

No. 12-1272 (consolidated with
Nos. 12-1146, 12-1248, 12-1254, 12-1268 and 12-1269)

In the Supreme Court of the United States

CHAMBER OF COMMERCE OF THE UNITED STATES
OF AMERICA, STATE OF ALASKA, AND
AMERICAN FARM BUREAU FEDERATION,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**OPENING BRIEF OF PETITIONERS
CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA, STATE OF ALASKA, AND
AMERICAN FARM BUREAU FEDERATION**

LILY FU CLAFFEE
RACHEL L. BRAND
SHELDON GILBERT
*National Chamber
Litigation Center, Inc.
1615 H Street, NW
Washington, DC 20062
(202) 463-5337*

*Counsel for Petitioner
Chamber of Commerce of
the United States of
America*

JEFFREY A. ROSEN, P.C.
ROBERT R. GASAWAY
Counsel of Record
JEFFREY BOSSERT CLARK
WILLIAM H. BURGESS
*Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
robert.gasaway@kirkland.com
(202) 879-5000*

*Counsel for Petitioner
Chamber of Commerce of the
United States of America*

[Additional Counsel Listed on Signature Page]

QUESTION PRESENTED

Whether EPA permissibly determined that its regulation of greenhouse gas emissions from new motor vehicles triggered permitting requirements under the Clean Air Act for stationary sources that emit greenhouse gases.

RULE 24.1(b) STATEMENT

Petitioners in Case No. 12-1272 are the Chamber of Commerce of the United States of America, State of Alaska, and American Farm Bureau Federation. The Chamber of Commerce of the United States of America was petitioner or petitioner-intervenor as to all of the challenged agency actions addressed by the consolidated judgment below. The State of Alaska and the American Farm Bureau Federation were petitioners and/or petitioner-intervenors in cases addressed by the consolidated judgment below.

This case has been consolidated with Case Nos. 12-1146, 12-1248, 12-1254, 12-1268, and 12-1269, which arise out of the same proceedings in the court of appeals. Petitioners in those cases are: Utility Air Regulatory Group (*No. 12-1146*); American Chemistry Council; American Frozen Food Institute; American Fuel & Petrochemical Manufacturers; American Iron and Steel Institute; American Petroleum Institute; Brick Industry Association; Clean Air Implementation Project; Corn Refiners Association; Glass Association of North America; Independent Petroleum Association of America; Indiana Cast Metals Association; Michigan Manufacturers Association; Mississippi Manufacturers Association; National Association of Home Builders; The National Association of Manufacturers; National Federation of Independent Business; National Oilseed Processors Association; North American Die Casting Association; Portland Cement Association; Specialty Steel Industry of North America; Tennessee Chamber of Commerce and Industry; Western States Petroleum Association; West Virginia Manufacturers Association; Wisconsin

Manufacturers and Commerce (*No. 12-1248*); Energy-Intensive Manufacturers' Working Group on Greenhouse Gas Regulation and Glass Packaging Institute (*No. 12-1254*); Southeastern Legal Foundation, Inc.; U.S. Representative Michele Bachmann; U.S. Representative Joe Barton; U.S. Representative Marsha Blackburn; U.S. Representative Kevin Brady; U.S. Representative Paul Broun; U.S. Representative Phil Gingrey; U.S. Representative Steve King; U.S. Representative Jack Kingston; U.S. Representative Tom Price; U.S. Representative Dana Rohrabacher; U.S. Representative John Shimkus; U.S. Representative Lynn Westmoreland; The Langdale Company; Langdale Forest Products Company; Langdale Timber Company; Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet, Inc.; Langdale Ford Company; Langboard, Inc. – MDF; Langboard, Inc. – OSB; Georgia Motor Trucking Association, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Kennesaw Transportation, Inc.; J&M Tank Lines, Inc.; Southeast Trailer Mart, Inc.; Georgia Agribusiness Council, Inc.; Competitive Enterprise Institute; FreedomWorks; and Science and Environmental Policy Project (*No. 12-1268*); and the States of Texas, Alabama, Florida, Georgia, Indiana, Louisiana, Michigan, Nebraska, North Dakota, Oklahoma, South Carolina, and South Dakota, and the Louisiana Department of Environmental Quality (*No. 12-1269*).

Respondents herein, who were also respondents in the cases below, are the Environmental Protection Agency and the Administrator of the Environmental Protection Agency. Lisa P. Jackson held the office of

Administrator until February 15, 2013. Gina McCarthy currently holds that office.

Other parties who were petitioners in the cases addressed by the consolidated judgment below are the following: Greg Abbott, Attorney General of Texas; Alpha Natural Resources, Inc.; Haley Barbour, Governor of the State of Mississippi; Coalition for Responsible Regulation, Inc.; Collins Industries, Inc.; Collins Trucking Company, Inc.; Commonwealth of Virginia; Georgia Agribusiness Council, Inc.; Georgia Coalition for Sound Environmental Policy, Inc.; Georgia Motor Trucking Association, Inc.; Gerdau Ameristeel US Inc.; Great Northern Project Development, L.P.; Industrial Minerals Association—North America; J&M Tank Lines, Inc.; Kennesaw Transportation, Inc.; Landmark Legal Foundation; Mark R. Levin; Louisiana Department of Environmental Quality; Missouri Joint Municipal Electric Utility Commission; National Cattlemen's Beef Association; National Environmental Development Association's Clean Air Project; National Mining Association; Ohio Coal Association; Pacific Legal Foundation; Peabody Energy Company; Rick Perry, Governor of Texas; Rosebud Mining Co.; South Carolina Public Service Authority; Texas Agriculture Commission; Texas Commission on Environmental Quality; Texas General Land Office; Texas Public Utilities Commission; and Texas Railroad Commission.

Intervenors for petitioners in cases addressed by the consolidated judgment below—other than petitioners herein—include Alpha Natural Resources, Inc.; American Frozen Food Institute; American Fuel & Petrochemical Manufacturers; American Petroleum Institute; Arkansas State Chamber of

Commerce; Associated Industries of Arkansas; Brick Industry Association; Coalition for Responsible Regulation, Inc.; Colorado Association of Commerce & Industry; Commonwealth of Kentucky; Corn Refiners Association; Glass Association of North America; Governor of Mississippi Haley Barbour; Great Northern Project Development, L.P.; Idaho Association of Commerce and Industry; Independent Petroleum Association of America; Indiana Cast Metals Association; Industrial Minerals Association North America; Kansas Chamber of Commerce and Industry; Langdale Farms, LLC; Langdale Fuel Company; Langdale Chevrolet-Pontiac, Inc; Langdale Ford Company; Langboard, Inc.–MDF; Langboard, Inc.–OSB; Louisiana Department of Environmental Quality; Louisiana Oil and Gas Association; Michigan Manufacturers Association; Mississippi Manufacturers Association; National Association of Manufacturers; National Association of Home Builders; National Cattlemen’s Beef Association; National Electrical Manufacturers Association; National Environmental Development Association’s Clean Air Project; National Federation of Independent Business; National Mining Association; National Oilseed Processors Association; Nebraska Chamber of Commerce and Industry; North American Die Casting Association; Ohio Coal Association; Ohio Manufacturers Association; Peabody Energy Company; Pennsylvania Manufacturers Association; Portland Cement Association; Rosebud Mining Company; South Coast Air Quality Management District; Specialty Steel Industry of North America; Steel Manufacturers Association; Tennessee Chamber of Commerce and Industry; Utility Air Regulatory Group; Virginia Manufacturers Association; Western States

Petroleum Association; West Virginia Manufacturers Association; and Wisconsin Manufacturers & Commerce.

Intervenors for in cases addressed by the consolidated judgment below include Alliance of Automobile Manufacturers; Association of Global Automakers; Center for Biological Diversity; City of New York; Commonwealth of Massachusetts; Conservation Law Foundation; Environmental Defense Fund; Georgia ForestWatch; Global Automakers; Indiana Wildlife Federation; Michigan Environmental Council; Natural Resources Council of Maine; Natural Resources Defense Council; National Wildlife Federation; Ohio Environmental Council; Pennsylvania Department of Environmental Protection; Sierra Club; South Coast Air Quality Management District; State of California; State of Connecticut; State of Delaware; State of Illinois; State of Iowa; State of Maine; State of Maryland; State of Minnesota; State of New Hampshire; State of New Mexico; State of New York; State of North Carolina; State of Oregon; State of Rhode Island; State of Vermont; State of Washington; Wetlands Watch; and Wild Virginia.

RULE 29.6 STATEMENT

No petitioner has a parent company, and no publicly-held corporation has a 10% or greater ownership interest in any petitioner.

TABLE OF CONTENTS

	Page(s)
QUESTION PRESENTED	i
RULE 24.1(b) STATEMENT	ii
RULE 29.6 STATEMENT	vi
TABLE OF AUTHORITIES	viii
INTRODUCTION	1
OPINIONS AND ORDERS BELOW	2
JURISDICTION.....	2
STATUTORY PROVISIONS.....	3
STATEMENT OF THE CASE.....	3
SUMMARY OF THE ARGUMENT	13
ARGUMENT	14
I. EPA Erred By Rewriting or Ignoring the Plain Terms of the PSD Statutes in Order to Extend the Program to Encompass GHGs.	14
II. EPA Erred By Deploying the Absurdity Doctrine As a Roving License to Ignore Statutory Text.....	23
CONCLUSION	33
STATUTORY ADDENDUM.....	1a

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Alabama Power Co. v. Costle</i> , 636 F.2d 323 (D.C. Cir. 1979).....	16
<i>Bowen v. Georgetown Univ. Hosp.</i> , 488 U.S. 204 (1988).....	22
<i>Chevron USA v. Nat. Res. Def. Council</i> , 467 U.S. 837 (1984).....	25
<i>Church of the Holy Trinity v. United States</i> , 143 U.S. 457 (1892).....	30
<i>Clinton v. City of New York</i> , 524 U.S. 417 (1998).....	28
<i>Duncan v. Walker</i> , 533 U.S. 167 (2001).....	18
<i>Environmental Defense v. Duke Energy Corp.</i> , 549 U.S. 561 (2007).....	21
<i>FDA v. Brown & Williamson Corp.</i> , 529 U.S. 120 (2000).....	5, 22
<i>Gonzales v. Oregon</i> , 546 U.S. 243 (2006).....	22
<i>Green v. Bock Laundry Mach. Co.</i> , 490 U.S. 504 (1989).....	24, 27, 28
<i>Hector v. U.S. Dep't of Agric.</i> , 82 F.3d 165 (7th Cir. 1996).....	31
<i>Johnson v. South Pacific Co.</i> , 196 U.S. 1 (1904).....	28

<i>Kloeckner v. Solis</i> , 133 S. Ct. 596 (2012).....	3, 24
<i>Lau Ow Bew v. United States</i> , 144 U.S. 47 (1892).....	26
<i>Massachusetts v. EPA</i> , 549 U.S. 497 (2007).....	1, 5, 15, 21, 23, 31
<i>MCI Telecommunications Corp. v. AT&T Co.</i> , 512 U.S. 218 (1994).....	22
<i>Nixon v. Missouri Mun. League, Inc.</i> 541 U.S. 125 (2004).....	24
<i>Public Citizen v. U.S. Dep’t of Justice</i> , 491 U.S. 440 (1989).....	25, 29
<i>Ragsdale v. Wolverine World Wide, Inc.</i> , 535 U.S. 81 (2002).....	22
<i>Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs</i> , 531 U.S. 159 (2001).....	25
<i>Sorrells v. United States</i> , 287 U.S. 435 (1932).....	26, 30
<i>Train v. Colorado Public Interest Research Group, Inc.</i> , 426 U.S. 1 (1976).....	21
<i>United Sav. Ass’n of Tex. v. Timbers of Inwood Forest Assoc., Ltd.</i> , 484 U.S. 365 (1988).....	20
<i>United States v. Am. Trucking Ass’n</i> , 310 U.S. 534 (1940).....	26
<i>United States v. Kirby</i> , 74 U.S. (7 Wall.) 482 (1868).....	25, 26, 29

<i>United States v. X-Citement Video, Inc.</i> , 513 U.S. 64 (1994).....	27, 28
-----------------------------------------------------------------------------	--------

Statutes

28 U.S.C. § 1254(1)	2
42 U.S.C. § 7401	4
42 U.S.C. § 7403(g)	4
42 U.S.C. § 7407	6, 7
42 U.S.C. § 7409	6
42 U.S.C. § 7470	5, 15, 16
42 U.S.C. § 7471	7
42 U.S.C. § 7475	7, 17, 21
42 U.S.C. § 7479	6, 18, 21
42 U.S.C. § 7521	4
42 U.S.C. § 7601	4
42 U.S.C. § 7602(j)	6
42 U.S.C. § 7651	4
42 U.S.C. § 7661	4, 5, 18
42 U.S.C. § 7671	4

Regulations

40 C.F.R. pt. 50	6
<i>Control of Emissions from New Highway Vehicles and Engines</i> , 68 Fed. Reg. 52,922 (Sept. 8, 2003)	4, 5

<i>Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496 (Dec. 15, 2009)</i>	5, 9
<i>Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule, 75 Fed. Reg. 25,324 (May 7, 2010)</i>	9
<i>Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 74 Fed. Reg. 55,292 (Oct. 27, 2009).....</i>	3, 10, 30
<i>Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, 75 Fed. Reg. 31,514 (June 3, 2010)</i>	4-6, 9-12, 16, 18, 19, 25, 30
<i>Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 18,886 (Apr. 24, 2009)</i>	4, 7, 9
<i>Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs, 75 Fed. Reg. 17,004 (Apr. 2, 2010)</i>	9, 10
<i>Regulating Greenhouse Gas Emissions Under the Clean Air Act, 73 Fed. Reg. 44,354 (July 30, 2008).....</i>	4, 5, 7-8, 22
Other Authorities	
Blackstone, William 1 <i>Commentaries on the Laws of England</i> 60 (1765).....	26, 27, 29
The Federalist No. 78.....	25

Manning, John F., <i>The Absurdity Doctrine</i> , 116 Harv. L. Rev. 2387 (2003).....	24
1 Joseph Story, <i>Commentaries on the Constitution of the United States</i> § 403 (2d ed. 1858)	26
EPA, <i>Technical Support Document for Final Endangerment Rule</i> , Regulatory Docket ID No. EPA-HQ-OAR-2009- 0171-11645 (Dec. 7, 2009), (available at http://www.epa.gov/climatechange/Downloads/ endangerment/Endangerment_TSD.pdf	5
EPA's <i>Response to Public Comments</i> , Regulatory Docket ID No. EPA-HQ-OAR-2009- 0597-0128 (Mar. 29, 2010).....	10
EPA, <i>National Ambient Air Quality Standards (NAAQS)</i> , at http://www.epa.gov/air/criteria.html (Dec. 14, 2012)	7
<i>PSD and Title V Permitting Guidance for Greenhouse Gases</i> 48 (2011), available at http://www.epa.gov/nsr/ghgdocs/ ghgpermitting_guidance.pdf	17
EPA, <i>What Are the Six Common Air Pollutants?</i> , at http://www.epa.gov/air/urbanair/ (Apr. 20, 2012).....	7
EPA, <i>Health</i> , at http://www.epa.gov/airquality/ carbonmonoxide/health.html	7
EPA, <i>Health</i> , at http://www.epa.gov/airquality/lead/ health.html (last visited Dec. 6, 2013)	7

INTRODUCTION

This case is about the Environmental Protection Agency's determination to regulate greenhouse gas (GHG) emissions under the Clean Air Act (CAA) no matter how much the agency had to distort and even rewrite statutory provisions to do so. In fact, EPA conceded in the rulemaking and in this litigation that extending the CAA's Prevention of Significant Deterioration (PSD) program to cover GHGs produces "absurd" results that Congress never intended. Nonetheless, misreading *Massachusetts v. EPA*, 549 U.S. 497 (2007), EPA pressed ahead and promulgated what may be the costliest, most intrusive regulatory program the nation has yet seen. But *Massachusetts* did not address stationary sources in general or the PSD program in particular and hence could not have authorized the rules EPA promulgated below.

The PSD program requires permits to build new facilities or refurbish old ones. The text, structure, purposes, and history of the program show it was designed to apply to emissions of conventional pollutants like lead and carbon monoxide—pollutants that concentrate in local areas and affect health and welfare via direct exposures, such as through inhalation or ingestion. The statutory PSD apparatus simply does not work when applied to substances like GHGs that disperse globally and produce harms unrelated to pollutant exposures. Indeed, EPA's own statements, both in the rulemakings below and subsequent regulatory guidance, make clear that PSD controls can be applied to GHGs only by nullifying many of the program's key statutory elements.

Congress, for instance, set the PSD program's coverage provisions so that its cumbersome and

expensive permitting requirements would apply exclusively to large sources of conventional pollution, like steel mills and power plants. As applied to GHGs, however, the coverage provisions sweep in very small sources, like churches, bakeries, even large private homes. By EPA's admission, Congress never intended such a thing. Nonetheless, the agency plunged ahead and extended the program to encompass GHG emissions.

To justify this programmatic mismatch, EPA deployed the "absurd results" canon and claimed authority to rewrite the statute's numerical provisions defining which pollution sources are subject to PSD requirements. But that is not how the absurdity doctrine works. Once it recognized that the PSD program produced absurd results if extended to include GHGs, EPA should have drawn the obvious conclusion—GHGs are not the type of "pollutant" to which PSD applies. Because EPA overstepped the bounds of its authority, the Court should reverse the D.C. Circuit decision below.

OPINIONS AND ORDERS BELOW

The opinion of the D.C. Circuit is reported at 684 F.3d 102 and reproduced in the Joint Appendix at 191-267. The order denying rehearing en banc is available at 2012 WL 6621785 and reproduced in the Joint Appendix at 139-190.

JURISDICTION

The court of appeals rendered its decision on June 26, 2012, and denied petitions for rehearing on December 20, 2012. On October 15, 2013, the Court granted six petitions for writs of certiorari. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

Relevant statutes are reproduced in the Statutory Addendum.

STATEMENT OF THE CASE

In construing the Clean Air Act to justify these regulations, EPA reached an interpretive endpoint that, in its words, is “so contrary to what Congress had in mind—and that in fact so undermines what Congress attempted to accomplish” that the statute’s language should not be followed. Proposed Tailoring Rule, 74 Fed. Reg. 55,292, 55,310 (Oct. 27, 2009). EPA recognized that, under its interpretation, PSD permitting requirements designed for utility and heavy industrial sources would now apply to millions of smaller facilities, including multi-family dwellings and even some large private homes. See *id.* at 55,338.

When faced with the extreme measures and absurd results caused by its preferred policy, EPA rewrote the tons-per-year (tpy) emissions thresholds defining which sources are subject to PSD permitting. As Judges Kavanaugh and Brown observed in separate dissents from the denial of rehearing en banc, this “is not the proper way to interpret a statute.” JA174 (Kavanaugh, J., dissenting); see also JA156-57 (Brown, J., dissenting). “Instead of ‘reading new words into the statute’ to avoid absurd results ... the statute should be interpreted so that ‘no absurdity arises in the first place.’” JA174 (Kavanaugh, J., dissenting) (quoting *Kloeckner v. Solis*, 133 S. Ct. 596, 606-07 (2012)).

1. The Clean Air Act is organized into six titles, none of which expressly addresses controls on GHG emissions or prevention of global climate change:

“Air Pollution Prevention and Control” (Title I, 42 U.S.C. §§ 7401-7515); “Emission Standards for Moving Sources” (Title II, 42 U.S.C. §§ 7521-7590); “General Provisions” (Title III, 42 U.S.C. §§ 7601-7627); “Acid Deposition Control” (Title IV, 42 U.S.C. §§ 7651-7651o); “Permits” (Title V, 42 U.S.C. §§ 7661-7661f); and “Stratospheric Ozone Protection” (Title VI, 42 U.S.C. §§ 7671-7671q); see also 68 Fed. Reg. 52,922, 52,925-29 (Sept. 8, 2003) (JA1341-63) (EPA overview of legislative history as it relates to GHGs). Section 103(g) does mention the most prevalent GHG, carbon dioxide. 42 U.S.C. § 7403(g). Section 103(g) authorizes “nonregulatory strategies and technologies,” and it specifically forbids its use “to authorize the imposition on any person of air pollution control requirements.” *Id.* Neither GHGs in general nor carbon dioxide in particular are mentioned in the Act’s PSD provisions.

GHGs differ in kind from conventional pollutants. See 75 Fed. Reg. at 31,535 (JA363); 73 Fed. Reg. at 44,399-401 (JA1083-95). Their concentrations and effects are global in character, in contrast to conventional pollutants, which concentrate in particular areas or regions. See 74 Fed. Reg. at 66,517 (JA871-72); 73 Fed. Reg. at 44,399-401 (JA1083-95). Unlike conventional pollutants, GHGs do not affect health and welfare through direct exposures, such as through inhalation or ingestion. See 74 Fed. Reg. 18,886, 18,901 (Apr. 24, 2009) (Proposed Endangerment Rule) (“[A]mbient concentrations of carbon dioxide and the other greenhouse gases, whether at current levels or at projected ambient levels ... do not cause direct adverse health effects such as respiratory or toxic effects.”); EPA, *Technical Support Document for Final Endangerment Rule*, Regulatory Docket ID No. EPA-

HQ-OAR-2009-0171-11645, at 21 (Dec. 7, 2009) (available at http://www.epa.gov/climatechange/Downloads/endangerment/Endangerment_TSD.pdf) (similar). And GHGs, particularly carbon dioxide, are emitted in much greater amounts than conventional pollutants, see 75 Fed. Reg. at 31,535 (JA363); 73 Fed. Reg. at 44,407, and from many more sources—including humans. See 75 Fed. Reg. at 31,535 (JA363); 73 Fed. Reg. at 44,376 (JA1041).

The issue of potentially regulating GHGs under the CAA initially arose under the Act's Title II, which focuses on emissions from mobile sources. See 68 Fed. Reg. at 52,922 (JA1332). This issue eventually reached the Court in *Massachusetts*, which held that GHGs are “air pollutants” for purposes of the Act-wide definition in Section 302(g), without addressing the Act's stationary-source provisions. In reaching this conclusion, *Massachusetts* distinguished *FDA v. Brown & Williamson Corp.*, 529 U.S. 120 (2000), reasoning that a ruling favoring the *Massachusetts* petitioners would not “lead to ... extreme measures.” 549 U.S. at 531.

In the proceedings on remand from *Massachusetts*, EPA regulated GHG emissions from new motor vehicles and went on to claim authority to regulate GHG emissions from stationary sources.

2. Two programs for regulating stationary-source GHG emissions are at issue in this case: Prevention of Significant Deterioration (PSD) of Title I, part C of the CAA (42 U.S.C. §§ 7470 et seq.), and the permitting provisions of Title V (42 U.S.C. §§ 7661 et seq.). Both programs impose permitting requirements on “major” emitting facilities—stationary sources with the potential to emit specific threshold amounts of “any air pollutant.”

The PSD program forbids the construction of “major emitting facilit[ies]” unless a permit is obtained from a state or federal permitting authority and a series of requirements are met. For purposes of the PSD program, “major emitting facility” means stationary sources that “emit, or have the potential to emit” either 100 tpy or 250 tpy of “any air pollutant.” 42 U.S.C. § 7479(1). Twenty-eight enumerated categories of industrial sources—for example, “iron and steel mill plants” and “primary lead smelters”—qualify as “major emitting facilities” if they have the potential to emit over 100 tpy of “any air pollutant.” *Id.* All other stationary sources qualify if they have potential to emit over 250 tpy of “any air pollutant.” *Id.*

Title V requires stationary sources to obtain state-issued operating permits to establish compliance with the PSD requirements, among others, if they have the potential to emit at least 100 tpy of “any air pollutant.” *Id.* § 7602(j).

3. The PSD program is closely related to maintenance of national ambient air quality standards (NAAQS). Under the NAAQS program, EPA designates certain pollutants as “criteria” pollutants and sets maximum allowable concentrations for regions throughout the nation. 42 U.S.C. §§ 7407, 7409. EPA thus far has designated only six substances as criteria pollutants—carbon monoxide, lead, nitrogen dioxide, ozone, particle pollution, and sulfur dioxide. All six harm human health and welfare through direct exposure by inhalation, ingestion, and the like; none is a greenhouse gas. See 40 C.F.R. pt. 50; 75 Fed. Reg. at 31,520 (JA298) (“There is no NAAQS for CO₂.”); EPA, *National Ambient Air Quality Standards (NAAQS)*,

at <http://www.epa.gov/air/criteria.html> (Dec. 14, 2012); EPA, *What Are the Six Common Air Pollutants?*, at <http://www.epa.gov/air/urbanair/> (Apr. 20, 2012); see also EPA, *Health*, at <http://www.epa.gov/airquality/carbonmonoxide/health.html> (last visited Dec. 6, 2013) (describing exposure-related effects of carbon monoxide); EPA, *Health*, at <http://www.epa.gov/airquality/lead/health.html> (last visited Dec. 6, 2013) (same for lead). By contrast, carbon dioxide, the most ubiquitous greenhouse gas, see, e.g., 73 Fed. Reg. at 44,429, does not harm human health or welfare through direct exposure. See 74 Fed. Reg. at 18,901. People and animals exhale carbon dioxide when they breathe, and plants need carbon dioxide to live. See 73 Fed. Reg. at 44,376 (JA1047).

To ensure compliance with the NAAQS, EPA must determine whether a region is in “attainment” (the NAAQS is met), “nonattainment” (the NAAQS remains unmet), or “unclassifiable” (EPA cannot determine whether the NAAQS is met). 42 U.S.C. § 7407(d)(1)(A). The PSD program applies to areas that are in “attainment” or are “unclassifiable,” *id.* § 7471, and requires permits before major emitting facilities are built or modified in those regions, *id.* § 7475(a). To obtain a permit, a regulated facility must, among other things, install the “best available control technology [BACT] for each pollutant subject to regulation under [the CAA].” *Id.* § 7475(a)(4).

4. On remand from *Massachusetts*, EPA opened a single regulatory docket in July 2008, and issued an Advance Notice of Proposed Rulemaking (ANPR) to address GHG emissions from all sources, including both mobile and stationary sources. See 73 Fed. Reg. 44,354, 44,355 (July 30, 2008) (JA975, JA979-80).

The ANPR flagged the prospect that application of the PSD and Title V programs to carbon emissions would lead to “absurd” results. 73 Fed. Reg. at 44,503 (JA1272-73), 44,512 (JA1311-12).

In a preface to the ANPR, the EPA Administrator observed that it had “become clear” that EPA regulation of GHGs from motor vehicles under section 202(a)(1) could trigger “regulation of smaller stationary sources that also emit GHGs—such as apartment buildings, large homes, schools, and hospitals,” resulting in “an unprecedented expansion of EPA authority that would have a profound effect on virtually every sector of the economy and touch every household in the land.” 73 Fed. Reg. at 44,355 (JA979). The Administrator found that the CAA was “ill-suited for the task of regulating global greenhouse gases.” *Id.* (JA980).

Other federal agencies reinforced EPA’s concerns about absurd consequences. The Department of Energy expressed concern about “an enormously elaborate, complex, burdensome and expensive regulatory regime that would not be assured of significantly mitigating global atmospheric GHG concentrations and global climate change.” *Id.* at 44,365 (JA1004). The Department of Transportation was wary “that attempting to regulate [GHGs] under the [CAA] will harm the U.S. economy while failing to actually reduce global emissions.” *Id.* at 44,362 (JA988). And the Department of Commerce expressed concerns that GHG emission controls “would impose significant costs on U.S. workers, consumers, and producers and harm U.S. competitiveness without necessarily producing meaningful reductions in global GHG emissions.” *Id.* at 44,371 (JA1029).

Departing from the ANPR's single-docket approach, on April 17, 2009, EPA issued a standalone Proposed Endangerment Ruling as to six GHGs, 74 Fed. Reg. 18,886, including the four at issue in *Massachusetts* plus two others that are emitted only by stationary sources. This proposal was soon followed by a final rule, 74 Fed. Reg. 66,496 (Dec. 15, 2009) (JA793), that was followed in rapid succession by three more final rules, the so-called "Timing Rule" or "Triggering Rule," 75 Fed. Reg. 17,004 (Apr. 2, 2010) (JA705), the "Tailpipe Rule," 75 Fed. Reg. 25,324 (May 7, 2010) (JA683), and the "Tailoring Rule," 75 Fed. Reg. 31,514 (June 3, 2010) (JA268).

EPA determined in the Triggering Rule that once it had regulated GHG emissions from motor vehicles, it also had to regulate GHG emissions from stationary sources under the PSD program. EPA declared that "once EPA has determined to regulate a pollutant in some form under the Act and such regulation is operative on the regulated activity, the terms of the Act make clear that the PSD program is automatically applicable." 75 Fed. Reg. at 17,020 (April 2, 2010) (JA778). EPA did likewise for the Title V program. See *id.* at 17,023 (JA788). Further, EPA stated that "[u]nder the current interpretation of the PSD applicability provision, EPA's recent promulgation" of regulations governing GHG emissions from new motor vehicles "will trigger the applicability of PSD for GHG sources at the 100/250 tpy threshold levels as of January 2, 2011." 75 Fed. Reg. at 31,554 (JA449).

In applying the PSD coverage provisions to GHGs, EPA rejected the broadest meaning of "air pollutant" and restricted the term to encompass only "*regulated* air pollutants." Hence, according to EPA,

the PSD and Title V programs would be triggered for stationary sources as of the day that controls mandated by the Tailpipe Rule took effect. See 75 Fed. Reg. 17,004 (JA705). EPA rejected commenters' suggestions that it read "any air pollutant" restrictively to exclude GHGs and include only regulated conventional air pollutants. See *EPA's Response to Public Comments*, Regulatory Docket ID No. EPA-HQ-OAR-2009-0597-0128, at 147 (Mar. 29, 2010) ("Nine industry and commerce commenters ... suggest that EPA clarify in the PSD Interpretive Memo that the term 'Pollutants Subject to Regulation' exclude GHGs.").

5. In the "Tailoring Rule," EPA again acknowledged that applying the PSD and Title V programs to GHGs would produce effects so extreme as to be "absurd." 75 Fed. Reg. at 31,596 (JA631-32), 74 Fed. Reg. 55,292, 55,306-11 (Oct. 27, 2009). In EPA's words, "[a]pplying the PSD thresholds to sources of GHG emissions literally results in a PSD program that is so contrary to what Congress had in mind—and that in fact so undermines what Congress attempted to accomplish with the PSD requirements—that it should be avoided under the 'absurd results' doctrine." *Id.* at 55,310. In 2009, the PSD program applied to only 280 stationary sources, while Title V reached 14,700 sources—primarily large industrial facilities and power plants. 74 Fed. Reg. at 55,301, 55,302. But because GHGs, especially carbon dioxide, are emitted in far greater amounts, and from many more sources than all other "air pollutants" previously regulated, applying PSD to GHGs would mean that the program would apply to "41,000 new and modified facilities per year," *id.* at 55,301, while the Title V program would apply, for the first time, to "more than six million sources of GHGs," *id.* at

55,302. Not only would such regulation add untold billions in compliance costs and permitting expenses, EPA concluded it could produce permitting delays of up to ten years. See 75 Fed. Reg. at 31,563-64 (JA485-94).

Confronted with the conundrum of how to address absurd results flowing from its preferred policy, EPA rewrote the numerical coverage thresholds set by Congress instead of construing the statute to exclude GHGs from the PSD program. In particular, EPA temporarily exempted some but not all emitters of some but not all pollutants that the statutory text, as construed by the agency, would otherwise cover. See 75 Fed. Reg. at 31,514 (JA268). While Congress determined that the PSD and Title V programs would apply to facilities discharging more than 100/250 tpy, the agency mandated that, to fit the programs to GHGs, they would apply only to sources emitting GHGs in amounts more than 75,000 or 100,000 tpy—two EPA-created thresholds. *Id.*; see also *id.* at 31,516, 31,533 (JA281-82, JA355).

EPA asserted authority to ratchet down the agency-created thresholds over time on grounds it claimed were both “intertwined” with and “independent” of the absurdity doctrine. *Id.* at 31,514 (JA391). Specifically, EPA relied on an “administrative necessity” doctrine, which it contended allows an agency to decline to “follow the literal requirements” of a statute that “is impossible for the agency to administer.” *Id.* at 31,543-44 (JA401-02). And EPA relied on a newly invented doctrine that it contended confers expansive agency authority to “implement statutory mandates one step at a time.” *Id.* at 31,544 (JA403). In this fashion, EPA claimed discretion to regulate more parties by

further changing the coverage thresholds in future years.

6. More than seventy business groups, public policy groups, and States challenged EPA's rulemakings. In a *per curiam* opinion, a D.C. Circuit panel rejected these challenges and held that EPA's reasoning in support of the decision to "trigger" the PSD program had appropriately led the agency to deviate from "the literal statutory definition of air pollutant." JA237.

The panel denied rehearing, and the court denied rehearing en banc, with Judge Kavanaugh and Judge Brown dissenting separately. Both Judge Brown and Judge Kavanaugh viewed skeptically EPA's response to the acknowledged "absurd results" of its interpretation, deeming it a kind of "abuse" used "to preempt legislative prerogatives." JA158-59 (Brown, J., dissenting); see also JA189-90 (Kavanaugh, J., dissenting). Judge Kavanaugh noted that "an unusual twist" in this case is that "EPA openly acknowledged unreasonableness—indeed, the absurdity—caused by its interpretation of the statute." JA173. Yet, "EPA surprisingly did not choose the seemingly obvious option" of revisiting its construction of "any air pollutant" and adopting a narrower construction that would eliminate the absurdity. *Id.* In Judge Kavanaugh's view, EPA's absurdity-causing interpretation of "any air pollutant" is "the most critical point in this case," even though the panel failed to address it. JA187. According to Judge Kavanaugh, "EPA chose an admittedly absurd reading over a perfectly natural reading of the relevant statutory text. An agency cannot do that." JA187. Judge Brown separately emphasized that "[a]lthough the *Massachusetts* Court

distinguished *Brown & Williamson*, it did so only in the context of tailpipe emissions. Its reasoning did not extend to Title V and the PSD program.” JA163. “Congress simply did not intend for EPA to convert the ‘Clean Air Act’ to the ‘Warm Air Act’ writ large.” JA166.

7. Nine petitions for certiorari followed, six of which the Court granted.

SUMMARY OF THE ARGUMENT

Through the so-called “Triggering Rule,” EPA expanded the PSD program’s ambit to encompass millions of new stationary sources, all the way down to neighborhood restaurants and even some homes. But by EPA’s own admission, the fit between the PSD program and GHG regulation is so poor as to produce absurd results, which EPA decided to address through statutory “tailoring.” Surely, the fact EPA needed to perform such a thing as statutory “tailoring” should have set off alarms that its interpretive enterprise had badly gone awry.

Regardless of how the Clean Air Act’s mobile-source provisions might work, the Act’s PSD provisions, properly construed, cannot and do not work if extended to encompass GHGs. Indeed, the only way to shoehorn GHGs into the PSD program is by nullifying many core statutory requirements. (See Section I, *infra*.) Moreover, even if EPA’s statute-nullifying PSD interpretation were the only one available (which it is not), proper application of the absurdity doctrine would still compel the conclusion that PSD regulation of GHGs falls beyond EPA’s statutory authority. (See Section II, *infra*.)

ARGUMENT

EPA offered various justifications for rewriting the PSD program’s emission thresholds while it dramatically expanded its regulatory authority. But the occasion for rewriting statutory provisions would never have arisen if the agency had properly construed the PSD provisions and properly applied the absurdity doctrine. Moreover, if the Court holds the PSD program cannot extend to GHGs, then by the same reasoning Title V cannot extend to GHGs. Because whether Title V properly applies to GHGs presents a parallel question to whether the PSD program applies, we do not address it separately.

Against this backdrop, we focus solely on the PSD program and absurdity doctrine. We focus in particular on the two dispositive questions—whether EPA properly concluded that the PSD statutory provisions extend to encompass GHGs and, if so, whether EPA properly responded to the admitted absurdity that arises from this extension. EPA erred on both questions.

I. EPA Erred By Rewriting or Ignoring the Plain Terms of the PSD Statutes in Order to Extend the Program to Encompass GHGs.

In response to a petition asking EPA to regulate mobile-source emissions, the Court concluded in *Massachusetts* that GHGs are “air pollutants” for purposes of the Act-wide definition in Section 302(g). But *Massachusetts* neither addressed the Act’s stationary-source provisions nor had occasion to consider EPA’s ultimate determination on remand that applying the PSD program to GHGs produces absurd results. The posture and stated limits of *Massachusetts* are significant because, regardless of

how the CAA’s mobile-source emissions programs might be framed, the PSD program for stationary sources, if applied to GHGs, produces the very type of “extreme measures” that *Massachusetts* disapproved. 549 U.S. at 531.

The fact that PSD regulation of GHGs requires that the statute’s coverage thresholds be multiplied by orders of magnitude itself dooms EPA’s rulemakings. But the incompatibilities between the statutory PSD provisions and EPA’s implementing rulemakings and guidance documents extend well beyond unworkable coverage thresholds. If allowed to stand, EPA’s “tailoring” of the Act will become an ongoing enterprise that requires and enables the agency to cut, reshape, and remold numerous parts of the statute.

1. The PSD program’s stated purposes underscore that it is designed to address only pollutants that, unlike GHGs, produce exposure-related harms, concentrate locally, and are emitted in modest amounts from very large facilities that Congress determined are best able to reduce emissions in economically feasible ways.

Prevention of Exposure-Related Harms. The first of the PSD program’s stated purposes is to “protect public health and welfare” from adverse effects that “occur from air pollution or from *exposures* to pollutants in other media, which pollutants originate as emissions to the ambient air” notwithstanding attainment of NAAQs standards. 42 U.S.C. § 7470(1) (emphasis added). This reference to preventing “exposures to pollutants”—whether directly from air pollution or indirectly via “other media”—makes clear the program aims at curtailing

the types of exposure-related harms characteristic of conventional pollutants.

Control of Localized Concentrations.

Congress also declared that the program's purposes include preventing harmful interstate transport of pollutants that produces "deterioration of air quality for any other State," 42 U.S.C. § 7470(4), and assuring that any "decision to permit increased air pollution *in any area*" is made only upon "careful evaluation" and after opportunity for "informed public participation." *Id.* § 7470(5) (emphasis added). In other words, the program was established to control localized concentrations of harmful pollutants—concentrations that can sensibly be ascribed to a particular "state" or a particular "area."

Economically Feasible Application. A third purpose is to "insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources." 42 U.S.C. § 7470(3). The PSD program's 100/250 tpy thresholds, see *id.* § 7479(1), implement this important purpose by imposing burdensome case-by-case PSD permitting requirements only on the "large" emissions sources that can most readily bear these costs. See, e.g., *Alabama Power Co. v. Costle*, 636 F.2d 323, 348 (D.C. Cir. 1979) (per curiam). Here, moreover, EPA admits that "the addition of enormous numbers of additional sources would provide relatively little benefit compared to the costs" 75 Fed. Reg. at 31,533 (JA356).

2. Unsurprisingly, the PSD program's declared purposes dovetail with and reinforce its operative provisions. As a result, EPA's extension of the program to encompass GHGs nullifies or renders unworkable core provisions of the program.

Local Air Impact Analysis. Sections 165(a)(2) and (e)(1)'s public participation and local air quality assessment provisions cannot be squared with extending the program to GHGs. These Sections work in tandem to require a non-discretionary “public hearing” regarding “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.” 42 U.S.C. § 7475(e)(1) (emphasis added). Likewise, Section 165(e)(3) requires that the Administrator “shall” analyze “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 Act.” *Id.* § 7475(e)(3) (emphasis added).

These features make sense when applied to conventional pollutants that give rise to localized, exposure-related harms due to impacts on “ambient air quality.” But they make no sense as applied to substances that do not degrade “ambient air quality” and whose concentrations and impacts can be meaningfully assessed only on a global scale. Indeed, EPA has effectively conceded as much, informing PSD permit applicants and authorities that they may ignore the statutory “ambient air” requirements because GHGs—being “well-mixed” in the atmosphere—do not give rise to localized impacts. See, e.g., *PSD and Title V Permitting Guidance for Greenhouse Gases* 48 (2011), available at http://www.epa.gov/nsr/ghgdocs/ghgpermitting_guidance.pdf (“Considering the nature of GHG emissions and their global impacts, EPA does not believe it is practical or appropriate to expect permitting authorities to collect

monitoring data for purpose of assessing ambient air impacts of GHGs.”).

Case-by-Case Economic Analysis. Building on its stated purposes, the PSD program mandates that “case-by-case ... economic” analyses be undertaken in issuing PSD permits for large facilities. 42 U.S.C. § 7479(3). Because the PSD program properly applies only to large sources that emit conventional pollutants, it makes sense to require expensive, case-by-case analyses to determine the best available control technology for each individual facility.

Case-by-case BACT assessments are impossible to faithfully adapt, however, in the GHG context, especially for carbon dioxide. If EPA’s interpretation of the program were correct, six million facilities, including 4.5 million residential facilities, would become subject to case-by-case PSD emission-control assessments. To address this unmanageable caseload and avoid imposing intolerable costs on small emitters, EPA has effectively eliminated case-by-case analysis, declaring that small GHG emitters shall eventually be governed by “presumptive” BACT standards and “general” permitting. See, e.g., 75 Fed. Reg. at 31,526 (JA325). But although Title V expressly provides for such general permitting, see 42 U.S.C. § 7661c(d), the PSD program does not.

Case-by-Case Energy and Environmental Analysis. The PSD program also requires “case-by-case” analysis of both “energy ... impacts” and “environmental ... impacts.” 42 U.S.C. § 7479(3). A cardinal rule of interpretation requires that these distinct statutory terms must carry distinct meanings. See *Duncan v. Walker*, 533 U.S. 167, 174 (2001). In the context of PSD permitting for controls on conventional pollutants, this basic rule of

construction is readily followed. When permitting authorities confront proposed PSD controls in conventional-pollutant settings, they can and do make straightforward, independent, and sensible assessments of both energy and environmental impacts. In that context, a permitting authority need only consider the extra energy needed to prevent additional conventional pollution, for instance, by installing energy-consuming pollution-control equipment like the desulfurization units known as “scrubbers.” But when applied to the release of energy and carbon dioxide through burning fossil fuels, the required energy-impact and environmental-impact assessments become hopelessly muddled. The whole reason for emitting carbon dioxide, after all, is that fossil fuels *are* stores of energy and this energy can be released through combustion. As a result, what should be distinct inquiries into “energy” and “environmental” impacts collapse, in the context of fossil-fuel burning, into one and the same assessment: how should EPA regulate energy consumption itself?

Coverage Thresholds. EPA recognized that conventional pollutants and GHGs critically differ in the scale on which they are emitted in an industrial economy. See, e.g., 75 Fed. Reg. at 31,535 (JA363) (“[I]t takes a relatively large source to generate emissions of conventional pollutants in the amounts of 100/250 tpy or more, but many sources combust fossil fuels for heat or electricity, and the combustion process for even small quantities of fossil fuel produces quantities of CO₂ that are far in excess of the sources’ quantities of conventional pollutants and that, for even small sources, equal or exceed the 100/250 tpy levels.”).

In other words, as applied to conventional pollutants, the PSD program's 100/250 tpy emission thresholds make sense and limit the program's burdens to large industrial sources. See *id.* But because GHGs, especially carbon dioxide, are emitted in much greater amounts than conventional pollutants, GHG emissions from a given facility will often exceed by orders of magnitude the facility's conventional-pollutant emissions. As a result, extending the PSD program to GHGs does violence to the Act's coverage thresholds, set with exposure-related harms caused by modestly sized conventional pollutant emissions in mind. The realization that the statutory thresholds fail in a GHG context to effectively winnow out small facilities prompted EPA's concession below that applying the statutory terms to GHGs would be "absurd."

These multiple contradictions, taken individually and even more when taken together, are fatal to EPA's reading of the Act. After all, a statutory "provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme," especially in cases where "only one of the permissible meanings produces a substantive effect compatible with the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 371 (1988). Here, the substantive effects of extending the PSD program to GHGs are manifestly untenable. Any such extension means nullifying or rendering unworkable most central elements of the program.

3. EPA nonetheless determined that the statutory reference in the PSD program to "any air pollutant" would include GHGs, pointing to its

reading of *Massachusetts*. 75 Fed. Reg. at 31,561 (JA481).

But tellingly, EPA itself rejected the broadest possible reading of the *Massachusetts* holding; namely, a reading under which “air pollutant” must refer to “any airborne compound of whatever stripe” for all purposes under the Act. 549 U.S. at 529. In proceedings below, EPA read “any air pollutant” under both the PSD and Title V programs to mean, more restrictively, “any *regulated* air pollutant.” JA236. On review, the Court of Appeals endorsed this reasoning and upheld the agency. JA236-41. The Court rejected the alternative view that, for PSD purposes, the relevant pollutant universe should exclude GHGs and thus be confined to *regulated conventional* air pollutants. JA421-46.

In reaching these conclusions, both EPA and the D.C. Circuit recognized that words and phrases like “any air pollutant,” 42 U.S.C. § 7479(1), and “each pollutant,” *id.* § 7475(a)(4), can and should be read in context. See *Environmental Defense v. Duke Energy Corp.*, 549 U.S. 561, 574 (2007) (holding in a CAA case decided the same day as *Massachusetts* that “identical words used in different parts of the same act” need not always have the same meaning); *Train v. Colorado Public Interest Research Group, Inc.*, 426 U.S. 1, 23-24 (1976) (holding that the term “pollutant”—defined to include “radioactive materials”—was properly read in context to exclude three types of radioactive materials). In light of this recognition and the interpretive evidence canvassed above, EPA and the D.C. Circuit should have further recognized that the term “pollutant” must be read in a PSD context to stop short of encompassing GHGs.

4. Finally, EPA was simply not permitted under the Court's precedents to interpret its authority to regulate localized emissions of conventional pollutants as an implicit grant of authority to regulate the conceptually distinct problem of global climate change. See *Brown & Williamson*, 529 U.S. at 160 (striking down FDA regulation of cigarettes); see also *Gonzales v. Oregon*, 546 U.S. 243 (2006) (striking down DoJ regulation of physician-assisted suicide); *MCI Telecommunications Corp. v. AT&T Co.*, 512 U.S. 218 (1994) (striking down FCC deregulation of long-distance carriers). This is true “[r]egardless of how serious” the problem the agency “seeks to address” may be. *Ragsdale v. Wolverine World Wide, Inc.*, 535 U.S. 81, 91 (2002) (quotation marks and citations omitted); see also *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (“axiomatic” that agencies lack power to promulgate regulations in absence of congressional authorization). And it is especially true here, in light of the “economic and political significance” of this expansive claim of new authority. *Brown & Williamson*, 529 U.S. at 160. Indeed, the implications of EPA’s claim of authority here are so great that, in the words of the Secretaries of Agriculture, Energy, Transportation, and Commerce, it would turn the agency into a “de facto zoning authority through control over thousands of what formerly were local or private decisions, impacting the construction of schools, hospitals, and commercial and residential development.” 73 Fed. Reg. at 44,360 (JA985).

If *Brown & Williamson*, *MCI*, and *Gonzales* were “extraordinary” cases requiring the relevant agencies to “hesitate” before finding an improbable “implicit delegation,” 529 U.S. at 143, 159, this case surely is

even more extraordinary and requires even more hesitation. In *Massachusetts*, the Court reasoned that construing “air pollutant” to include GHGs “would lead to no ... extreme measures” because there was “nothing counterintuitive to the notion that EPA can curtail” automotive GHG emissions. 549 U.S. at 531. Unlike in *Massachusetts*, where the mobile sources at issue already faced functionally equivalent Department of Transportation fuel economy regulations of their emissions, it is difficult to imagine administrative measures and real-world consequences more extreme than those presented by EPA’s triggering of PSD and Title V regulation of GHGs from all types of stationary sources.

In sum, EPA points to nothing in the text, structure, purposes, or history of the Clean Air Act, nor in any background principle of construction, remotely adequate to establish that Congress intended to grant it authority to regulate GHGs under the PSD program. Indeed, the *only* substantial evidence the agency can marshal is the Act’s use of the term “air pollutant,” but even EPA concedes this language cannot be taken in its broadest sense. As a matter of first principles, EPA’s willingness, perhaps eagerness, to construe statutory language in a manner that produces absurd results and expands its jurisdiction to where it becomes a “de facto zoning authority” cannot be squared with the Court’s precedents.

II. EPA Erred By Deploying the Absurdity Doctrine As a Roving License to Ignore Statutory Text.

In choosing to trigger controls on emissions of GHGs under the PSD program, notwithstanding that the triggering produces absurd results, EPA

overlooked the elementary rule that, when confronted with potentially absurd statutory results, the first and best option is to read the relevant statute so that “no absurdity arises in the first place.” *Kloeckner v. Solis*, 133 S. Ct. 596, 607 (2012); see also *Nixon v. Missouri Mun. League, Inc.* 541 U.S. 125, 138 (2004) (avoiding interpretation “that leads to absurd or futile results”) (citation omitted); cf. John F. Manning, *The Absurdity Doctrine*, 116 Harv. L. Rev. 2387, 2392-93 (2003) (urging careful textual analysis to avoid recourse to the absurdity doctrine). EPA should have recognized, before embarking on statutory reconstruction, that it was bound to reject an admittedly absurd interpretation in favor of the more natural reading of the statute described above.

1. Rather than properly interpreting the CAA, EPA invoked a novel, agency-authority-maximizing version of the absurdity doctrine that finds no support in the Court’s cases. As explained below, even in rare cases where absurd results are unavoidable, courts and agencies do not attain *carte blanche* to rewrite a statute, much less a roving commission to continually modify it well into the future. A review of this Court’s decisions over two centuries recognizes just two principal ways to respond to unavoidably absurd applications of statutory language.

First, where a minor, self-evident adjustment to literal meaning suggests itself, the Court has applied that adjustment rather than the statute’s literal terms. See, e.g., *Green v. Bock Laundry Mach. Co.*, 490 U.S. 504 (1989). *Second*, in even rarer circumstances, the Court has declared a specific application of a statute, seemingly authorized by its plain terms, to be beyond its proper scope. See, e.g.,

United States v. Kirby, 74 U.S. (7 Wall.) 482 (1868). What the Court has never condoned is what EPA did here—using potentially absurd applications of statutory language as grounds for an “unhealthy process of amending the statute” by interpretation. *Public Citizen v. U.S. Dep’t of Justice*, 491 U.S. 440, 470 (1989) (Kennedy, J., concurring in the judgment). Such “loose invocation[s]” of the canon create intolerable risks that the relevant court or agency will exercise “its own ‘WILL instead of JUDGMENT,’ with the consequence of ‘substituting its own pleasure to that of the legislative body.’” *Id.* at 471 (quoting *The Federalist* No. 78, p. 469 (C. Rossiter ed. 1961)) (internal alterations omitted).

Having concluded that its preferred construction produces unavoidably absurd results, EPA was bound to inquire whether a minor, self-evident adjustment to statutory language was available for resolving the identified absurdity and, if not, to conclude simply that GHG regulation lay beyond the permissible scope of the PSD provisions.

2. Because the absurdity doctrine is an accepted interpretive canon, EPA properly concluded that it applies at *Chevron* step one. See 75 Fed. Reg. at 31,545 (JA408-09). At this first *Chevron* step, courts consider statutory meaning by applying “traditional tools of statutory construction,” without any deference to an implementing agency’s interpretation. *Chevron USA v. Nat. Res. Def. Council*, 467 U.S. 837, 843 n.9 (1984). These “traditional tools” include accepted construction canons, see, e.g., *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 174 (2001), and these canons include the principle that statutes should be construed to avoid absurd

results—a practice deeply embedded in the Court’s jurisprudence and embraced for centuries by leading authorities. See *Kirby*, 74 U.S. (7 Wall.) at 487 (citing Baron Samuel von Pufendorf and Sir Edmund Plowden); see also, e.g., *United States v. Am. Trucking Ass’n*, 310 U.S. 534, 542 (1940); *Sorrells v. United States*, 287 U.S. 435, 450 (1932); *Lau Ow Bew v. United States*, 144 U.S. 47, 59 (1892); 1 Joseph Story, *Commentaries on the Constitution of the United States* § 403 (2d ed. 1858); 1 W. Blackstone, *Commentaries on the Laws of England* 60, 61 (1765).

After correctly concluding that its preferred construction produces absurd results and that the absurdity doctrine binds agencies at *Chevron* step one, EPA got practically everything else about the doctrine wrong. This case is singular in that it appears to be the first in the Court’s history where no party disputes that an agency’s interpretation of a statute it administers produces absurd results. This case, therefore, turns solely on whether EPA can deploy an admittedly absurd statutory result to rewrite statutory text and bolster its own regulatory authority—as opposed to the more modest step of embracing an interpretation that avoids absurd results from the outset by excluding GHGs from the PSD requirements.

3. EPA chose neither of the two distinct and discernible paths by which the Court’s precedents allow an unavoidable absurdity to be safely addressed.

The first of the two paths marked out by the Court’s cases follows in the wake of Blackstone’s classic admonition that “where words bear either none, or a very absurd signification, if literally understood, *we must a little deviate from the received*

sense of them.” Blackstone, *supra*, at 61 (emphasis added).

Blackstone’s classic formulation recognizes that minor “deviations” from legislative text—as opposed to wholesale rewriting at the discretion of a court or agency—can at times produce a more faithful application of the statute than “literal[]” application of the law. *Id.* But such “deviations” must indeed be “little.” Hence, this approach to addressing an absurdity has been essentially confined to making self-evident adjustments to a statute’s scope, making it slightly more or less inclusive, not unlike correcting a scrivener’s error. See, e.g., *Bock Laundry*, 490 U.S. at 529 (Scalia, J., concurring) (correcting text where nuance “could understandably have been omitted by inadvertence”). Limited in this fashion, courts can have confidence in their fidelity to congressional enactments. Accordingly, where self-evident deviations from literalism will prevent an absurdity, the Court has been willing to countenance such deviations.

The Court has followed this first path marked by Blackstone on numerous occasions, countenancing minor, self-evident, textual “deviations” to avoid absurdity without invading the legislative province or rewriting statutory terms from scratch. In *Bock Laundry*, for instance, the Court interpreted the word “defendant” in a federal rule of evidence to mean only criminal defendants, not civil defendants, for, as the Court explained, the language as written could not “mean what it sa[id].” 490 U.S. at 511. In *United States v. X-Citement Video, Inc.*, the Court rejected the “most natural grammatical reading” of a child-pornography statute and construed “the term ‘knowingly’” to “extend[] both to the sexually explicit

nature of the material and to the age of the performers” rather than merely to the transportation or shipment of a visual depiction in interstate or foreign commerce. 513 U.S. 64, 68-69, 78 (1994). In *Clinton v. City of New York*, the Court concluded that the category of “individuals” permitted to obtain expedited review of the constitutionality of the line-item veto statute should be interpreted to encompass not only natural persons but also corporate “persons” because it would be absurd to exclude corporate plaintiffs from the benefits of such review. 524 U.S. 417, 428-29 (1998). And in *Johnson v. South Pacific Co.*, the Court read “locomotives” to fall within a definition of rail “cars,” notwithstanding definitional language pointing in the other direction, in order to effectuate a railroad safety statute requiring that safer train couplings be used in interstate commerce. 196 U.S. 1, 14-15 (1904).

In each of these cases, the Court took care to respect statutory text by making what it thought were minor, natural adjustments to the scope of statutory language. “Any entity” meant any private entity. “Defendant” meant only criminal defendants. “Knowingly” applied to all elements of an offense. “Individual” was read to include all legal persons, including corporations. And rail “cars” was read to include all parts of a train, including locomotives. While some of these “deviations” prompted objections from dissenting justices, none were open-ended. All involved what appeared to be self-evident adjustments not unlike the correction of scrivener’s errors. Cf., e.g., *Bock Laundry*, 490 U.S. at 529 (Scalia, J., concurring).

The second path marked by the Court’s precedents, also drawn from Blackstone, applies in

situations where “there arise[s]” from a statute “any absurd consequences, manifestly contrary to common reason” (that cannot be addressed by deviating just a little from the unaltered text). Blackstone, *supra*, at 91. According to Blackstone, such statutes should be construed with regard to such consequences as “void.” *Id.*

Accordingly, where, as here, an absurdity cannot be avoided through a fairly evident and minor adjustment to statutory language, the particular application of the statute’s literal language must be deemed simply and altogether beyond the statute’s scope. *Kirby* presents the classic example. In that case, a county sheriff arrested a mail carrier for murder while the mail carrier was delivering the mail. A federal statute declared that if any person should knowingly and willfully obstruct or retard the passage of the mail, the person would be subject to penalty. 74 U.S. at 482. The question in *Kirby* was whether the sheriff could be punished for arresting an accused murderer, an obvious absurdity. Although recognizing that the act’s categorical language contained no exceptions for officers acting in their official duties, the Court declared the particular situation before it beyond the intended compass of the law. See *id* at 487.

Following *Kirby*, the Court has occasionally concluded that a literal application of statutory language would create absurd results, but found no evident deviation from the statute’s literal terms was available. In those rare cases, the Court has been satisfied to hold that the particular application at issue falls outside the statute’s scope. See, e.g., *Public Citizen*, 490 U.S. at 443 (Federal Advisory Committee Act does not apply to communications

with the American Bar Association regarding judicial nominations); *Sorrells*, 287 U.S. at 448-49 (criminal statute does not apply to case of entrapment); *Church of the Holy Trinity v. United States*, 143 U.S. 457, 465 (1892) (immigration statute does not apply to clergyman). In none of these cases did the Court strain to offer a definitive reinterpretation of the meaning of the relevant text. It instead concluded, more modestly, that the statute at issue ought not be interpreted to extend so far as to produce absurd results in the instance at hand.

4. EPA failed to appreciate any limitations on the options available for addressing statutory absurdities, and the court below did not even address the issue with regard to EPA's triggering of PSD and Title V. If either had done so—after identifying what concededly were extreme and absurd results and realizing no minor, self-evident “deviation” from statutory text would eliminate them—they would have simply concluded that Congress had not authorized the type of extreme measures needed to bring GHGs under the PSD program.

Remarkably, after realizing that its PSD “triggering” would create results “so contrary to what Congress had in mind” that they “should be avoided under the ‘absurd results’ doctrine,” 74 Fed. Reg. at 55,310, EPA did nothing to prevent the triggering. It opted instead to try to partially alleviate the ensuing absurd results by rewriting codified numerical thresholds, while nullifying other statutory requirements by fiat. In this fashion, EPA replaced the statute's numerical limits with limits of the agency's choosing. See 75 Fed. Reg. at 31,533 (JA355-56).

Significantly, however, there is nothing minor or self-evident about a decision to “unilaterally” increase the statute’s coverage thresholds for stationary-source emissions of some (but not all) pollutants from “250 tons to 100,000 tons—a 400-fold increase.” JA173 (Kavanaugh, J., dissenting). Far from it, selecting a numerical parameter to delineate the bounds of regulatory authority is a quintessentially legislative decision. See, e.g., *Hoctor v. U.S. Dep’t of Agric.*, 82 F.3d 165, 170 (7th Cir. 1996) (explaining an agency rule was legislative because “[t]here is no way to reason” to a particular number selected by the agency) (Posner, J.). This is especially true here, where EPA purports to retain still more discretion to further modify the agency-created numerical thresholds over time. Nothing in the statute’s text or structure even hints at the precise thresholds EPA selected as its initial, preferred PSD coverage levels, and in fact EPA proposed thresholds substantially different from the ones it eventually promulgated. See 74 Fed. Reg. at 55,292 (proposing 25,000 tpy threshold).

EPA’s statutory rewrite was thus by no means self-evident or akin to correcting a scrivener’s error. It was extreme by any measure and not at all authorized by *Massachusetts*, which expressly admonished EPA not to assume “a roving license to ignore the statutory text” and expressly required EPA to ground its “action or inaction in the statute.” 549 U.S. at 533, 535.

In sum, the whole justification for the absurdity doctrine is to better discover and better apply the true meaning of the law. But as invoked by EPA, the doctrine has been transformed from a way of ensuring fidelity to congressional enactments into a

springboard for an agency's never-ending and ultimately legislative rewriting of statutes. Once EPA saw that triggering PSD controls for GHGs produces absurd results, it ought to have recognized that, when facing such results, the best option is to read a statute so no absurdity arises in the first place, as we and other petitioners contend. But failing that, EPA ought to have appreciated at a bare minimum—under the Court's precedents and principles dating to Blackstone—that because no self-evident textual adjustments were available for eliminating the absurdity and still accommodating PSD regulation of GHGs, such regulation necessarily falls, quite simply, beyond the agency's authority.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

LILY FU CLAFFEE
RACHEL L. BRAND
SHELDON GILBERT
*National Chamber
Litigation Center, Inc.
1615 H Street, NW
Washington, DC 20062
(202) 463-5337*

*Counsel for Petitioner
Chamber of Commerce of
the United States of
America*

MICHAEL C. GERAGHTY
*Attorney General
STEVEN E. MULDER
State of Alaska
1031 W. 4th Avenue
Anchorage, AK 99501
(907) 269-5274*

ELLEN STEEN
DANIELLE QUIST
*American Farm Bureau
Federation
600 Maryland Ave., SW
Washington, DC 20024
(202) 406-3600*

JEFFREY A. ROSEN, P.C.
ROBERT R. GASAWAY
Counsel of Record
JEFFREY BOSSERT CLARK
WILLIAM H. BURGESS
*Kirkland & Ellis LLP
655 Fifteenth Street, N.W.
Washington, DC 20005
robert.gasaway@kirkland.com
(202) 879-5000*

*Counsel for Petitioner
Chamber of Commerce of the
United States of America*

DOUGLAS A. HENDERSON
*Troutman Sanders LLP
600 Peachtree Street, NE
Atlanta, GA 30308
(404) 885-3479*

*Counsel for Petitioner American
Farm Bureau Federation*

December 9, 2013

STATUTORY ADDENDUM

Clean Air Act (“CAA”)

Title I — Air Pollution Prevention and Control

Part A — Air Quality and Emission Limitations

CAA § 103(g), 42 U.S.C. § 7403(g)..... 1a

CAA § 107, 42 U.S.C. § 7407 3a

CAA § 109, 42 U.S.C. § 7409 17a

Part C — Prevention of Significant Deterioration of Air Quality

Subpart 1 - Clean Air

CAA § 160, 42 U.S.C. § 7470 21a

CAA § 161, 42 U.S.C. § 7471 22a

CAA § 163, 42 U.S.C. § 7473 23a

CAA § 165, 42 U.S.C. § 7475 29a

CAA § 167, 42 U.S.C. § 7477 39a

CAA § 169, 42 U.S.C. § 7479 40a

Subpart 2 - Visibility Protection

CAA § 169A, 42 U.S.C. § 7491 43a

Title II — Emission Standards for Moving Sources

Part A — Motor Vehicle Emission and Fuel Standards

CAA § 202, 42 U.S.C. § 7521 50a

Title III — General Provisions

CAA § 302, 42 U.S.C. § 7602 86a

Title V — Permits

CAA § 501, 42 U.S.C. § 7661 92a

CAA § 502, 42 U.S.C. § 7661a 94a

CAA § 503, 42 U.S.C. § 7661b 108a

CAA § 504, 42 U.S.C. § 7661c 111a

**42 U.S.C. § 7403(g): Research, investigation,
training, and other activities**

* * *

(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.

2a

(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.

* * *

42 U.S.C. § 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

6a

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 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 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) of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5) of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

42 U.S.C. § 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 NO₂ 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 Administrator 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.

42 U.S.C. § 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 anticipated to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air), 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.

42 U.S.C. § 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.

42 U.S.C. § 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:

24a

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:

25a

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.

(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.A. § 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 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.

42 U.S.C. § 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

30a

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

31a

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

37a

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.

42 U.S.C. § 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.

42 U.S.C. § 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 on-site 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.

**42 U.S.C. § 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.

47a

(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.

42 U.S.C. § 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

52a

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

53a

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) 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

54a

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 unreasonable 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

57a

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

58a

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), 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

60a

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) 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.A. § 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph 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 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) 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

66a

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:

**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			Column B		
	(5 yrs/50,000 mi)			(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

(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	0.80 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%*

(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			Column B			
	(5 yrs/50,000 mi)			(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

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

79a

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,

82a

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) 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:

85a

PM STANDARD FOR BUSES

.....

Model year	Standard*
1991	0.25
1992	0.25
1993 and thereafter	0.10

42 U.S.C. § 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.

87a

(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.

(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.

42 U.S.C. § 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

93a

authorized by the Administrator to carry out a permit program under this subchapter.

42 U.S.C. § 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 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 (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 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

99a

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

100a

(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

101a

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: *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 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)

103a

(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

104a

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

105a

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.

42 U.S.C. § 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

110a

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.

42 U.S.C. § 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.

112a

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.