount for direct sales

In accordance with regulations under this section, the Administrator shall establish a Direct Sale Subaccount in the Special Allowance Reserve established under this section. The Direct Sale Subaccount shall contain allowances in the amount of 50,000 tons per year for each year beginning in the year 2000.

(2) Sales

Allowances in the subaccount shall be offered for direct sale to any person at the times and in the amounts specified in table 1 at a price of $1,500 per allowance, adjusted by the Consumer Price Index in the same manner as provided in paragraph (3). Requests to purchase allowances from the Direct Sale Subaccount established under paragraph (1) shall be approved in the order of receipt until no allowances remain in such subaccount, except that an opportunity to purchase such allowances shall be provided to the independent power producers referred to in this subsection before such allowances are offered to any other person. Each applicant shall be required to pay 50 percent of the total purchase price of the allowances within 6 months after the approval of the request to purchase. The remainder shall be paid on or before the transfer of the allowances.

TABLE 1—NUMBER OF ALLOWANCES AVAILABLE FOR SALE AT $1,500 PER TON

Year of Sale	Spot Sale (same year)	Advance Sale
1993–1999	.....	25,000
2000 and after	25,000	25,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year). Allowances sold in the advance sale in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

(3) Entitlement to written guarantee

Any independent power producer that submits an application to the Administrator establishing that such independent power producer—

(A) proposes to construct a new independent power production facility for which allowances are required under this subchapter;

(B) will apply for financing to construct such facility after January 1, 1990, and before the date of the first auction under this section;

[1] See References in Text note below.

(C) has submitted to each owner or operator of an affected unit listed in table A (in section 7651c of this title) a written offer to purchase the required allowances for $750 per ton; and

(D) has not received (within 180 days after submitting offers to purchase under subparagraph (C)) an acceptance of the offer to purchase the required allowances,

shall, within 30 days after submission of such application, be entitled to receive the Administrator's written guarantee (subject to the eligibility requirements set forth in paragraph (4)) that such required allowances will be made available for purchase from the Direct Sale Subaccount established under this subsection and at a guaranteed price. The guaranteed price at which such allowances shall be made available for purchase shall be $1,500 per ton, adjusted by the percentage, if any, by which the Consumer Price Index (as determined under section 7661a(b)(3)(B)(v) of this title) for the year in which the allowance is purchased exceeds the Consumer Price Index for the calendar year 1990.

(4) Eligibility requirements

The guarantee issued by the Administrator under paragraph (3) shall be subject to a demonstration by the independent power producer, satisfactory to the Administrator, that—

(A) the independent power producer has—

(i) made good faith efforts to purchase the required allowances from the owners or operators of affected units to which allowances will be allocated, including efforts to purchase at annual auctions under this section, and from industrial sources that have elected to become affected units pursuant to section 7651i of this title; and

(ii) such bids and efforts were unsuccessful in obtaining the required allowances; and

(B) the independent power producer will continue to make good faith efforts to purchase the required allowances from the owners or operators of affected units and from industrial sources.

(5) Issuance of guaranteed allowances from Direct Sale Subaccount under this section

From the allowances available in the Direct Sale Subaccount established under this subsection, upon payment of the guaranteed price, the Administrator shall issue to any person exercising the right to purchase allowances pursuant to a guarantee under this subsection the allowances covered by such guarantee. Persons to which guarantees under this subsection have been issued shall have the opportunity to purchase allowances pursuant to such guarantee from such subaccount before the allowances in such reserve are offered for sale to any other person.

(6) Proceeds

Notwithstanding section 3302 of title 31 or any other provision of law, the Administrator shall require that the proceeds of any sale under this subsection be transferred, within 90 days after the sale, without charge, on a pro rata basis to the owners or operators of the affected units from whom the allowances were withheld under subsection (b) of this section and that any unsold allowances be transferred to the Subaccount for Auction Sales established under subsection (d) of this section. No proceeds of any sale under this subsection shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or to the Administrator.

(7) Termination of subaccount

If the Administrator determines that, during any period of 2 consecutive calendar years, less than 20 percent of the allowances available in the subaccount for direct sales established under this subsection have been purchased under this paragraph, the Administrator shall terminate the subaccount and transfer such allowances to the Auction Subaccount under subsection (d) of this section.

(d) Auction sales

(1) Subaccount for auctions

The Administrator shall establish an Auction Subaccount in the Special Reserve established under this section. The Auction Subaccount shall contain allowances to be sold at auction under this section in the amount of 150,000 tons per year for each year from 1995 through 1999, inclusive and 250,000 tons per year for each year beginning in the calendar year 2000.

(2) Annual auctions

Commencing in 1993 and in each year thereafter, the Administrator shall conduct auctions at which the allowances referred to in paragraph (1) shall be offered for sale in accordance with regulations promulgated by the Administrator, in consultation with the Secretary of the Treasury, within 12 months of November 15, 1990. The allowances referred to in paragraph (1) shall be offered for sale at auction in the amounts specified in table 2. The auction shall be open to any person. A person wishing to bid for such allowances shall submit (by a date set by the Administrator) to the Administrator (on a sealed bid schedule provided by the Administrator) offers to purchase specified numbers of allowances at specified prices. Such regulations shall specify that the auctioned allowances shall be allocated and sold on the basis of bid price, starting with the highest-priced bid and continuing until all allowances for sale at such auction have been allocated. The regulations shall not permit that a minimum price be set for the purchase of withheld allowances. Allowances purchased at the auction may be used for any purpose and at any time after the auction, subject to the provisions of this subchapter.

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION

Year of Sale	Spot Auction (same year)	Advance Auction
1993	50,000*	100,000

TABLE 2—NUMBER OF ALLOWANCES AVAILABLE FOR AUCTION—CONTINUED

Year of Sale	Spot Auction (same year)	Advance Auction
1994	50,000*	100,000
1995	50,000*	100,000
1996	150,000	100,000
1997	150,000	100,000
1998	150,000	100,000
1999	150,000	100,000
2000 and after	100,000	100,000

Allowances sold in the spot sale in any year are allowances which may only be used in that year (unless banked for use in a later year), except as otherwise noted. Allowances sold in the advance auction in any year are allowances which may only be used in the 7th year after the year in which they are first offered for sale (unless banked for use in a later year).

*Available for use only in 1995 (unless banked for use in a later year).

(3) Proceeds

(A) Notwithstanding section 3302 of title 31 or any other provision of law, within 90 days of receipt, the Administrator shall transfer the proceeds from the auction under this section, on a pro rata basis, to the owners or operators of the affected units at an affected source from whom allowances were withheld under subsection (b) of this section. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(B) At the end of each year, any allowances offered for sale but not sold at the auction shall be returned without charge, on a pro rata basis, to the owner or operator of the affected units from whose allocation the allowances were withheld.

(4) Additional auction participants

Any person holding allowances or to whom allowances are allocated by the Administrator may submit those allowances to the Administrator to be offered for sale at auction under this subsection. The proceeds of any such sale shall be transferred at the time of sale by the purchaser to the person submitting such allowances for sale. The holder of allowances offered for sale under this paragraph may specify a minimum sale price. Any person may purchase allowances offered for auction under this paragraph. Such allowances shall be allocated and sold to purchasers on the basis of bid price after the auction under paragraph (2) is complete. No funds transferred from a purchaser to a seller of allowances under this paragraph shall be held by any officer or employee of the United States or treated for any purpose as revenue to the United States or the Administrator.

(5) Recording by EPA

The Administrator shall record and publicly report the nature, prices and results of each auction under this subsection, including the prices of successful bids, and shall record the transfers of allowances as a result of each auction in accordance with the requirements of this section. The transfer of allowances at such auction shall be recorded in accordance with the regulations promulgated by the Administrator under this subchapter.

(e) Changes in sales, auctions, and withholding

Pursuant to rulemaking after public notice and comment the Administrator may at any time after the year 1998 (in the case of advance sales or advance auctions) and 2005 (in the case of spot sales or spot auctions) decrease the number of allowances withheld and sold under this section.

(f) Termination of auctions

The Administrator may terminate the withholding of allowances and the auction sales under this section if the Administrator determines that, during any period of 3 consecutive calendar years after 2002, less than 20 percent of the allowances available in the auction subaccount have been purchased. Pursuant to regulations under this section, the Administrator may by delegation or contract provide for the conduct of sales or auctions under the Administrator's supervision by other departments or agencies of the United States Government or by nongovernmental agencies, groups, or organizations.

(July 14, 1955, ch. 360, title IV, § 416, as added Pub. L. 101–549, title IV, § 401, Nov. 15, 1990, 104 Stat. 2626.)

REFERENCES IN TEXT

Section 79b of title 15, referred to in subsec. (a)(2)(C), was repealed by Pub. L. 109–58, title XII, § 1263, Aug. 8, 2005, 119 Stat. 974. See section 16451(1) of this title.

SUBCHAPTER V—PERMITS

§ 7661. Definitions

As used in this subchapter—

(1) Affected source

The term ''affected source'' shall have the meaning given such term in subchapter IV–A of this chapter.

(2) Major source

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

(A) A major source as defined in section 7412 of this title.

(B) A major stationary source as defined in section 7602 of this title or part D of subchapter I of this chapter.

(3) Schedule of compliance

The term ''schedule of compliance'' means a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance with an applicable implementation plan, emission standard, emission limitation, or emission prohibition.

(4) Permitting authority

The term ''permitting authority'' means the Administrator or the air pollution control agency authorized by the Administrator to carry out a permit program under this subchapter.

(July 14, 1955, ch. 360, title V, § 501, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2635.)

§ 7661a. Permit programs

(a) Violations

After the effective date of any permit program approved or promulgated under this subchapter, it shall be unlawful for any person to violate any requirement of a permit issued under this subchapter, or to operate an affected source (as provided in subchapter IV–A of this chapter), a major source, any other source (including an area source) subject to standards or regulations under section 7411 or 7412 of this title, any other source required to have a permit under parts[1] C or D of subchapter I of this chapter, or any other stationary source in a category designated (in whole or in part) by regulations promulgated by the Administrator (after notice and public comment) which shall include a finding setting forth the basis for such designation, except in compliance with a permit issued by a permitting authority under this subchapter. (Nothing in this subsection shall be construed to alter the applicable requirements of this chapter that a permit be obtained before construction or modification.) The Administrator may, in the Administrator's discretion and consistent with the applicable provisions of this chapter, promulgate regulations to exempt one or more source categories (in whole or in part) from the requirements of this subsection if the Administrator finds that compliance with such requirements is impracticable, infeasible, or unnecessarily burdensome on such categories, except that the Administrator may not exempt any major source from such requirements.

(b) Regulations

The Administrator shall promulgate within 12 months after November 15, 1990, regulations establishing the minimum elements of a permit program to be administered by any air pollution control agency. These elements shall include each of the following:

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

(2) Monitoring and reporting requirements.

(3)(A) A requirement under State or local law or interstate compact that the owner or operator of all sources subject to the requirement to obtain a permit under this subchapter pay an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this subchapter, including section 7661f of this title, including the reasonable costs of—

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

(ii) if the owner or operator receives a permit for such source, whether before or after November 15, 1990, implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action),

(iii) emissions and ambient monitoring,

(iv) preparing generally applicable regulations, or guidance,

(v) modeling, analyses, and demonstrations, and

(vi) preparing inventories and tracking emissions.

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

(i) The Administrator shall not approve a program as meeting the requirements of this paragraph unless the State demonstrates that, except as otherwise provided in subparagraphs[2] (ii) through (v) of this subparagraph, the program will result in the collection, in the aggregate, from all sources subject to subparagraph (A), of an amount not less than $25 per ton of each regulated pollutant, or such other amount as the Administrator may determine adequately reflects the reasonable costs of the permit program.

(ii) As used in this subparagraph, the term ''regulated pollutant'' shall mean (I) a volatile organic compound; (II) each pollutant regulated under section 7411 or 7412 of this title; and (III) each pollutant for which a national primary ambient air quality standard has been promulgated (except that carbon monoxide shall be excluded from this reference).

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

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

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

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

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

(C)(i) If the Administrator determines, under subsection (d) of this section, that the fee provisions of the operating permit program do

[1] So in original. Probably should be ''part''.

[2] So in original. Probably should be ''clauses''.

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

(ii) Any source that fails to pay fees lawfully imposed by the Administrator under this subparagraph shall pay a penalty of 50 percent of the fee amount, plus interest on the fee amount computed in accordance with section 6621(a)(2) of title 26 (relating to computation of interest on underpayment of Federal taxes).

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

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

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

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

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

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

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

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

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

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

(7) To ensure against unreasonable delay by the permitting authority, adequate authority and procedures to provide that a failure of such permitting authority to act on a permit application or permit renewal application (in accordance with the time periods specified in section 7661b of this title or, as appropriate, subchapter IV–A of this chapter) shall be treated as a final permit action solely for purposes of obtaining judicial review in State court of an action brought by any person referred to in paragraph (6) to require that action be taken by the permitting authority on such application without additional delay.

(8) Authority, and reasonable procedures consistent with the need for expeditious action by the permitting authority on permit applications and related matters, to make available to the public any permit application, compliance plan, permit, and monitoring or compliance report under section 7661b(e) of this title, subject to the provisions of section 7414(c) of this title.

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

(10) Provisions to allow changes within a permitted facility (or one operating pursuant to section 7661b(d) of this title) without requiring a permit revision, if the changes are not modifications under any provision of subchapter I of this chapter and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions:[3] *Provided*, That the facility provides the Administrator and the permitting authority with written notification in advance of the proposed changes which shall be a minimum of 7 days, unless the permitting authority provides in its regulations a different timeframe for emergencies.

(c) Single permit

A single permit may be issued for a facility with multiple sources.

(d) Submission and approval

(1) Not later than 3 years after November 15, 1990, the Governor of each State shall develop and submit to the Administrator a permit program under State or local law or under an interstate compact meeting the requirements of this

[3] So in original. A closing parenthesis probably should precede the colon.

subchapter. In addition, the Governor shall submit a legal opinion from the attorney general (or the attorney for those State air pollution control agencies that have independent legal counsel), or from the chief legal officer of an interstate agency, that the laws of the State, locality, or the interstate compact provide adequate authority to carry out the program. Not later than 1 year after receiving a program, and after notice and opportunity for public comment, the Administrator shall approve or disapprove such program, in whole or in part. The Administrator may approve a program to the extent that the program meets the requirements of this chapter, including the regulations issued under subsection (b) of this section. If the program is disapproved, in whole or in part, the Administrator shall notify the Governor of any revisions or modifications necessary to obtain approval. The Governor shall revise and resubmit the program for review under this section within 180 days after receiving notification.

(2)(A) If the Governor does not submit a program as required under paragraph (1) or if the Administrator disapproves a program submitted by the Governor under paragraph (1), in whole or in part, the Administrator may, prior to the expiration of the 18-month period referred to in subparagraph (B), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(B) If the Governor does not submit a program as required under paragraph (1), or if the Administrator disapproves any such program submitted by the Governor under paragraph (1), in whole or in part, 18 months after the date required for such submittal or the date of such disapproval, as the case may be, the Administrator shall apply sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(C) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this paragraph in any area unless the failure to submit or the disapproval referred to in subparagraph (A) or (B) relates to an air pollutant for which such area has been designated a nonattainment area (as defined in part D of subchapter I of this chapter).

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

(e) Suspension

The Administrator shall suspend the issuance of permits promptly upon publication of notice of approval of a permit program under this section, but may, in such notice, retain jurisdiction over permits that have been federally issued, but for which the administrative or judicial review process is not complete. The Administrator shall continue to administer and enforce federally issued permits under this subchapter until they are replaced by a permit issued by a permitting program. Nothing in this subsection should be construed to limit the Administrator's ability to enforce permits issued by a State.

(f) Prohibition

No partial permit program shall be approved unless, at a minimum, it applies, and ensures compliance with, this subchapter and each of the following:

(1) All requirements established under subchapter IV–A of this chapter applicable to ''affected sources''.

(2) All requirements established under section 7412 of this title applicable to ''major sources'', ''area sources,'' and ''new sources''.

(3) All requirements of subchapter I of this chapter (other than section 7412 of this title) applicable to sources required to have a permit under this subchapter.

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

(g) Interim approval

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

(h) Effective date

The effective date of a permit program, or partial or interim program, approved under this subchapter, shall be the effective date of approval by the Administrator. The effective date of a permit program, or partial permit program, promulgated by the Administrator shall be the date of promulgation.

(i) Administration and enforcement

(1) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, the Administrator shall provide notice to the State and may, prior to the expiration of the 18-month period referred to in paragraph (2), in the Administrator's discretion, apply any of the sanctions specified in section 7509(b) of this title.

(2) Whenever the Administrator makes a determination that a permitting authority is not adequately administering and enforcing a program, or portion thereof, in accordance with the requirements of this subchapter, 18 months after

the date of the notice under paragraph (1), the Administrator shall apply the sanctions under section 7509(b) of this title in the same manner and subject to the same deadlines and other conditions as are applicable in the case of a determination, disapproval, or finding under section 7509(a) of this title.

(3) The sanctions under section 7509(b)(2) of this title shall not apply pursuant to this subsection in any area unless the failure to adequately enforce and administer the program relates to an air pollutant for which such area has been designated a nonattainment area.

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

(July 14, 1955, ch. 360, title V, § 502, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2635.)

§ 7661b. Permit applications

(a) Applicable date

Any source specified in section 7661a(a) of this title shall become subject to a permit program, and required to have a permit, on the later of the following dates—

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

(2) the date such source becomes subject to section 7661a(a) of this title.

(b) Compliance plan

(1) The regulations required by section 7661a(b) of this title shall include a requirement that the applicant submit with the permit application a compliance plan describing how the source will comply with all applicable requirements under this chapter. The compliance plan shall include a schedule of compliance, and a schedule under which the permittee will submit progress reports to the permitting authority no less frequently than every 6 months.

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

(c) Deadline

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

(d) Timely and complete applications

Except for sources required to have a permit before construction or modification under the applicable requirements of this chapter, if an applicant has submitted a timely and complete application for a permit required by this subchapter (including renewals), but final action has not been taken on such application, the source's failure to have a permit shall not be a violation of this chapter, unless the delay in final action was due to the failure of the applicant timely to submit information required or requested to process the application. No source required to have a permit under this subchapter shall be in violation of section 7661a(a) of this title before the date on which the source is required to submit an application under subsection (c) of this section.

(e) Copies; availability

A copy of each permit application, compliance plan (including the schedule of compliance), emissions or compliance monitoring report, certification, and each permit issued under this subchapter, shall be available to the public. If an applicant or permittee is required to submit information entitled to protection from disclosure under section 7414(c) of this title, the applicant or permittee may submit such information separately. The requirements of section 7414(c) of this title shall apply to such information. The contents of a permit shall not be entitled to protection under section 7414(c) of this title.

(July 14, 1955, ch. 360, title V, § 503, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2641.)

§ 7661c. Permit requirements and conditions

(a) Conditions

Each permit issued under this subchapter shall include enforceable emission limitations and standards, a schedule of compliance, a requirement that the permittee submit to the permitting authority, no less often than every 6 months, the results of any required monitoring, and such other conditions as are necessary to assure compliance with applicable requirements of this chapter, including the requirements of the applicable implementation plan.

(b) Monitoring and analysis

The Administrator may by rule prescribe procedures and methods for determining compliance and for monitoring and analysis of pollutants regulated under this chapter, but continuous emissions monitoring need not be required if alternative methods are available that provide sufficiently reliable and timely information for determining compliance. Nothing in this subsection shall be construed to affect any continuous emissions monitoring requirement of subchapter IV–A of this chapter, or where required elsewhere in this chapter.

(c) Inspection, entry, monitoring, certification, and reporting

Each permit issued under this subchapter shall set forth inspection, entry, monitoring, compliance certification, and reporting requirements to assure compliance with the permit terms and conditions. Such monitoring and reporting requirements shall conform to any applicable regulation under subsection (b) of this section. Any report required to be submitted by a permit issued to a corporation under this subchapter shall be signed by a responsible corporate official, who shall certify its accuracy.

(d) General permits

The permitting authority may, after notice and opportunity for public hearing, issue a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under this subchapter. No source covered by a general permit shall thereby be relieved from the obligation to file an application under section 7661b of this title.

(e) Temporary sources

The permitting authority may issue a single permit authorizing emissions from similar operations at multiple temporary locations. No such permit shall be issued unless it includes conditions that will assure compliance with all the requirements of this chapter at all authorized locations, including, but not limited to, ambient standards and compliance with any applicable increment or visibility requirements under part C of subchapter I of this chapter. Any such permit shall in addition require the owner or operator to notify the permitting authority in advance of each change in location. The permitting authority may require a separate permit fee for operations at each location.

(f) Permit shield

Compliance with a permit issued in accordance with this subchapter shall be deemed compliance with section 7661a of this title. Except as otherwise provided by the Administrator by rule, the permit may also provide that compliance with the permit shall be deemed compliance with other applicable provisions of this chapter that relate to the permittee if—

(1) the permit includes the applicable requirements of such provisions, or

(2) the permitting authority in acting on the permit application makes a determination relating to the permittee that such other provisions (which shall be referred to in such determination) are not applicable and the permit includes the determination or a concise summary thereof.

Nothing in the preceding sentence shall alter or affect the provisions of section 7603 of this title, including the authority of the Administrator under that section.

(July 14, 1955, ch. 360, title V, § 504, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2642.)

§ 7661d. Notification to Administrator and contiguous States

(a) Transmission and notice

(1) Each permitting authority—

(A) shall transmit to the Administrator a copy of each permit application (and any application for a permit modification or renewal) or such portion thereof, including any compliance plan, as the Administrator may require to effectively review the application and otherwise to carry out the Administrator's responsibilities under this chapter, and

(B) shall provide to the Administrator a copy of each permit proposed to be issued and issued as a final permit.

(2) The permitting authority shall notify all States—

(A) whose air quality may be affected and that are contiguous to the State in which the emission originates, or

(B) that are within 50 miles of the source,

of each permit application or proposed permit forwarded to the Administrator under this section, and shall provide an opportunity for such States to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the permitting authority, such authority shall notify the State submitting the recommendations and the Administrator in writing of its failure to accept those recommendations and the reasons therefor.

(b) Objection by EPA

(1) If any permit contains provisions that are determined by the Administrator as not in compliance with the applicable requirements of this chapter, including the requirements of an applicable implementation plan, the Administrator shall, in accordance with this subsection, object to its issuance. The permitting authority shall respond in writing if the Administrator (A) within 45 days after receiving a copy of the proposed permit under subsection (a)(1) of this section, or (B) within 45 days after receiving notification under subsection (a)(2) of this section, objects in writing to its issuance as not in compliance with such requirements. With the objection, the Administrator shall provide a statement of the reasons for the objection. A copy of the objection and statement shall be provided to the applicant.

(2) If the Administrator does not object in writing to the issuance of a permit pursuant to paragraph (1), any person may petition the Administrator within 60 days after the expiration of the 45-day review period specified in paragraph (1) to take such action. A copy of such pe-

tition shall be provided to the permitting authority and the applicant by the petitioner. The petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the permitting agency (unless the petitioner demonstrates in the petition to the Administrator that it was impracticable to raise such objections within such period or unless the grounds for such objection arose after such period). The petition shall identify all such objections. If the permit has been issued by the permitting agency, such petition shall not postpone the effectiveness of the permit. The Administrator shall grant or deny such petition within 60 days after the petition is filed. The Administrator shall issue an objection within such period if the petitioner demonstrates to the Administrator that the permit is not in compliance with the requirements of this chapter, including the requirements of the applicable implementation plan. Any denial of such petition shall be subject to judicial review under section 7607 of this title. The Administrator shall include in regulations under this subchapter provisions to implement this paragraph. The Administrator may not delegate the requirements of this paragraph.

(3) Upon receipt of an objection by the Administrator under this subsection, the permitting authority may not issue the permit unless it is revised and issued in accordance with subsection (c) of this section. If the permitting authority has issued a permit prior to receipt of an objection by the Administrator under paragraph (2) of this subsection, the Administrator shall modify, terminate, or revoke such permit and the permitting authority may thereafter only issue a revised permit in accordance with subsection (c) of this section.

(c) Issuance or denial

If the permitting authority fails, within 90 days after the date of an objection under subsection (b) of this section, to submit a permit revised to meet the objection, the Administrator shall issue or deny the permit in accordance with the requirements of this subchapter. No objection shall be subject to judicial review until the Administrator takes final action to issue or deny a permit under this subsection.

(d) Waiver of notification requirements

(1) The Administrator may waive the requirements of subsections (a) and (b) of this section at the time of approval of a permit program under this subchapter for any category (including any class, type, or size within such category) of sources covered by the program other than major sources.

(2) The Administrator may, by regulation, establish categories of sources (including any class, type, or size within such category) to which the requirements of subsections (a) and (b) of this section shall not apply. The preceding sentence shall not apply to major sources.

(3) The Administrator may exclude from any waiver under this subsection notification under subsection (a)(2) of this section. Any waiver granted under this subsection may be revoked or modified by the Administrator by rule.

(e) Refusal of permitting authority to terminate, modify, or revoke and reissue

If the Administrator finds that cause exists to terminate, modify, or revoke and reissue a permit under this subchapter, the Administrator shall notify the permitting authority and the source of the Administrator's finding. The permitting authority shall, within 90 days after receipt of such notification, forward to the Administrator under this section a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The Administrator may extend such 90 day period for an additional 90 days if the Administrator finds that a new or revised permit application is necessary, or that the permitting authority must require the permittee to submit additional information. The Administrator may review such proposed determination under the provisions of subsections (a) and (b) of this section. If the permitting authority fails to submit the required proposed determination, or if the Administrator objects and the permitting authority fails to resolve the objection within 90 days, the Administrator may, after notice and in accordance with fair and reasonable procedures, terminate, modify, or revoke and reissue the permit.

(July 14, 1955, ch. 360, title V, § 505, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2643.)

§ 7661e. Other authorities

(a) In general

Nothing in this subchapter shall prevent a State, or interstate permitting authority, from establishing additional permitting requirements not inconsistent with this chapter.

(b) Permits implementing acid rain provisions

The provisions of this subchapter, including provisions regarding schedules for submission and approval or disapproval of permit applications, shall apply to permits implementing the requirements of subchapter IV–A of this chapter except as modified by that subchapter.

(July 14, 1955, ch. 360, title V, § 506, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

§ 7661f. Small business stationary source technical and environmental compliance assistance program

(a) Plan revisions

Consistent with sections 7410 and 7412 of this title, each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator as part of the State implementation plan for such State or as a revision to such State implementation plan under section 7410 of this title, plans for establishing a small business stationary source technical and environmental compliance assistance program. Such submission shall be made within 24 months after November 15, 1990. The Administrator shall approve such program if it includes each of the following:

(1) Adequate mechanisms for developing, collecting, and coordinating information concerning compliance methods and technologies

for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with this chapter.

(2) Adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products, and methods of operation that help reduce air pollution.

(3) A designated State office within the relevant State agency to serve as ombudsman for small business stationary sources in connection with the implementation of this chapter.

(4) A compliance assistance program for small business stationary sources which assists small business stationary sources in determining applicable requirements and in receiving permits under this chapter in a timely and efficient manner.

(5) Adequate mechanisms to assure that small business stationary sources receive notice of their rights under this chapter in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standard issued under this chapter.

(6) Adequate mechanisms for informing small business stationary sources of their obligations under this chapter, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with this chapter.

(7) Procedures for consideration of requests from a small business stationary source for modification of—

(A) any work practice or technological method of compliance, or

(B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date,

based on the technological and financial capability of any such small business stationary source. No such modification may be granted unless it is in compliance with the applicable requirements of this chapter, including the requirements of the applicable implementation plan. Where such applicable requirements are set forth in Federal regulations, only modifications authorized in such regulations may be allowed.

(b) Program

The Administrator shall establish within 9 months after November 15, 1990, a small business stationary source technical and environmental compliance assistance program. Such program shall—

(1) assist the States in the development of the program required under subsection (a) of this section (relating to assistance for small business stationary sources);

(2) issue guidance for the use of the States in the implementation of these programs that includes alternative control technologies and pollution prevention methods applicable to small business stationary sources; and

(3) provide for implementation of the program provisions required under subsection (a)(4) of this section in any State that fails to submit such a program under that subsection.

(c) Eligibility

(1) Except as provided in paragraphs (2) and (3), for purposes of this section, the term ''small business stationary source'' means a stationary source that—

(A) is owned or operated by a person that employs 100 or fewer individuals,

(B) is a small business concern as defined in the Small Business Act [15 U.S.C. 631 et seq.];

(C) is not a major stationary source;

(D) does not emit 50 tons or more per year of any regulated pollutant; and

(E) emits less than 75 tons per year of all regulated pollutants.

(2) Upon petition by a source, the State may, after notice and opportunity for public comment, include as a small business stationary source for purposes of this section any stationary source which does not meet the criteria of subparagraphs[1] (C), (D), or (E) of paragraph (1) but which does not emit more than 100 tons per year of all regulated pollutants.

(3)(A) The Administrator, in consultation with the Administrator of the Small Business Administration and after providing notice and opportunity for public comment, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the Administrator determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(B) The State, in consultation with the Administrator and the Administrator of the Small Business Administration and after providing notice and opportunity for public hearing, may exclude from the small business stationary source definition under this section any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of this chapter without the application of this subsection.

(d) Monitoring

The Administrator shall direct the Agency's Office of Small and Disadvantaged Business Utilization through the Small Business Ombudsman (hereinafter in this section referred to as the ''Ombudsman'') to monitor the small business stationary source technical and environmental compliance assistance program under this section. In carrying out such monitoring activities, the Ombudsman shall—

(1) render advisory opinions on the overall effectiveness of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, difficulties encountered, and degree and severity of enforcement;

(2) make periodic reports to the Congress on the compliance of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,[2]

[1] So in original. Probably should be ''subparagraph''.

[2] See References in Text note below.

the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(3) review information to be issued by the Small Business Stationary Source Technical and Environmental Compliance Assistance Program for small business stationary sources to ensure that the information is understandable by the layperson; and

(4) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(e) Compliance Advisory Panel

(1) There shall be created a Compliance Advisory Panel (hereinafter referred to as the ''Panel'') on the State level of not less than 7 individuals. This Panel shall—

(A) render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program, difficulties encountered, and degree and severity of enforcement;

(B) make periodic reports to the Administrator concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act,[2] the Regulatory Flexibility Act [5 U.S.C. 601 et seq.], and the Equal Access to Justice Act;

(C) review information for small business stationary sources to assure such information is understandable by the layperson; and

(D) have the Small Business Stationary Source Technical and Environmental Compliance Assistance Program serve as the secretariat for the development and dissemination of such reports and advisory opinions.

(2) The Panel shall consist of—

(A) 2 members, who are not owners, or representatives of owners, of small business stationary sources, selected by the Governor to represent the general public;

(B) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the lower house, or in the case of a unicameral State legislature, 2 members each shall be selected by the majority leadership and the minority leadership, respectively, of such legislature, and subparagraph (C) shall not apply);

(C) 2 members selected by the State legislature who are owners, or who represent owners, of small business stationary sources (1 member each by the majority and minority leadership of the upper house, or the equivalent State entity); and

(D) 1 member selected by the head of the department or agency of the State responsible for air pollution permit programs to represent that agency.

(f) Fees

The State (or the Administrator) may reduce any fee required under this chapter to take into account the financial resources of small business stationary sources.

(g) Continuous emission monitors

In developing regulations and CTGs under this chapter that contain continuous emission monitoring requirements, the Administrator, consistent with the requirements of this chapter, before applying such requirements to small business stationary sources, shall consider the necessity and appropriateness of such requirements for such sources. Nothing in this subsection shall affect the applicability of subchapter IV–A of this chapter provisions relating to continuous emissions monitoring.

(h) Control technique guidelines

The Administrator shall consider, consistent with the requirements of this chapter, the size, type, and technical capabilities of small business stationary sources (and sources which are eligible under subsection (c)(2) of this section to be treated as small business stationary sources) in developing CTGs applicable to such sources under this chapter.

(July 14, 1955, ch. 360, title V, § 507, as added Pub. L. 101–549, title V, § 501, Nov. 15, 1990, 104 Stat. 2645.)

REFERENCES IN TEXT

The Small Business Act, referred to in subsec. (c)(1)(B), is Pub. L. 85–536, § 2(1 et seq.), July 18, 1958, 72 Stat. 384, which is classified generally to chapter 14A (§ 631 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 631 of Title 15 and Tables.

The Paperwork Reduction Act, referred to in subsecs. (d)(2) and (e)(1)(B), probably means the Paperwork Reduction Act of 1980, Pub. L. 96–511, Dec. 11, 1980, 94 Stat. 2812, as amended, which was classified principally to chapter 35 (§ 3501 et seq.) of Title 44, Public Printing and Documents, prior to the general amendment of that chapter by Pub. L. 104–13, § 2, May 22, 1995, 109 Stat. 163. For complete classification of this Act to the Code, see Short Title of 1980 Amendment note set out under section 101 of Title 44 and Tables.

The Regulatory Flexibility Act, referred to in subsecs. (d)(2) and (e)(1)(B), is Pub. L. 96–354, Sept. 19, 1980, 94 Stat. 1164, which is classified generally to chapter 6 (§ 601 et seq.) of Title 5, Government Organization and Employees. For complete classification of this Act to the Code, see Short Title note set out under section 601 of Title 5 and Tables.

The Equal Access to Justice Act, referred to in subsecs. (d)(2) and (e)(1)(B), is title II of Pub. L. 96–481, Oct. 21, 1980, 94 Stat. 2325. For complete classification of this Act to the Code, see Short Title note set out under section 504 of Title 5.

SUBCHAPTER VI—STRATOSPHERIC OZONE PROTECTION

§ 7671. Definitions

As used in this subchapter—

(1) Appliance

The term ''appliance'' means any device which contains and uses a class I or class II substance as a refrigerant and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(2) Baseline year

The term ''baseline year'' means—

(A) the calendar year 1986, in the case of any class I substance listed in Group I or II under section 7671a(a) of this title,

(B) the calendar year 1989, in the case of any class I substance listed in Group III, IV, or V under section 7671a(a) of this title, and

(C) a representative calendar year selected by the Administrator, in the case of—

(i) any substance added to the list of class I substances after the publication of the initial list under section 7671a(a) of this title, and

(ii) any class II substance.

(3) Class I substance

The term ''class I substance'' means each of the substances listed as provided in section 7671a(a) of this title.

(4) Class II substance

The term ''class II substance'' means each of the substances listed as provided in section 7671a(b) of this title.

(5) Commissioner

The term ''Commissioner'' means the Commissioner of the Food and Drug Administration.

(6) Consumption

The term ''consumption'' means, with respect to any substance, the amount of that substance produced in the United States, plus the amount imported, minus the amount exported to Parties to the Montreal Protocol. Such term shall be construed in a manner consistent with the Montreal Protocol.

(7) Import

The term ''import'' means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

(8) Medical device

The term ''medical device'' means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and

(B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

(9) Montreal Protocol

The terms ''Montreal Protocol'' and ''the Protocol'' mean the Montreal Protocol on Substances that Deplete the Ozone Layer, a protocol to the Vienna Convention for the Protection of the Ozone Layer, including adjustments adopted by Parties thereto and amendments that have entered into force.

(10) Ozone-depletion potential

The term ''ozone-depletion potential'' means a factor established by the Administrator to reflect the ozone-depletion potential of a substance, on a mass per kilogram basis, as compared to chlorofluorocarbon-11 (CFC–11). Such factor shall be based upon the substance's atmospheric lifetime, the molecular weight of bromine and chlorine, and the substance's ability to be photolytically disassociated, and upon other factors determined to be an accurate measure of relative ozone-depletion potential.

(11) Produce, produced, and production

The terms ''produce'', ''produced'', and ''production'', refer to the manufacture of a substance from any raw material or feedstock chemical, but such terms do not include—

(A) the manufacture of a substance that is used and entirely consumed (except for trace quantities) in the manufacture of other chemicals, or

(B) the reuse or recycling of a substance.

(July 14, 1955, ch. 360, title VI, § 601, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2649.)

REFERENCES IN TEXT

The customs laws of the United States, referred to in par. (7), are classified generally to Title 19, Customs Duties.

The Federal Food, Drug, and Cosmetic Act, referred to in par. (8), is act June 25, 1938, ch. 675, 52 Stat. 1040, as amended, which is classified generally to chapter 9 (§ 301 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see section 301 of Title 21 and Tables.

§ 7671a. Listing of class I and class II substances

(a) List of class I substances

Within 60 days after November 15, 1990, the Administrator shall publish an initial list of class I substances, which list shall contain the following substances:

Group I
chlorofluorocarbon-11 (CFC–11)
chlorofluorocarbon-12 (CFC–12)
chlorofluorocarbon-113 (CFC–113)
chlorofluorocarbon-114 (CFC–114)
chlorofluorocarbon-115 (CFC–115)

Group II
halon-1211
halon-1301
halon-2402

Group III
chlorofluorocarbon-13 (CFC–13)
chlorofluorocarbon-111 (CFC–111)
chlorofluorocarbon-112 (CFC–112)
chlorofluorocarbon-211 (CFC–211)
chlorofluorocarbon-212 (CFC–212)
chlorofluorocarbon-213 (CFC–213)
chlorofluorocarbon-214 (CFC–214)
chlorofluorocarbon-215 (CFC–215)
chlorofluorocarbon-216 (CFC–216)
chlorofluorocarbon-217 (CFC–217)

Group IV
carbon tetrachloride

Group V
methyl chloroform

The initial list under this subsection shall also include the isomers of the substances listed above, other than 1,1,2-trichloroethane (an isomer of methyl chloroform). Pursuant to sub-

section (c) of this section, the Administrator shall add to the list of class I substances any other substance that the Administrator finds causes or contributes significantly to harmful effects on the stratospheric ozone layer. The Administrator shall, pursuant to subsection (c) of this section, add to such list all substances that the Administrator determines have an ozone depletion potential of 0.2 or greater.

(b) List of class II substances

Simultaneously with publication of the initial list of class I substances, the Administrator shall publish an initial list of class II substances, which shall contain the following substances:

hydrochlorofluorocarbon-21 (HCFC–21)
hydrochlorofluorocarbon-22 (HCFC–22)
hydrochlorofluorocarbon-31 (HCFC–31)
hydrochlorofluorocarbon-121 (HCFC–121)
hydrochlorofluorocarbon-122 (HCFC–122)
hydrochlorofluorocarbon-123 (HCFC–123)
hydrochlorofluorocarbon-124 (HCFC–124)
hydrochlorofluorocarbon-131 (HCFC–131)
hydrochlorofluorocarbon-132 (HCFC–132)
hydrochlorofluorocarbon-133 (HCFC–133)
hydrochlorofluorocarbon-141 (HCFC–141)
hydrochlorofluorocarbon-142 (HCFC–142)
hydrochlorofluorocarbon-221 (HCFC–221)
hydrochlorofluorocarbon-222 (HCFC–222)
hydrochlorofluorocarbon-223 (HCFC–223)
hydrochlorofluorocarbon-224 (HCFC–224)
hydrochlorofluorocarbon-225 (HCFC–225)
hydrochlorofluorocarbon-226 (HCFC–226)
hydrochlorofluorocarbon-231 (HCFC–231)
hydrochlorofluorocarbon-232 (HCFC–232)
hydrochlorofluorocarbon-233 (HCFC–233)
hydrochlorofluorocarbon-234 (HCFC–234)
hydrochlorofluorocarbon-235 (HCFC–235)
hydrochlorofluorocarbon-241 (HCFC–241)
hydrochlorofluorocarbon-242 (HCFC–242)
hydrochlorofluorocarbon-243 (HCFC–243)
hydrochlorofluorocarbon-244 (HCFC–244)
hydrochlorofluorocarbon-251 (HCFC–251)
hydrochlorofluorocarbon-252 (HCFC–252)
hydrochlorofluorocarbon-253 (HCFC–253)
hydrochlorofluorocarbon-261 (HCFC–261)
hydrochlorofluorocarbon-262 (HCFC–262)
hydrochlorofluorocarbon-271 (HCFC–271)

The initial list under this subsection shall also include the isomers of the substances listed above. Pursuant to subsection (c) of this section, the Administrator shall add to the list of class II substances any other substance that the Administrator finds is known or may reasonably be anticipated to cause or contribute to harmful effects on the stratospheric ozone layer.

(c) Additions to the lists

(1) The Administrator may add, by rule, in accordance with the criteria set forth in subsection (a) or (b) of this section, as the case may be, any substance to the list of class I or class II substances under subsection (a) or (b) of this section. For purposes of exchanges under section 7661f[1] of this title, whenever a substance is added to the list of class I substances the Administrator shall, to the extent consistent with the Montreal Protocol, assign such substance to existing Group I, II, III, IV, or V or place such substance in a new Group.

(2) Periodically, but not less frequently than every 3 years after November 15, 1990, the Administrator shall list, by rule, as additional class I or class II substances those substances which the Administrator finds meet the criteria of subsection (a) or (b) of this section, as the case may be.

(3) At any time, any person may petition the Administrator to add a substance to the list of class I or class II substances. Pursuant to the criteria set forth in subsection (a) or (b) of this section as the case may be, within 180 days after receiving such a petition, the Administrator shall either propose to add the substance to such list or publish an explanation of the petition denial. In any case where the Administrator proposes to add a substance to such list, the Administrator shall add, by rule, (or make a final determination not to add) such substance to such list within 1 year after receiving such petition. Any petition under this paragraph shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this paragraph, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(4) Only a class II substance which is added to the list of class I substances may be removed from the list of class II substances. No substance referred to in subsection (a) of this section, including methyl chloroform, may be removed from the list of class I substances.

(d) New listed substances

In the case of any substance added to the list of class I or class II substances after publication of the initial list of such substances under this section, the Administrator may extend any schedule or compliance deadline contained in section 7671c or 7671d of this title to a later date than specified in such sections if such schedule or deadline is unattainable, considering when such substance is added to the list. No extension under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year in which the substance is added to the list of class I substances. No extension under this subsection may extend the date for termination of production of any class II substance to a date more than 10 years after January 1 of the year after the year in which the substance is added to the list of class II substances.

(e) Ozone-depletion and global warming potential

Simultaneously with publication of the lists under this section and simultaneously with any addition to either of such lists, the Administrator shall assign to each listed substance a numerical value representing the substance's ozone-depletion potential. In addition, the Administrator shall publish the chlorine and bromine loading potential and the atmospheric lifetime of each listed substance. One year after November 15, 1990 (one year after the addition of a substance to either of such lists in the case of a substance added after the publication of the initial lists of such substances), and after notice

[1] So in original. Probably should be section ''7671f''.

and opportunity for public comment, the Administrator shall publish the global warming potential of each listed substance. The preceding sentence shall not be construed to be the basis of any additional regulation under this chapter. In the case of the substances referred to in table 1, the ozone-depletion potential shall be as specified in table 1, unless the Administrator adjusts the substance's ozone-depletion potential based on criteria referred to in section 7671(10) of this title:

TABLE 1

Substance	Ozone-depletion potential
chlorofluorocarbon-11 (CFC–11)	1.0
chlorofluorocarbon-12 (CFC–12)	1.0
chlorofluorocarbon-13 (CFC–13)	1.0
chlorofluorocarbon-111 (CFC–111)	1.0
chlorofluorocarbon-112 (CFC–112)	1.0
chlorofluorocarbon-113 (CFC–113)	0.8
chlorofluorocarbon-114 (CFC–114)	1.0
chlorofluorocarbon-115 (CFC–115)	0.6
chlorofluorocarbon-211 (CFC–211)	1.0
chlorofluorocarbon-212 (CFC–212)	1.0
chlorofluorocarbon-213 (CFC–213)	1.0
chlorofluorocarbon-214 (CFC–214)	1.0
chlorofluorocarbon-215 (CFC–215)	1.0
chlorofluorocarbon-216 (CFC–216)	1.0
chlorofluorocarbon-217 (CFC–217)	1.0
halon-1211	3.0
halon-1301	10.0
halon-2402	6.0
carbon tetrachloride	1.1
methyl chloroform	0.1
hydrochlorofluorocarbon-22 (HCFC–22)	0.05
hydrochlorofluorocarbon-123 (HCFC–123)	0.02
hydrochlorofluorocarbon-124 (HCFC–124)	0.02
hydrochlorofluorocarbon-141(b) (HCFC–141(b))	0.1
hydrochlorofluorocarbon-142(b) (HCFC–142(b))	0.06

Where the ozone-depletion potential of a substance is specified in the Montreal Protocol, the ozone-depletion potential specified for that substance under this section shall be consistent with the Montreal Protocol.

(July 14, 1955, ch. 360, title VI, § 602, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2650.)

§ 7671b. Monitoring and reporting requirements

(a) Regulations

Within 270 days after November 15, 1990, the Administrator shall amend the regulations of the Administrator in effect on such date regarding monitoring and reporting of class I and class II substances. Such amendments shall conform to the requirements of this section. The amended regulations shall include requirements with respect to the time and manner of monitoring and reporting as required under this section.

(b) Production, import, and export level reports

On a quarterly basis, or such other basis (not less than annually) as determined by the Administrator, each person who produced, imported, or exported a class I or class II substance shall file a report with the Administrator setting forth the amount of the substance that such person produced, imported, and exported during the preceding reporting period. Each such report shall be signed and attested by a responsible officer. No such report shall be required from a person after April 1 of the calendar year after such person permanently ceases production, importation, and exportation of the substance and so notifies the Administrator in writing.

(c) Baseline reports for class I substances

Unless such information has previously been reported to the Administrator, on the date on which the first report under subsection (b) of this section is required to be filed, each person who produced, imported, or exported a class I substance (other than a substance added to the list of class I substances after the publication of the initial list of such substances under this section) shall file a report with the Administrator setting forth the amount of such substance that such person produced, imported, and exported during the baseline year. In the case of a substance added to the list of class I substances after publication of the initial list of such substances under this section, the regulations shall require that each person who produced, imported, or exported such substance shall file a report with the Administrator within 180 days after the date on which such substance is added to the list, setting forth the amount of the substance that such person produced, imported, and exported in the baseline year.

(d) Monitoring and reports to Congress

(1) The Administrator shall monitor and, not less often than every 3 years following November 15, 1990, submit a report to Congress on the production, use and consumption of class I and class II substances. Such report shall include data on domestic production, use and consumption, and an estimate of worldwide production, use and consumption of such substances. Not less frequently than every 6 years the Administrator shall report to Congress on the environmental and economic effects of any stratospheric ozone depletion.

(2) The Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration shall monitor, and not less often than every 3 years following November 15, 1990, submit a report to Congress on the current average tropospheric concentration of chlorine and bromine and on the level of stratospheric ozone depletion. Such reports shall include updated projections of—

(A) peak chlorine loading;

(B) the rate at which the atmospheric abundance of chlorine is projected to decrease after the year 2000; and

(C) the date by which the atmospheric abundance of chlorine is projected to return to a level of two parts per billion.

Such updated projections shall be made on the basis of current international and domestic controls on substances covered by this subchapter as well as on the basis of such controls supplemented by a year 2000 global phase out of all halocarbon emissions (the base case). It is the purpose of the Congress through the provisions of this section to monitor closely the production

and consumption of class II substances to assure that the production and consumption of such substances will not:

(i) increase significantly the peak chlorine loading that is projected to occur under the base case established for purposes of this section;

(ii) reduce significantly the rate at which the atmospheric abundance of chlorine is projected to decrease under the base case; or

(iii) delay the date by which the average atmospheric concentration of chlorine is projected under the base case to return to a level of two parts per billion.

(e) Technology status report in 2015

The Administrator shall review, on a periodic basis, the progress being made in the development of alternative systems or products necessary to manufacture and operate appliances without class II substances. If the Administrator finds, after notice and opportunity for public comment, that as a result of technological development problems, the development of such alternative systems or products will not occur within the time necessary to provide for the manufacture of such equipment without such substances prior to the applicable deadlines under section 7671d of this title, the Administrator shall, not later than January 1, 2015, so inform the Congress.

(f) Emergency report

If, in consultation with the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and after notice and opportunity for public comment, the Administrator determines that the global production, consumption, and use of class II substances are projected to contribute to an atmospheric chlorine loading in excess of the base case projections by more than 5/10ths parts per billion, the Administrator shall so inform the Congress immediately. The determination referred to in the preceding sentence shall be based on the monitoring under subsection (d) of this section and updated not less often than every 3 years.

(July 14, 1955, ch. 360, title VI, § 603, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2653.)

TERMINATION OF REPORTING REQUIREMENTS

For termination, effective May 15, 2000, of provisions in subsec. (d)(1) of this section relating to submittal of triennial report to Congress, see section 3003 of Pub. L. 104–66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and the 12th item on page 162 of House Document No. 103–7.

METHANE STUDIES

Section 603 of Pub. L. 101–549 provided that:

''(a) ECONOMICALLY JUSTIFIED ACTIONS.—Not later than 2 years after enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit a report to the Congress that identifies activities, substances, processes, or combinations thereof that could reduce methane emissions and that are economically and technologically justified with and without consideration of environmental benefit.

''(b) DOMESTIC METHANE SOURCE INVENTORY AND CONTROL.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator, in consultation and coordination with the Secretary of Energy and the Secretary of Agriculture, shall prepare and submit to the Congress reports on each of the following:

''(1) Methane emissions associated with natural gas extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from natural gas and oil wells, pipelines, processing facilities, and gas burners. The report shall also include an inventory of methane generation with such activities.

''(2) Methane emissions associated with coal extraction, transportation, distribution, storage, and use. Such report shall include an inventory of methane emissions associated with such activities within the United States. Such emissions include, but are not limited to, accidental and intentional releases from mining shafts, degasification wells, gas recovery wells and equipment, and from the processing and use of coal. The report shall also include an inventory of methane generation with such activities.

''(3) Methane emissions associated with management of solid waste. Such report shall include an inventory of methane emissions associated with all forms of waste management in the United States, including storage, treatment, and disposal.

''(4) Methane emissions associated with agriculture. Such report shall include an inventory of methane emissions associated with rice and livestock production in the United States.

''(5) Methane emissions associated with biomass burning. Such report shall include an inventory of methane emissions associated with the intentional burning of agricultural wastes, wood, grasslands, and forests.

''(6) Other methane emissions associated with human activities. Such report shall identify and inventory other domestic sources of methane emissions that are deemed by the Administrator and other such agencies to be significant.

''(c) INTERNATIONAL STUDIES.—

''(1) METHANE EMISSIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on methane emissions from countries other than the United States. Such report shall include inventories of methane emissions associated with the activities listed in subsection (b).

''(2) PREVENTING INCREASES IN METHANE CONCENTRATIONS.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report that analyzes the potential for preventing an increase in atmospheric concentrations of methane from activities and sources in other countries. Such report shall identify and evaluate the technical options for reducing methane emission from each of the activities listed in subsection (b), as well as other activities or sources that are deemed by the Administrator in consultation with other relevant Federal agencies and departments to be significant and shall include an evaluation of costs. The report shall identify the emissions reductions that would need to be achieved to prevent increasing atmospheric concentrations of methane. The report shall also identify technology transfer programs that could promote methane emissions reductions in lesser developed countries.

''(d) NATURAL SOURCES.—Not later than 2 years after the enactment of this Act [Nov. 15, 1990], the Administrator shall prepare and submit to the Congress a report on—

''(1) methane emissions from biogenic sources such as (A) tropical, temperate, and subarctic forests, (B) tundra, and (C) freshwater and saltwater wetlands; and

''(2) the changes in methane emissions from biogenic sources that may occur as a result of potential increases in temperatures and atmospheric concentrations of carbon dioxide.

''(e) STUDY OF MEASURES TO LIMIT GROWTH IN METHANE CONCENTRATIONS.—Not later than 2 years after the completion of the studies in subsections (b), (c), and (d), the Administrator shall prepare and submit to the Congress a report that presents options outlining measures that could be implemented to stop or reduce the growth in atmospheric concentrations of methane from sources within the United States referred to in paragraphs (1) through (6) of subsection (b). This study shall identify and evaluate the technical options for reducing methane emissions from each of the activities listed in subsection (b), as well as other activities or sources deemed by such agencies to be significant, and shall include an evaluation of costs, technology, safety, energy, and other factors. The study shall be based on the other studies under this section. The study shall also identify programs of the United States and international lending agencies that could be used to induce lesser developed countries to undertake measures that will reduce methane emissions and the resource needs of such programs.

''(f) INFORMATION GATHERING.—In carrying out the studies under this section, the provisions and requirements of section 114 of the Clean Air Act [42 U.S.C. 7414] shall be available for purposes of obtaining information to carry out such studies.

''(g) CONSULTATION AND COORDINATION.—In preparing the studies under this section the Administrator shall consult and coordinate with the Secretary of Energy, the Administrators of the National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, and the heads of other relevant Federal agencies and departments. In the case of the studies under subsections (a), (b), and (e), such consultation and coordination shall include the Secretary of Agriculture.''

§ 7671c. Phase-out of production and consumption of class I substances

(a) Production phase-out

Effective on January 1 of each year specified in Table 2, it shall be unlawful for any person to produce any class I substance in an annual quantity greater than the relevant percentage specified in Table 2. The percentages in Table 2 refer to a maximum allowable production as a percentage of the quantity of the substance produced by the person concerned in the baseline year.

TABLE 2

Date	Carbon tetrachloride	Methyl chloroform	Other class I substances
1991	100%	100%	85%
1992	90%	100%	80%
1993	80%	90%	75%
1994	70%	85%	65%
1995	15%	70%	50%
1996	15%	50%	40%
1997	15%	50%	15%
1998	15%	50%	15%
1999	15%	50%	15%
2000		20%	
2001		20%	

(b) Termination of production of class I substances

Effective January 1, 2000 (January 1, 2002 in the case of methyl chloroform), it shall be unlawful for any person to produce any amount of a class I substance.

(c) Regulations regarding production and consumption of class I substances

The Administrator shall promulgate regulations within 10 months after November 15, 1990, phasing out the production of class I substances in accordance with this section and other applicable provisions of this subchapter. The Administrator shall also promulgate regulations to insure that the consumption of class I substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class I substances under this subchapter.

(d) Exceptions for essential uses of methyl chloroform, medical devices, and aviation safety

(1) Essential uses of methyl chloroform

Notwithstanding the termination of production required by subsection (b) of this section, during the period beginning on January 1, 2002, and ending on January 1, 2005, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications (such as nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal fatigue) for which no safe and effective substitute is available. Notwithstanding this paragraph, the authority to produce methyl chloroform for use in medical devices shall be provided in accordance with paragraph (2).

(2) Medical devices

Notwithstanding the termination of production required by subsection (b) of this section, the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of class I substances solely for use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(3) Aviation safety

(A) Notwithstanding the termination of production required by subsection (b) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211 (bromochlorodifluoromethane), halon-1301 (bromotrifluoromethane), and halon-2402 (dibromotetrafluoroethane) solely for purposes of aviation safety if the Administrator of the Federal Aviation Administration, in consultation with the Administrator, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes.

(B) The Administrator of the Federal Aviation Administration shall, in consultation with the Administrator, examine whether safe and effective substitutes for methyl chloroform or alternative techniques will be available for nondestructive testing for metal fatigue and corrosion of existing airplane engines and airplane parts susceptible to metal

fatigue and whether an exception for such uses of methyl chloroform under this paragraph will be necessary for purposes of airline safety after January 1, 2005 and provide a report to Congress in 1998.

(4) Cap on certain exceptions

Under no circumstances may the authority set forth in paragraphs (1), (2), and (3) of subsection (d) of this section be applied to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(5) Sanitation and food protection

To the extent consistent with the Montreal Protocol's quarantine and preshipment provisions, the Administrator shall exempt the production, importation, and consumption of methyl bromide to fumigate commodities entering or leaving the United States or any State (or political subdivision thereof) for purposes of compliance with Animal and Plant Health Inspection Service requirements or with any international, Federal, State, or local sanitation or food protection standard.

(6) Critical uses

To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.

(e) Developing countries

(1) Exception

Notwithstanding the phase-out and termination of production required under subsections (a) and (b) of this section, the Administrator, after notice and opportunity for public comment, may, consistent with the Montreal Protocol, authorize the production of limited quantities of a class I substance in excess of the amounts otherwise allowable under subsection (a) or (b) of this section, or both, solely for export to, and use in, developing countries that are Parties to the Montreal Protocol and are operating under article 5 of such Protocol. Any production authorized under this paragraph shall be solely for purposes of satisfying the basic domestic needs of such countries.

(2) Cap on exception

(A) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in any year for which a production percentage is specified in Table 2 of subsection (a) of this section in an annual quantity greater than the specified percentage, plus an amount equal to 10 percent of the amount produced by such person in the baseline year.

(B) Under no circumstances may the authority set forth in paragraph (1) be applied to authorize any person to produce a class I substance in the applicable termination year referred to in subsection (b) of this section, or in any year thereafter, in an annual quantity greater than 15 percent of the baseline quantity of such substance produced by such person.

(C) An exception authorized under this subsection shall terminate no later than January 1, 2010 (2012 in the case of methyl chloroform).

(3) Methyl bromide

Notwithstanding the phaseout and termination of production of methyl bromide pursuant to subsection (h) of this section, the Administrator may, consistent with the Montreal Protocol, authorize the production of limited quantities of methyl bromide, solely for use in developing countries that are Parties to the Copenhagen Amendments to the Montreal Protocol.

(f) National security

The President may, to the extent such action is consistent with the Montreal Protocol, issue such orders regarding production and use of CFC–114 (chlorofluorocarbon-114), halon-1211, halon-1301, and halon-2402, at any specified site or facility or on any vessel as may be necessary to protect the national security interests of the United States if the President finds that adequate substitutes are not available and that the production and use of such substance are necessary to protect such national security interest. Such orders may include, where necessary to protect such interests, an exemption from any prohibition or requirement contained in this subchapter. The President shall notify the Congress within 30 days of the issuance of an order under this paragraph providing for any such exemption. Such notification shall include a statement of the reasons for the granting of the exemption. An exemption under this paragraph shall be for a specified period which may not exceed one year. Additional exemptions may be granted, each upon the President's issuance of a new order under this paragraph. Each such additional exemption shall be for a specified period which may not exceed one year. No exemption shall be granted under this paragraph due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation.

(g) Fire suppression and explosion prevention

(1) Notwithstanding the production phase-out set forth in subsection (a) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent such action is consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in excess of the amount otherwise permitted pursuant to the schedule under subsection (a) of this section solely for purposes of fire suppression or explosion prevention if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes.

The Administrator shall not authorize production under this paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator grant an exception under this paragraph that permits production after December 31, 1999.

(2) The Administrator shall periodically monitor and assess the status of efforts to obtain substitutes for the substances referred to in paragraph (1) for purposes of fire suppression or explosion prevention and the probability of such substitutes being available by December 31, 1999. The Administrator, as part of such assessment, shall consider any relevant assessments under the Montreal Protocol and the actions of the Parties pursuant to Article 2B of the Montreal Protocol in identifying essential uses and in permitting a level of production or consumption that is necessary to satisfy such uses for which no adequate alternatives are available after December 31, 1999. The Administrator shall report to Congress the results of such assessment in 1994 and again in 1998.

(3) Notwithstanding the termination of production set forth in subsection (b) of this section, the Administrator, after notice and opportunity for public comment, may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 in the period after December 31, 1999, and before December 31, 2004, solely for purposes of fire suppression or explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if the Administrator, in consultation with the Administrator of the United States Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression and explosion prevention purposes. The Administrator shall not authorize production under the paragraph for purposes of fire safety or explosion prevention training or testing of fire suppression or explosion prevention equipment. In no event shall the Administrator authorize under this paragraph any person to produce any such halon in an amount greater than 3 percent of that produced by such person during the baseline year.

(h) Methyl bromide

Notwithstanding subsections (b) and (d) of this section, the Administrator shall not terminate production of methyl bromide prior to January 1, 2005. The Administrator shall promulgate rules for reductions in, and terminate the production, importation, and consumption of, methyl bromide under a schedule that is in accordance with, but not more stringent than, the phaseout schedule of the Montreal Protocol Treaty as in effect on October 21, 1998.

(July 14, 1955, ch. 360, title VI, § 604, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2655; amended Pub. L. 105–277, div. A, § 101(a) [title VII, § 764], Oct. 21, 1998, 112 Stat. 2681, 2681–36.)

AMENDMENTS

1998—Subsec. (d)(5), (6). Pub. L. 105–277, § 101(a) [title VII, § 764(b)], added pars. (5) and (6).

Subsec. (e)(3). Pub. L. 105–277, § 101(a) [title VII, § 764(c)], added par. (3).

Subsec. (h). Pub. L. 105–277, § 101(a) [title VII, § 764(a)], added subsec. (h).

§ 7671d. Phase-out of production and consumption of class II substances

(a) Restriction of use of class II substances

Effective January 1, 2015, it shall be unlawful for any person to introduce into interstate commerce or use any class II substance unless such substance—

(1) has been used, recovered, and recycled;

(2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or

(3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.

As used in this subsection, the term ''refrigerant'' means any class II substance used for heat transfer in a refrigerating system.

(b) Production phase-out

(1) Effective January 1, 2015, it shall be unlawful for any person to produce any class II substance in an annual quantity greater than the quantity of such substance produced by such person during the baseline year.

(2) Effective January 1, 2030, it shall be unlawful for any person to produce any class II substance.

(c) Regulations regarding production and consumption of class II substances

By December 31, 1999, the Administrator shall promulgate regulations phasing out the production, and restricting the use, of class II substances in accordance with this section, subject to any acceleration of the phase-out of production under section 7671e of this title. The Administrator shall also promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule (subject to the same exceptions and other provisions) as is applicable to the phase-out and termination of production of class II substances under this subchapter.

(d) Exceptions

(1) Medical devices

(A) In general

Notwithstanding the termination of production required under subsection (b)(2) of this section and the restriction on use referred to in subsection (a) of this section, the Administrator, after notice and opportunity for public comment, shall, to the extent such action is consistent with the Montreal Protocol, authorize the production and use of limited quantities of class II substances solely for purposes of use in medical devices if such authorization is determined by the Commissioner, in consultation with the Administrator, to be necessary for use in medical devices.

(B) Cap on exception

Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II

substance in annual quantities greater than 10 percent of that produced by such person during the baseline year.

(2) Developing countries

(A) In general

Notwithstanding the provisions of subsection (a) or (b) of this section, the Administrator, after notice and opportunity for public comment, may authorize the production of limited quantities of a class II substance in excess of the quantities otherwise permitted under such provisions solely for export to and use in developing countries that are Parties to the Montreal Protocol, as determined by the Administrator. Any production authorized under this subsection shall be solely for purposes of satisfying the basic domestic needs of such countries.

(B) Cap on exception

(i) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in any year following the effective date of subsection (b)(1) of this section and before the year 2030 in annual quantities greater than 110 percent of the quantity of such substance produced by such person during the baseline year.

(ii) Under no circumstances may the authority set forth in subparagraph (A) be applied to authorize any person to produce a class II substance in the year 2030, or any year thereafter, in an annual quantity greater than 15 percent of the quantity of such substance produced by such person during the baseline year.

(iii) Each exception authorized under this paragraph shall terminate no later than January 1, 2040.

(July 14, 1955, ch. 360, title VI, § 605, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2658.)

§ 7671e. Accelerated schedule

(a) In general

The Administrator shall promulgate regulations, after notice and opportunity for public comment, which establish a schedule for phasing out the production and consumption of class I and class II substances (or use of class II substances) that is more stringent than set forth in section 7671c or 7671d of this title, or both, if—

(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects,

(2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or

(3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this subchapter.

In making any determination under paragraphs (1) and (2), the Administrator shall consider the status of the period remaining under the applicable schedule under this subchapter.

(b) Petition

Any person may petition the Administrator to promulgate regulations under this section. The Administrator shall grant or deny the petition within 180 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition, such final regulations shall be promulgated within 1 year. Any petition under this subsection shall include a showing by the petitioner that there are data adequate to support the petition. If the Administrator determines that information is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(July 14, 1955, ch. 360, title VI, § 606, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2660.)

§ 7671f. Exchange authority

(a) Transfers

The Administrator shall, within 10 months after November 15, 1990, promulgate rules under this subchapter providing for the issuance of allowances for the production of class I and II substances in accordance with the requirements of this subchapter and governing the transfer of such allowances. Such rules shall insure that the transactions under the authority of this section will result in greater total reductions in the production in each year of class I and class II substances than would occur in that year in the absence of such transactions.

(b) Interpollutant transfers

(1) The rules under this section shall permit a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.

(2) Allowances for substances in each group of class I substances (as listed pursuant to section 7671a of this title) may only be transferred for allowances for other substances in the same Group.

(3) The Administrator shall, as appropriate, establish groups of class II substances for trading purposes and assign class II substances to such groups. In the case of class II substances, allowances may only be transferred for allowances for other class II substances that are in the same Group.

(c) Trades with other persons

The rules under this section shall permit 2 or more persons to transfer production allowances (including interpollutant transfers which meet the requirements of subsections (a) and (b) of

this section) if the transferor of such allowances will be subject, under such rules, to an enforceable and quantifiable reduction in annual production which—

(1) exceeds the reduction otherwise applicable to the transferor under this subchapter,

(2) exceeds the production allowances transferred to the transferee, and

(3) would not have occurred in the absence of such transaction.

(d) Consumption

The rules under this section shall also provide for the issuance of consumption allowances in accordance with the requirements of this subchapter and for the trading of such allowances in the same manner as is applicable under this section to the trading of production allowances under this section.

(July 14, 1955, ch. 360, title VI, § 607, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2660.)

§ 7671g. National recycling and emission reduction program

(a) In general

(1) The Administrator shall, by not later than January 1, 1992, promulgate regulations establishing standards and requirements regarding the use and disposal of class I substances during the service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than July 1, 1992.

(2) The Administrator shall, within 4 years after November 15, 1990, promulgate regulations establishing standards and requirements regarding use and disposal of class I and II substances not covered by paragraph (1), including the use and disposal of class II substances during service, repair, or disposal of appliances and industrial process refrigeration. Such standards and requirements shall become effective not later than 12 months after promulgation of the regulations.

(3) The regulations under this subsection shall include requirements that—

(A) reduce the use and emission of such substances to the lowest achievable level, and

(B) maximize the recapture and recycling of such substances.

Such regulations may include requirements to use alternative substances (including substances which are not class I or class II substances) or to minimize use of class I or class II substances, or to promote the use of safe alternatives pursuant to section 7671k of this title or any combination of the foregoing.

(b) Safe disposal

The regulations under subsection (a) of this section shall establish standards and requirements for the safe disposal of class I and II substances. Such regulations shall include each of the following—

(1) Requirements that class I or class II substances contained in bulk in appliances, machines or other goods shall be removed from each such appliance, machine or other good prior to the disposal of such items or their delivery for recycling.

(2) Requirements that any appliance, machine or other good containing a class I or class II substance in bulk shall not be manufactured, sold, or distributed in interstate commerce or offered for sale or distribution in interstate commerce unless it is equipped with a servicing aperture or an equally effective design feature which will facilitate the recapture of such substance during service and repair or disposal of such item.

(3) Requirements that any product in which a class I or class II substance is incorporated so as to constitute an inherent element of such product shall be disposed of in a manner that reduces, to the maximum extent practicable, the release of such substance into the environment. If the Administrator determines that the application of this paragraph to any product would result in producing only insignificant environmental benefits, the Administrator shall include in such regulations an exception for such product.

(c) Prohibitions

(1) Effective July 1, 1992, it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration, to knowingly vent or otherwise knowingly release or dispose of any class I or class II substance used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment. De minimis releases associated with good faith attempts to recapture and recycle or safely dispose of any such substance shall not be subject to the prohibition set forth in the preceding sentence.

(2) Effective 5 years after November 15, 1990, paragraph (1) shall also apply to the venting, release, or disposal of any substitute substance for a class I or class II substance by any person maintaining, servicing, repairing, or disposing of an appliance or industrial process refrigeration which contains and uses as a refrigerant any such substance, unless the Administrator determines that venting, releasing, or disposing of such substance does not pose a threat to the environment. For purposes of this paragraph, the term ''appliance'' includes any device which contains and uses as a refrigerant a substitute substance and which is used for household or commercial purposes, including any air conditioner, refrigerator, chiller, or freezer.

(July 14, 1955, ch. 360, title VI, § 608, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2661.)

§ 7671h. Servicing of motor vehicle air conditioners

(a) Regulations

Within 1 year after November 15, 1990, the Administrator shall promulgate regulations in accordance with this section establishing standards and requirements regarding the servicing of motor vehicle air conditioners.

(b) Definitions

As used in this section—

(1) The term ''refrigerant'' means any class I or class II substance used in a motor vehicle air conditioner. Effective 5 years after Novem-

ber 15, 1990, the term ''refrigerant'' shall also include any substitute substance.

(2)(A) The term ''approved refrigerant recycling equipment'' means equipment certified by the Administrator (or an independent standards testing organization approved by the Administrator) to meet the standards established by the Administrator and applicable to equipment for the extraction and reclamation of refrigerant from motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to such equipment (SAE standard J–1990).

(B) Equipment purchased before the proposal of regulations under this section shall be considered certified if it is substantially identical to equipment certified as provided in subparagraph (A).

(3) The term ''properly using'' means, with respect to approved refrigerant recycling equipment, using such equipment in conformity with standards established by the Administrator and applicable to the use of such equipment. Such standards shall, at a minimum, be at least as stringent as the standards of the Society of Automotive Engineers in effect as of November 15, 1990, and applicable to the use of such equipment (SAE standard J–1989).

(4) The term ''properly trained and certified'' means training and certification in the proper use of approved refrigerant recycling equipment for motor vehicle air conditioners in conformity with standards established by the Administrator and applicable to the performance of service on motor vehicle air conditioners. Such standards shall, at a minimum, be at least as stringent as specified, as of November 15, 1990, in SAE standard J–1989 under the certification program of the National Institute for Automotive Service Excellence (ASE) or under a similar program such as the training and certification program of the Mobile Air Conditioning Society (MACS).

(c) Servicing motor vehicle air conditioners

Effective January 1, 1992, no person repairing or servicing motor vehicles for consideration may perform any service on a motor vehicle air conditioner involving the refrigerant for such air conditioner without properly using approved refrigerant recycling equipment and no such person may perform such service unless such person has been properly trained and certified. The requirements of the previous sentence shall not apply until January 1, 1993 in the case of a person repairing or servicing motor vehicles for consideration at an entity which performed service on fewer than 100 motor vehicle air conditioners during calendar year 1990 and if such person so certifies, pursuant to subsection (d)(2) of this section, to the Administrator by January 1, 1992.

(d) Certification

(1) Effective 2 years after November 15, 1990, each person performing service on motor vehicle air conditioners for consideration shall certify to the Administrator either—

(A) that such person has acquired, and is properly using, approved refrigerant recycling equipment in service on motor vehicle air conditioners involving refrigerant and that each individual authorized by such person to perform such service is properly trained and certified; or

(B) that such person is performing such service at an entity which serviced fewer than 100 motor vehicle air conditioners in 1991.

(2) Effective January 1, 1993, each person who certified under paragraph (1)(B) shall submit a certification under paragraph (1)(A).

(3) Each certification under this subsection shall contain the name and address of the person certifying under this subsection and the serial number of each unit of approved recycling equipment acquired by such person and shall be signed and attested by the owner or another responsible officer. Certifications under paragraph (1)(A) may be made by submitting the required information to the Administrator on a standard form provided by the manufacturer of certified refrigerant recycling equipment.

(e) Small containers of class I or class II substances

Effective 2 years after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce to any person (other than a person performing service for consideration on motor vehicle air-conditioning systems in compliance with this section) any class I or class II substance that is suitable for use as a refrigerant in a motor vehicle air-conditioning system and that is in a container which contains less than 20 pounds of such refrigerant.

(July 14, 1955, ch. 360, title VI, § 609, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2662.)

§ 7671i. Nonessential products containing chlorofluorocarbons

(a) Regulations

The Administrator shall promulgate regulations to carry out the requirements of this section within 1 year after November 15, 1990.

(b) Nonessential products

The regulations under this section shall identify nonessential products that release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal) and prohibit any person from selling or distributing any such product, or offering any such product for sale or distribution, in interstate commerce. At a minimum, such prohibition shall apply to—

(1) chlorofluorocarbon-propelled plastic party streamers and noise horns,

(2) chlorofluorocarbon-containing cleaning fluids for noncommercial electronic and photographic equipment, and

(3) other consumer products that are determined by the Administrator—

(A) to release class I substances into the environment (including any release occurring during manufacture, use, storage, or disposal), and

(B) to be nonessential.

In determining whether a product is nonessential, the Administrator shall consider the

purpose or intended use of the product, the technological availability of substitutes for such product and for such class I substance, safety, health, and other relevant factors.

(c) Effective date

Effective 24 months after November 15, 1990, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce any nonessential product to which regulations under subsection (a) of this section implementing subsection (b) of this section are applicable.

(d) Other products

(1) Effective January 1, 1994, it shall be unlawful for any person to sell or distribute, or offer for sale or distribution, in interstate commerce—

(A) any aerosol product or other pressurized dispenser which contains a class II substance; or

(B) any plastic foam product which contains, or is manufactured with, a class II substance.

(2) The Administrator is authorized to grant exceptions from the prohibition under subparagraph (A) of paragraph (1) where—

(A) the use of the aerosol product or pressurized dispenser is determined by the Administrator to be essential as a result of flammability or worker safety concerns, and

(B) the only available alternative to use of a class II substance is use of a class I substance which legally could be substituted for such class II substance.

(3) Subparagraph (B) of paragraph (1) shall not apply to—

(A) a foam insulation product, or

(B) an integral skin, rigid, or semi-rigid foam utilized to provide for motor vehicle safety in accordance with Federal Motor Vehicle Safety Standards where no adequate substitute substance (other than a class I or class II substance) is practicable for effectively meeting such Standards.

(e) Medical devices

Nothing in this section shall apply to any medical device as defined in section 7671(8) of this title.

(July 14, 1955, ch. 360, title VI, § 610, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2664.)

§ 7671j. Labeling

(a) Regulations

The Administrator shall promulgate regulations to implement the labeling requirements of this section within 18 months after November 15, 1990, after notice and opportunity for public comment.

(b) Containers containing class I or class II substances and products containing class I substances

Effective 30 months after November 15, 1990, no container in which a class I or class II substance is stored or transported, and no product containing a class I substance, shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

''Warning: Contains [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere''.

(c) Products containing class II substances

(1) After 30 months after November 15, 1990, and before January 1, 2015, no product containing a class II substance shall be introduced into interstate commerce unless it bears the label referred to in subsection (b) of this section if the Administrator determines, after notice and opportunity for public comment, that there are substitute products or manufacturing processes (A) that do not rely on the use of such class II substance, (B) that reduce the overall risk to human health and the environment, and (C) that are currently or potentially available.

(2) Effective January 1, 2015, the requirements of subsection (b) of this section shall apply to all products containing a class II substance.

(d) Products manufactured with class I and class II substances

(1) In the case of a class II substance, after 30 months after November 15, 1990, and before January 1, 2015, if the Administrator, after notice and opportunity for public comment, makes the determination referred to in subsection (c) of this section with respect to a product manufactured with a process that uses such class II substance, no such product shall be introduced into interstate commerce unless it bears a clearly legible and conspicuous label stating:

''Warning: Manufactured with [insert name of substance], a substance which harms public health and environment by destroying ozone in the upper atmosphere''[1]

(2) In the case of a class I substance, effective 30 months after November 15, 1990, and before January 1, 2015, the labeling requirements of this subsection shall apply to all products manufactured with a process that uses such class I substance unless the Administrator determines that there are no substitute products or manufacturing processes that (A) do not rely on the use of such class I substance, (B) reduce the overall risk to human health and the environment, and (C) are currently or potentially available.

(e) Petitions

(1) Any person may, at any time after 18 months after November 15, 1990, petition the Administrator to apply the requirements of this section to a product containing a class II substance or a product manufactured with a class I or II substance which is not otherwise subject to such requirements. Within 180 days after receiving such petition, the Administrator shall, pursuant to the criteria set forth in subsection (c) of this section, either propose to apply the requirements of this section to such product or publish an explanation of the petition denial. If the Administrator proposes to apply such requirements to such product, the Administrator shall, by rule, render a final determination pursuant to such criteria within 1 year after receiving such petition.

[1] So in original. Probably should be followed by a period.

(2) Any petition under this paragaph[2] shall include a showing by the petitioner that there are data on the product adequate to support the petition.

(3) If the Administrator determines that information on the product is not sufficient to make the required determination the Administrator shall use any authority available to the Administrator under any law administered by the Administrator to acquire such information.

(4) In the case of a product determined by the Administrator, upon petition or on the Administrator's own motion, to be subject to the requirements of this section, the Administrator shall establish an effective date for such requirements. The effective date shall be 1 year after such determination or 30 months after November 15, 1990, whichever is later.

(5) Effective January 1, 2015, the labeling requirements of this subsection[3] shall apply to all products manufactured with a process that uses a class I or class II substance.

(f) Relationship to other law

(1) The labeling requirements of this section shall not constitute, in whole or part, a defense to liability or a cause for reduction in damages in any suit, whether civil or criminal, brought under any law, whether Federal or State, other than a suit for failure to comply with the labeling requirements of this section.

(2) No other approval of such label by the Administrator under any other law administered by the Administrator shall be required with respect to the labeling requirements of this section.

(July 14, 1955, ch. 360, title VI, § 611, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2665.)

§ 7671k. Safe alternatives policy

(a) Policy

To the maximum extent practicable, class I and class II substances shall be replaced by chemicals, product substitutes, or alternative manufacturing processes that reduce overall risks to human health and the environment.

(b) Reviews and reports

The Administrator shall—

(1) in consultation and coordination with interested members of the public and the heads of relevant Federal agencies and departments, recommend Federal research programs and other activities to assist in identifying alternatives to the use of class I and class II substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications and in achieving a transition to such alternatives, and, where appropriate, seek to maximize the use of Federal research facilities and resources to assist users of class I and class II substances in identifying and developing alternatives to the use of such substances as refrigerants, solvents, fire retardants, foam blowing agents, and other commercial applications;

(2) examine in consultation and coordination with the Secretary of Defense and the heads of other relevant Federal agencies and departments, including the General Services Administration, Federal procurement practices with respect to class I and class II substances and recommend measures to promote the transition by the Federal Government, as expeditiously as possible, to the use of safe substitutes;

(3) specify initiatives, including appropriate intergovernmental, international, and commercial information and technology transfers, to promote the development and use of safe substitutes for class I and class II substances, including alternative chemicals, product substitutes, and alternative manufacturing processes; and

(4) maintain a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and class II substances.

(c) Alternatives for class I or II substances

Within 2 years after November 15, 1990, the Administrator shall promulgate rules under this section providing that it shall be unlawful to replace any class I or class II substance with any substitute substance which the Administrator determines may present adverse effects to human health or the environment, where the Administrator has identified an alternative to such replacement that—

(1) reduces the overall risk to human health and the environment; and

(2) is currently or potentially available.

The Administrator shall publish a list of (A) the substitutes prohibited under this subsection for specific uses and (B) the safe alternatives identified under this subsection for specific uses.

(d) Right to petition

Any person may petition the Administrator to add a substance to the lists under subsection (c) of this section or to remove a substance from either of such lists. The Administrator shall grant or deny the petition within 90 days after receipt of any such petition. If the Administrator denies the petition, the Administrator shall publish an explanation of why the petition was denied. If the Administrator grants such petition the Administrator shall publish such revised list within 6 months thereafter. Any petition under this subsection shall include a showing by the petitioner that there are data on the substance adequate to support the petition. If the Administrator determines that information on the substance is not sufficient to make a determination under this subsection, the Administrator shall use any authority available to the Administrator, under any law administered by the Administrator, to acquire such information.

(e) Studies and notification

The Administrator shall require any person who produces a chemical substitute for a class I substance to provide the Administrator with such person's unpublished health and safety studies on such substitute and require producers to notify the Administrator not less than 90 days before new or existing chemicals are introduced into interstate commerce for significant

[2] So in original. Probably should be ''paragraph''.

[3] So in original. Probably should be ''section''.

new uses as substitutes for a class I substance. This subsection shall be subject to section 7414(c) of this title.

(July 14, 1955, ch. 360, title VI, § 612, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2667.)

§ 7671*l*. Federal procurement

Not later than 18 months after November 15, 1990, the Administrator, in consultation with the Administrator of the General Services Administration and the Secretary of Defense, shall promulgate regulations requiring each department, agency, and instrumentality of the United States to conform its procurement regulations to the policies and requirements of this subchapter and to maximize the substitution of safe alternatives identified under section 7671k of this title for class I and class II substances. Not later than 30 months after November 15, 1990, each department, agency, and instrumentality of the United States shall so conform its procurement regulations and certify to the President that its regulations have been modified in accordance with this section.

(July 14, 1955, ch. 360, title VI, § 613, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2668.)

EXECUTIVE ORDER NO. 12843

Ex. Ord. No. 12843, Apr. 21, 1993, 58 F.R. 21881, which provided for Federal agencies to implement policies and programs to minimize procurement of ozone-depleting substances, was revoked by Ex. Ord. No. 13148, § 901, Apr. 21, 2000, 65 F.R. 24604, formerly set out as a note under section 4321 of this title.

§ 7671m. Relationship to other laws

(a) State laws

Notwithstanding section 7416 of this title, during the 2-year period beginning on November 15, 1990, no State or local government may enforce any requirement concerning the design of any new or recalled appliance for the purpose of protecting the stratospheric ozone layer.

(b) Montreal Protocol

This subchapter as added by the Clean Air Act Amendments of 1990 shall be construed, interpreted, and applied as a supplement to the terms and conditions of the Montreal Protocol, as provided in Article 2, paragraph 11 thereof, and shall not be construed, interpreted, or applied to abrogate the responsibilities or obligations of the United States to implement fully the provisions of the Montreal Protocol. In the case of conflict between any provision of this subchapter and any provision of the Montreal Protocol, the more stringent provision shall govern. Nothing in this subchapter shall be construed, interpreted, or applied to affect the authority or responsibility of the Administrator to implement Article 4 of the Montreal Protocol with other appropriate agencies.

(c) Technology export and overseas investment

Upon November 15, 1990, the President shall—

(1) prohibit the export of technologies used to produce a class I substance;

(2) prohibit direct or indirect investments by any person in facilities designed to produce a class I or class II substance in nations that are not parties to the Montreal Protocol; and

(3) direct that no agency of the government provide bilateral or multilateral subsidies, aids, credits, guarantees, or insurance programs, for the purpose of producing any class I substance.

(July 14, 1955, ch. 360, title VI, § 614, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2668.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1990, referred to in subsec. (b), probably means Pub. L. 101–549, Nov. 15, 1990, 104 Stat. 2399. For complete classification of this Act to the Code, see Short Title of 1990 Amendment note set out under section 7401 of this title and Tables.

§ 7671n. Authority of Administrator

If, in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall submit notice of the proposal and promulgation of such regulation to the Congress.

(July 14, 1955, ch. 360, title VI, § 615, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

§ 7671*o*. Transfers among Parties to Montreal Protocol

(a) In general

Consistent with the Montreal Protocol, the United States may engage in transfers with other Parties to the Protocol under the following conditions:

(1) The United States may transfer production allowances to another Party if, at the time of such transfer, the Administrator establishes revised production limits for the United States such that the aggregate national United States production permitted under the revised production limits equals the lesser of (A) the maximum production level permitted for the substance or substances concerned in the transfer year under the Protocol minus the production allowances transferred, (B) the maximum production level permitted for the substance or substances concerned in the transfer year under applicable domestic law minus the production allowances transferred, or (C) the average of the actual national production level of the substance or substances concerned for the 3 years prior to the transfer minus the production allowances transferred.

(2) The United States may acquire production allowances from another Party if, at the time of such transfer, the Administrator finds that the other Party has revised its domestic production limits in the same manner as provided with respect to transfers by the United States in this subsection.

(b) Effect of transfers on production limits

The Administrator is authorized to reduce the production limits established under this chapter

as required as a prerequisite to transfers under paragraph (1) of subsection (a) of this section or to increase production limits established under this chapter to reflect production allowances acquired under a transfer under paragraph (2) of subsection (a) of this section.

(c) Regulations

The Administrator shall promulgate, within 2 years after November 15, 1990, regulations to implement this section.

(d) "Applicable domestic law" defined

In the case of the United States, the term ''applicable domestic law'' means this chapter.

(July 14, 1955, ch. 360, title VI, § 616, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

§ 7671p. International cooperation

(a) In general

The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this subchapter, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

(b) Assistance to developing countries

The Administrator, in consultation with the Secretary of State, shall support global participation in the Montreal Protocol by providing technical and financial assistance to developing countries that are Parties to the Montreal Protocol and operating under article 5 of the Protocol. There are authorized to be appropriated not more than $30,000,000 to carry out this section in fiscal years 1991, 1992 and 1993 and such sums as may be necessary in fiscal years 1994 and 1995. If China and India become Parties to the Montreal Protocol, there are authorized to be appropriated not more than an additional $30,000,000 to carry out this section in fiscal years 1991, 1992, and 1993.

(July 14, 1955, ch. 360, title VI, § 617, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2669.)

AUTHORITY OF SECRETARY OF STATE

Except as otherwise provided, Secretary of State to have and exercise any authority vested by law in any official or office of Department of State and references to such officials or offices deemed to refer to Secretary of State or Department of State, as appropriate, see section 2651a of Title 22, Foreign Relations and Intercourse, and section 161(d) of Pub. L. 103–236, set out as a note under section 2651a of Title 22.

§ 7671q. Miscellaneous provisions

For purposes of section 7416 of this title, requirements concerning the areas addressed by this subchapter for the protection of the stratosphere against ozone layer depletion shall be treated as requirements for the control and abatement of air pollution. For purposes of section 7418 of this title, the requirements of this subchapter and corresponding State, interstate, and local requirements, administrative authority, and process, and sanctions respecting the protection of the stratospheric ozone layer shall be treated as requirements for the control and abatement of air pollution within the meaning of section 7418 of this title.

(July 14, 1955, ch. 360, title VI, § 618, as added Pub. L. 101–549, title VI, § 602(a), Nov. 15, 1990, 104 Stat. 2670.)

CHAPTER 86—EARTHQUAKE HAZARDS REDUCTION

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§ 7701. Congressional findings

The Congress finds and declares the following:

(1) All 50 States are vulnerable to the hazards of earthquakes, and at least 39 of them are subject to major or moderate seismic risk, including Alaska, California, Hawaii, Illinois, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, South Carolina, Utah, and Washington. A large portion of the population of the United States lives in areas vulnerable to earthquake hazards.

(2) Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and implementation of earthquake hazards reduction measures, including (A) improved design and construction methods and practices, (B) land-use controls and redevelopment, (C) prediction techniques and early-warning systems, (D) coordinated emergency preparedness plans, and (E) public education and involvement programs.

(3) An expertly staffed and adequately financed earthquake hazards reduction program, based on Federal, State, local, and private research, planning, decisionmaking, and contributions would reduce the risk of such loss, destruction, and disruption in seismic areas by an amount far greater than the cost of such program.

(4) A well-funded seismological research program in earthquake prediction could provide